Materials for Review draft OFHP legislation .rtf

From: Cox, Hilary (ENERGY) []
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Subject: Materials for Review draft OFHP legislation
Date: Monday, April 03, 2017 15:25:53
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Please see attached materials for Review of Draft OFHP legislation meeting tomorrow morning.

Hilary

Hilary Cox
Executive Assistant/Sr. Policy Advisor (A) | Assistant Deputy Mini

Attachments:

External - Draft 5 Annotated (Blks DS) GOV2016.146.e05 (April 3 2017).docx (126 KB)
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Hilary

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A proposal to create Legislation.

Fair Hydro Plan Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

ELECTRICITY ACT, 1998

1. (1) Section 1 of the *Electricity Act, 1998* would be amended by adding the following clause:

[Note: GGRA provisions have been removed for now. Please confirm if they should be re-inserted.]

(2) Clause 1 (f) of the Act would be struck out and the following substituted:

(f) to protect the interests of consumers with respect to the adequacy, reliability and quality of electricity service;

(f.1) to protect the interests of consumers with respect to the prices they pay for electricity, including protection of those interests through the Hydro financing initiative;

[Note: Since the Hydro financing initiative is a defined term and is clearly required to be implemented under the new substantive provisions of the Act, I'm still not sure why this needs to be addressed in the purpose clause. However, I have included a purpose provision as per your instructions.]

Article 1 – Purpose

The proposed new legislation will likely include a large number of provisions intended to support the "financeability" of the structure. As a result, it may make sense for (LSB is exploring the potential) the Bill to create a new stand-alone energy statute, much like the *Green Energy and Green Economy Act, 2009* created the *Green Energy Act, 2009*.

The new legislation would have a purpose clause that explains the objective of intergenerational fairness. This would be useful for the markets to see, and may

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help support the validity of the legislation from a constitutional law perspective (charge vs. tax)

x. Subsection 2 (1) of the Act would be amended by adding the following definitions:

"Financing Entity" means the trust established by Ontario Power Generation Inc. under clause XX (a) or the entity prescribed for the purposes of clause XX (b); ("French")

"hydro financing initiative" means those policies of the Government of Ontario related to its decision to ensure costs to Ontario electricity consumers are allocated fairly over time, taking into account the useful life of new sources of and technologies for electricity; ("French")

[Note: I have applied the precedent of the "smart metering initiative" as per your instructions. Just want to reiterate my concern that the reference to government policies is really vague (which initiative/ policies? At which point in time?) and I think this could cause lots of confusion, particularly if the policies evolve over time. It could also have unintended consequences.]

[Note: To consider -- by describing the initiative as we have in the above definition, we are potentially linking the deferred amount to amounts that would otherwise be paid for by consumers as part of the GA. If the deferred amounts are not all about "the useful life of new sources and technologies" then the description of the initiative should likely be broadened. (For example, if some of the deferred amount may be used to cover high wholesale prices, one could argue that the initiative is NOT about allocating costs fairly over time… it's just about pushing the cost increase to future consumers without considering what is "fair" across the generations.]

Article 2 - Definitions

The new legislation will include many new defined terms. One important term will be "Funding Shortfall" (or equivalent wording). This will be the net reduction in cash flows to IESO as a result of the reallocation of a portion of the Global Adjustment to later periods of time. Currently, the "Funding Shortfall" would be limited to the Global Adjustment attributable to the procurement contracts, but this is a question that still has to be settled.

Another important defined term that is worth noting is "Replacement Event". This is an event under which the market would want to replace a person who has responsibility to take essential actions under the program (including LDCs, IESO and OPG), like invoicing and collecting amounts.

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The triggering events are likely to include insolvency and breach of duty/obligation.

Another key defined term is "Transition Charge". This is the amount that will be calculated and applied to the "deferral consumers", based on the amounts of payments due under funding obligations incurred to cover the funding shortfall (i.e., what we have until now been calling "deferral repayments").

Another important defined term will be "Treasury Plan". This will be the written plan prepared by OPG relating to the sale of the "regulatory asset(s)" to the OPG Financing Entity (sometimes previously referred to as the "Financing Trust") and the debt issued by the OPG Financing Entity to the markets.

Another defined term will be "True-up Amount". This is a key provision for the market. It allows for a catch-up for estimate/actual adjustments and to address consumer non-payment credit losses.

A further defined term will be "Undertaking of the Province". This will be a promise by the Government not to impair the program. This will be expected by the market, even though it will be understood that there may be issues for investors to enforce the promise, or get damages if there is a breach.

x. (1) Subsection 6 (1) of the Act would be amended by adding the following clauses:

(q.1) to enter into agreements or arrangements with the Financing Entity;

(q.2) to engage in activities related to making payments to and receiving payments from the Financing Entity under Part V.2, as required under this Act, and to engage in related settlement activities;

Note: Is some of this covered already by clause (i)? Could we address this by expanding upon clause (i)? Trying to understand whether there is any potential overlap.]

(q.3) to engage in activities related to the [sale/disposition/conveyance/assignment] of the [right/regulatory asset] created under section XX, which activities may include,

[Note: As discussed, please confirm terminology.]

(i) incurring liabilities in relation to the [right/asset];

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(ii) [selling/assigning/disposing of?] the [right/asset] to the Financing Entity;

(iii) assigning [the right/asset] to third parties;

[Note: I don't understand (iii) -- I thought the rights to the asset were being assigned to the trust and nobody else?]

(q.4) acting as a recovery agent for the Financing Entity in relation to [the right/asset];

x. (1) Subsections 25.33 (1) and (2) of the Act would be repealed and the following substituted [TBD].

[Note: As per our telephone discussion today (March 27), there seems to be ongoing debate about the policy direction:

1. Do you want to amend the GAM so that the money received from the FE and the money recovered by the FE are part of the initial GA calculation?

2. Do you want to leave the GAM section as is and add a requirement (in a new section) for the IESO to conduct additional adjustments for a subset of the payments referred to in s. 25.33? This second adjustment would be engaged in after the existing GAM is calculated. So it would be a further adjustment of what has already been adjusted under the GAM.

Until this fundamental question is answered, we would be removing the proposed amendments to s. 25.33.]

OPTION 2:

Deferral adjustments, 25.33 amounts.

25.33.2 (0.1) For the purposes of this section and sections 25.34 and 25.35,

(a) "authorized entity" means **[the hydro financing trust established by Ontario Power Generation Inc. for the sole purpose of financing the recovery of the balance in the deferral account, or]** such **[other]** entity as may be prescribed by regulation;

(b) "deferral account" means the deferral account established under section 25.34;

(c) "deferral amount" means the amount recorded in the deferral account for each month during the deferral and recovery period;

(d) "deferral and recovery period" means the period from May 1, 2017 to April 30, 2047;

(e) "deferral consumer" means a consumer who is a member of a class of consumers prescribed by the regulations for the purposes of sections 25.34 and 25.35;

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[NTD: This will be set out in a new subection 4(3) of O. Reg. 95/05 and will reflect OREC-eligible consumers other than non-grid connected customers of IPAs (who would not pay a GA charge anyway). Note that this is not quite the same as "RPP-eligible" consumers.]

(f) "electricity supply cost" means the amount calculated according to the formula:

(A + B + C + D) - E

where,

A is the amounts paid by the IESO to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the *Ontario Energy Board Act, 1998,*

B is the amounts paid by the IESO to entities with whom the IESO has a procurement contract, as determined under the procurement contract,

[NTD: A and B use exactly the same wording as is set out in (a) and (b) of the existing ss. 25.33(1).]

C is

[NTD: C is the "net new" costs associated with the GA deferral. These are costs that the IESO will record in the GA deferral account established under s. 25.34, and that the IESO (or its assignee) will subsequently recover. These costs consist of the interest and financing-related admin costs associated with the GA deferral (which costs will be flowed through from the hydro financing trust to the IESO). These costs do not include the principal amount deferred and recovered, since that is already captured as part of A and B.

The "net new" costs in C will be recoverable solely from a newly prescribed class of consumers - deferral consumers (i.e. those consumers who will benefit from the GA deferral). The rules for the recovery of these costs will be part of a new subsection 4(3) of the RPP Regulation.]

D is any other amounts that may be prescribed by regulation,

[NTD: Paragraph D would give us flexibility to add new cost categories by reg. if/as needed now or later.]

[GGRA-related amendments are removed for the time-being]

and

E is any other amounts that may be prescribed by regulation;

[NTD: Paragraph E would give us flexibility to add new cost categories by reg.

Question for leg counsel: If in the future HOEP were to exceed contract prices and/or regulated rates, presumably the formula would still work (i.e. in such case the amounts for A and B would simply be negative amounts)?] *[ntd-LSB: IESO appears to agree with that idea, based on our shared appreciation of how EA s.25.33 works today.]*

(f) "reduction period" means the period commencing May 1, 2017 and ending April 30, 2018;

(g) "RPP Regulation" means Ontario Regulation 95/05 (Classes of Consumers and Determination of Rates).

Electricity pricing adjustments

Adjustments by IESO

(1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by such classes of market participants in Ontario as are prescribed by regulation, reflect the electricity supply cost.

Adjustments by distributors and retailers

(2) Distributors and retailers shall, through their billing systems, make adjustments in accordance with the regulations that ensure that, over time, payments by such classes of consumers in Ontario as are prescribed by regulation, reflect the electricity supply cost.

[NTD: There will be two "classes of consumers in Ontario that are prescribed" for the purposes of RPP-"plus" deferral – the EA regulation that "prescribes" these two classes will refer to (or be aligned with) the two classes as described in the RPP Regulation. 1) The first class are the deferral consumers (see definition above), and 2) the second class (or defined base consumer) will be the "proxy" Toronto Hydro consumer whose bill will only be allowed to increase year-over-year according to rules prescribed in a new s. 6.1 of the RPP Regulation.]

Variance accounts

(3) The IESO shall, in accordance with the regulations, establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section and under sections 25.34 and 25.35, in accordance with such rules and requirements as may be prescribed by regulation. *[ntd-DAN: I left "this section"*

even though this provision is part of a new s.25.33.2 – did you want "this section" to refer to "section 25.33"? If so, then we'd add this to the list we've started referencing proposed new s.25.34 and s.25.35. Consider.]

[Drafting note: We can prescribe the different variance accounts that must be maintained, and the different amounts that must be tracked and accounted for, by the IESO. Among other things, the IESO will presumably need to establish variance accounts related to the GA deferral and payback, to take into account timing and other differences. Any financing costs associated with these variance accounts (over and above the financing costs passed through to the IESO by the authorized entity (the hydro financing trust) would be subject to Board scrutiny.]

Same, distributors and retailers

(4) Distributors and retailers shall, in accordance with the regulations, establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by them under this section and under sections 25.34 and 25.35, in accordance with such rules and requirements as may be prescribed by regulation.

x. The Act would be amended by adding the following sections:

Deferral account

25.34 (1) The IESO shall establish a deferral account to record, for each month during the reduction period and the deferral and recovery period, the difference between,

(a) the amounts that would be payable by deferral consumers in respect of the electricity supply cost for the month under section 6.1 of the RPP Regulation; and

(b) the amounts payable by deferral consumers in respect of the electricity supply cost for the month under section 6.2 of the RPP Regulation.

[NTD: IESO to confirm whether the differences between (a) and (b) would be recorded monthly.

Explanatory note: The Board will determine a rate under a new s. 6.1 of the RPP Regulation that will essentially follow the same process the Board uses to establish the RPP rate, except that it will establish a rate for the deferral consumers (which is a slightly broader class than RPP consumers). The Board will also determine a "proxy" rate for the deferral consumers, calculated according to a different set of rules set out in a new s. 6.2 of the RPP Regulation. The rules in s. 6.2 will establish the "proxy" rate for a "proxy" Toronto Hydro customer consuming an average of 750 kWh/mth, to achieve an all-in tax-included total bill amount reduction of approximately 17% (the bill reduction for GA deferral + 8% OREC will result in an all-in bill reduction for May 1, 2017 – April 30, 2018 of 25% over the May 1, 2016 – April 30, 2017 period). There will be

additional rules dealing with bill increases and full repayment of the GA deferral by April 30, 2047.]

Note that because we refer to the new provisions in the RPP Regulation, we will need to amend that regulation *before* the introduction of the proposed legislative amendments. Drafting of the proposed RPP Regulation amendments is underway.

Do we need to create a parallel provision requiring distributors and retailers to establish deferral accounts as well?]

(2) The IESO shall record interest on the balance of the deferral account at a rate or rates reflecting the costs incurred by the IESO, or by any assignee under section 25.35, to finance the amounts recorded in the deferral account.

(3) The IESO shall also record in the deferral account the costs incurred by the IESO to finance the amounts recorded in the deferral account.

[NTD: This is a placeholder for what we will need here. The concept is that ss. (2) and (3) will ultimately apply to the interest and admin costs incurred by the hydro financing trust (assignee of the right of recovery under s. 25.35) in providing funds to the IESO to finance the GA deferral. Those interest costs and admin costs will be fully recoverable through section 25.35, subject to Board scrutiny presumably limited to verifying the calculations. This is not intended to address interest and costs incurred by the IESO and recorded in the variance accounts established under ss. 25.33(5).]

Recovery of GA deferral amounts

25.35 (1) The IESO shall have the right to fully recover the balance recorded in the deferral account. **[The Board shall authorize?]** recovery of the balance from the deferral consumers over the deferral recovery period in accordance with the prescribed rules.

[NTD: What role should the Board play in determining the amounts recovered each year (within the smoothing parameters that are prescribed)? For e.g., could the Board set rates such that the year-over-year increase in the proxy Toronto Hydro customer's all-in bill was less than the maximum permitted under the prescribed rules?

The prescribed rules will be set out in the new s. 6.2 of the RPP Regulation, which will determine how much the "proxy" Toronto Hydro customer's monthly average bill can increase year-over-year (after the reduction period). Basically, for the first four years after the reduction period, the increase will be limited to CPI. For the balance of the deferral and recovery period, the increases will be limited to 10%, with an overarching requirement that the deferral amounts be fully repaid by April 30, 2047.]

Assignment of right of recovery

(2) The IESO shall have the right to assign**[, in whole or in part?,]** to **[one or more?]** authorized entities, the IESO's rights under subsection (1).

[NTD: This is largely a placeholder for what needs to be addressed here. We will need to determine how to characterize this transaction. For e.g., will it be an outright assignment? Will it be a series of assignments? Should it be characterized as a "sale"? How will this transaction be implemented – e.g. by way of a contract between the IESO and the Trust? We will need the input of external counsel and others to ensure that it adequately supports the contemplated financings.]

Payments to assignee

(3) In the event of an assignment to an authorized entity under subsection (2), the IESO shall, through its billing and settlement systems, make payments to the authorized entity of the full amounts paid to the IESO in respect of the rights assigned.

[NTD: This is largely a placeholder for what needs to be addressed here. Iin addition to requiring IESO to make payments to the authorized entity, do we need to include explicit provisions giving the assignee the right to recover the amounts in the deferral account that are covered by the assignment?

We will need provisions dealing with billing and payment as between the authorized entity and IESO. We will also have to decide whether the interest and admin costs incurred by the authorized entity will simply be passed through to IESO, or whether the authorized entity (or OPG) will have an opportunity to keep any profits made on financing activities (swaps, etc.) by establishing some sort of "reference rate" that IESO would have to pay (and that might be different than the rate(s) the authorized entity would have to pay). A middle ground that could be considered would be to cap the amount of profits the authorized entity (or OPG) could make.

Along similar lines, the amounts charged by OPG to the authorized entity to provide admin services should be subject to Board review (e.g. for reasonableness). This would not jeopardize the ability of the authorized entity to recover all of its costs (since it would affect the amounts OPG could recover from the authorized entity).

We also need to contemplate a provision that if there is a change of law by the Government of Ontario that materially adversely affects the ability of the authorized entity to fully recover the assigned deferral account amounts, then repayment of those amounts will be accelerated and become immediately due and payable.]

x. The Act would be amended by adding the following provisions after s.29:

Transition Charges -- Ratepayer Obligation to Pay a Transition Charge

s.29.0.1 (1) Each consumer in the class of ratepayers to which this program applies (previously referred to as the "deferral consumers") will have a direct statutory obligation to the OPG Financing Entity to pay its share of the deferral repayments (principal, interest, financing costs).

Indebtedness of Ratepayers –
(2) This will be a debt owed by the consumer directly to the OPG Financing Entity. If it is not paid, the OPG Financing Entity can sue the consumer directly through the agreed procedures. This is identifying an explicit and identifiable revenue stream for the comfort of investors.

Separate tracking - distributors,
(3) This debt is separate from the debt owed by the consumer to its LDC, although the LDC will be the collection agent.

No set-off, etc. *[see similar provision at EA s.29.0.3(2)]*
(4) This debt cannot be netted out against any amount owed by the LDC to the consumer (e.g. year-end credit to consumer on equal monthly billing).

Allocation of Ratepayer Payments
(5) If a consumer pays less than its total invoiced amount, the payment will be allocated pro rata between the deferral repayment and the amounts owing to the LDC.

Transition Charges are Irrevocable

(6). This is intended to prohibit any reversal of amounts that must be paid to meet the terms and conditions of the funding obligations to be incurred under the program.

> **The deferral repayments are due regardless of whether a financing obligation incurred under the treasury plan is consistent with government policy at the time a related payment obligation arises.**
>
> **If the Fair Allocation Plan is amended after a funding obligation is properly incurred, any inconsistency in the payment profile will not impair the existing funding obligation or the pass-through of related payment amounts as Transition Charges.**

Anti-avoidance; No-by-pass

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(7) The idea here tracks the U.S. transactions, which say that the obligation of a consumer to pay Transition Charges cannot be "by-passed". If a consumer leaves the grid, he or she will still be obligated. See the highlighted text in the definition of "Ratepayer" for a sense of how this may be accomplished.

> **This concept is a key to a rated market financing and will need to be developed further.**
>
> **For example, self-generating customers could be charged a flat fee (for example, equal to the amount that would be payable by the "representative" Toronto Hydro customer that underpins the current government policy on the 25% or some other basis.)**

Distributor, agent for Financing Entity,
s.29.0.2(1) LDC is agent for the OPG Financing Entity. LDC must invoice the deferral consumer the deferral repayment amount - referable to the items described in "Finance Amount" (i.e., an amount already borrowed).

IESO - Calculation of the Period Transition Charge

(2) IESO will calculate the total amount of deferral financing that will be repayable in an applicable [e.g. 6 month] period.

(3) IESO will then determine the deferral repayments due from deferral consumers based on a prescribed methodology for allocating payments to individual deferral consumers.

Notice of Transition Charges, IESO to distributors

(4) IESO will then inform each LDC of the amount of the deferral repayments to be included in the invoices issued to each deferral consumer in the LDC's service territory.

Adjustments *[ntd: Consider – Deferral repayment amount final]*

(5) Deferral consumers cannot challenge the amount of the deferral repayment showing on their invoice unless there is a substantial calculation error.

Successors of Electricity Distributors –
(6) Any successor of an LDC will be bound by the same obligations as the original LDC re: billing and collecting deferral repayments.

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Successors of IESO –

(7) Any successor of the IESO will be bound by the same obligations as the original IES re: billing and collecting deferral repayments from distributors *[ntd-LSB: what about from consumers?].*

Appointment of an Alternative Invoicing Agent *[NTD – this provision may be moved closer to the powers/authorities of the OPG financing entity.]*

(8) If a "replacement event" (as defined in any payment obligation incurred to fund a deferral) occurs in respect of an LDC, the OPG Financing Entity can appoint someone else as the OPG Financing Entity's agent to collect deferral repayments. The LDC must sign whatever agreements and assignments are needed to enable the replacement agent to collect the deferral repayments from the LDC's deferral consumers.

Regulatory Asset Owner has Standing

(9) The OPG Financing Entity (or investors through their security) will be able to sue LDCs for failing to properly calculate or invoice the financing repayments.

29.0.3 Collections and Remittances [Collecting and Remitting Deferral Repayments]

(1) If a "replacement event" (as defined in any payment obligation incurred to fund a deferral) occurs in respect of an LDC or the IESO, the OPG Financing Entity can appoint someone else as the OPG Financing Entity's agent to collect and remit deferral repayments. The LDC (or IESO, as applicable) must sign whatever agreements and assignments are needed to enable the replacement agent to collect and remit the deferral repayments. "Replacement Events" are necessary to investors to safeguard against a person holding money in a distressed circumstance.

No Set-off, etc. *[see similar provision at EA s.29.0.1(3)]*

(2) The deferral repayments cannot be netted out against any amounts owed by the party responsible for collecting those repayments.

Sequestration.

(3) If any LDC or the IESO fails to remit deferral repayments, the OPG Financing Entity can get a court to order the LDC (or IESO, as applicable) to require them do so.

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x. Subsection 53.1 (1) of the Act would be repealed and the following substituted:

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, the following:

[Note: I know that the words "in addition to any other objects" appears in the current provision, but it seems very odd. This suggests that the objects are unlimited, which doesn't seem to be the intention but I could be wrong.]

1. Owning and operating generation facilities.

2. Establishing, operating and supervising the activities of entities for the purposes of supporting and promoting the government's hydro financing initiative.

3. Providing financial and other support to the IESO in its activities in relation to the hydro financing initiative.

4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.

5. Providing equity, not exceeding the prescribed amount, to support the financing capacity of the Financing Entity.

Subsidiaries

(1.1) Ontario Power Generation Inc. may create one or more subsidiaries in order to more efficiently conduct its activities or achieve its objects.

x. Section 53.2 of the Act would be repealed and the following substituted:

Rights of the Minister[1]

53.2 (1) The Minister, on behalf of Her Majesty in right of Ontario, may acquire, hold, dispose of and otherwise deal with securities or debt obligations of, or any other interest in, Ontario Power Generation Inc. or any of its subsidiaries.

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[1] FLS - this provision is based on s. 49 of the Act

Agreements

(2) The Minister, on behalf of Her Majesty in right of Ontario, may enter into any agreement or arrangement that the Minister considers necessary or incidental to the exercise of a power under subsection (1).

x. The Act would be amended by adding the following Part:

PART V.2
HYDRO FINANCING INITIATIVE

FAIR HYDRO FINANCING PLAN

Establishment and adoption of the Fair Allocation Plan

A. 1 (1) The Minister of Energy [may/shall] establish a "fair allocation plan"

(a) The purpose of the plan is generally to try and reallocate the portion of GA attributable to the procurement contracts over the anticipated useful life of the generation assets under those contracts.

- **This is the intergenerational funding of the Green Generation Initiaitves.**
- **One policy question is whether the amounts deferred and the period over which the deferred amounts are repaid are to be limited to the portion of GA attributable to the procurement contracts and to the anticipated useful life of the [renewable] generation assets under those contracts.**

- From a constitutional validity perspective (and hence a financeability perspective) these limits are very important.

-Financial/economic modelling to verify this link is required.

Principles and Parameters,

(2) Based on this initial description (which is only illustrative to advance the initial stakeholder discussion), the Minister would determine the details of the "fair allocation plan", but must take into consideration the following principles:

- **The deferred GA costs should be spread over a period not exceeding the anticipated remaining useful life of the generation assets under the procurement contracts**
- **The plan should specify the length of the "reference periods", to identify which deferral consumers are responsible for which deferral repayments**

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- **The share of the deferral repayments to be allocated to deferral consumers in each "reference period" should reflect a reasonable assessment of the remaining anticipated useful life of the generation assets under procurement contracts and perhaps to the benefits received by those deferral consumers from the procurement contracts (e.g. transition off coal)]**

- **No deferral consumer group should bear an unreasonably disproportionate share of the deferral repayments. That could be limited to a maximum amount, determined on a formula basis, if it makes sense tot he stakeholders**

- **In making the allocations, real (i.e. inflation-adjusted) dollars should be usedThe fair allocation plan is made using forward-looking information and projections.**

- **If, after the fact, the Minister determines that a Ratepayer Group paid more than would otherwise would have been the case had the projections for such period been accurate or other considerations come to light, adjustments to the plan could be made.**

Attribution Methodology

(3) The program will need to define how deferral consumers will be allocated an appropriate share of aggregate adjustment amount.

Confirmation][Review] of the Fair Allocation Plan – [OEB?]

Confirmation][Review] of the Fair Allocation Plan – [OEB?]

(4) Consideration will be needed regarding the level of review and confirmation of the plan is needed or appropriate. For example, should the scope of review be limited to calculations only? If there is a need for review, then consideration will be needed as to who will be the reviewer and under what authority, etc.

THE TREASURY PLAN

Power to Prepare and Implement the Treasury Plan –

A.2 (1) The "Treasury Plan" will be prepared by OPG. It must follow the requirements set out in this Part. Accounting considerations will need to be factored into this delegation, as well as the degree of province input initially and on an on-

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going basis. [Note for leg counsel: We will need to create the necessary sub-delegation authority]

Required Terms and Conditions of the Treasury Plan

(2) The Treasury Plan will establish the basis for OPG making funding decisions, which will need to align with the Fair Allocation Plan.

Power to Review and Approve the Treasury Plan

(3) The Minister may designate one or more persons to review, and require changes to the Treasury Plan. (This review could also be given to the Minister.) *[NTD-: Assumin no role for OEB – confirm. Any role for MOF/OFA here?]*

Obligation to Apply IESO Remittances,

(4) OPG will need to ensure that pass-through amounts, transferred to it as agent for the OPG Financing Entity, are only used to repay the debt and related costs.

Non-Recourse,

(5) The Treasury Plan will provide that the investors and other contracting parties will not have recourse to the IESO, LDCs, agents, the OEB or the Province, except where such parties fail to comply with applicable law. This may be modified in the contracts under which a financing arises.

NOTE: The documentation creating the Funding Obligations must expressly state that such obligations are not guaranteed by the Province.

NOTE: See IESO/Stikeman's language for "Regulatory Asset" above.

Incurrences are Binding,

(6) A failure to implement the Treasury Plan will not impair the pass-through of the deferral amounts or the validity of an otherwise valid funding obligation.

- **NOTE: Separate from the legislative provisions, we will also be preparing a very rough sketch of some of the items that might be included in the Treasury Plan direction.**
- **The sketch will be for illustration purposes only and will be for use in discussions with stakeholders including OPG and IESO.**

Crown bound, actions prohibited,

A.3 (1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – *[NTD: alternative* - Crown bound, prohibition against discriminatory action.

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(2) The Province will be prohibited from taking or permitting any action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or collections.

Undertaking and Agreement

(3) Under this Undertaking, the Province will agree for the benefit the OPG Financing Entity that it will not impair the value of the Regulatory Asset or the Transition Charges imposed under this Part. This "pledge" is in line with market expectations. Enforcement issues arise in this sort of undertaking, which will be assessed by the market and rating agencies based on the likelihood that a failure by the Province would lead to a successful damages claim. Unlike in the U.S., the law regarding such a claim is uncertain. Nevertheless, we expect that this sort of Undertaking will be requested in the legislation itself (i.e., requiring an act of the legislature to disavow – which is a higher bar than simply walking away from a contractual undertaking.

[Note: TBD where to place this Part within the Act and how to structure this Part. Temporary number (e.g. A1, A2, A3 etc.) has been used for now.]

FINANCING ENTITY

Financing Entity, established or prescribed

A1. (1) For the purpose of accomplishing the hydro financing initiative, the Minister may,

(a) direct Ontario Power Generation Inc. to establish and operate a trust; or

(b) direct Ontario Power Generation Inc. to [oversee? Administer?] an entity prescribed by the regulations.

[Note: Would the direction of the Minister include any additional instructions re timing etc.?]

Duty of Ontario Power Generation Inc.

(2) Ontario Power Generation Inc. shall comply with the direction of the Minister.

[Note: Once OPG takes action under A1 in accordance with the Minister's direction, what happens if at some point in the future, the Minister wants a different entity to take over the role of the FE? Is this a concern that needs to be addressed?]

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Object of Financing Entity

A2. (1) The object of the Financing Entity is to finance the amounts required to accomplish the hydro financing initiative.

[Note: We are imposing several obligations on the Financing Entity (FE). As a practical matter, how will these obligations be enforced? Who will be responsible for meeting these obligations? (e.g. would there be directors or officers of the trust?). Or will the OPG be responsible for meeting these obligations as the body that establishes/manages the trust or oversees the designated entity?]

Activities

(2) To achieve the object, the Financing Entity shall engage in the following activities:

[Note: Just want to confirm that this should be "shall" and not "may".]

1. Borrowing funds from the Financial Corporation or from such other persons or entities [as may be prescribed?].

2. Investing funds.

3. Making payments and loans to the IESO or such other entity as may be prescribed in accordance with the regulations [or an order of the Board].

[Note: I think it would be best to specify whether the rules would be set out in a reg or in a Board order to avoid confusion.]

[Note: Should the "loans" language be removed, since you noted that the IESO is not "borrowing" from the FE?]

4. Receiving payments from the IESO or such other person or entity as may be prescribed in accordance with the regulations.

5. Issuing securities or debt ***[in the manner prescribed?].***

6. Engaging in any activities, including entering into such transactions, agreements or arrangements as may be prescribed and in accordance with the regulations.

Board review of expenditures, etc.

A3. (1) The Financing Entity shall, at least 60 days after the end of each fiscal year, submit its expenditures relating to its operations for the fiscal year including the expenses it has charged to Ontario Power Generation Inc. or the IESO, or that it has been charged by the Financial Corporation, in relation to those operations, to the Board for review.

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[Note: The list of items that have to be reported on could be more prescriptive (e.g. specifying specific amounts to be set out) or it could also allow for the Board to specify what it wants to see in the report. Let me know if you'd like to adjust the wording of the requirement.]

Board recommendations, etc.

(2) The Board may review the expenditures and charges referred to in subsection (1) and make recommendations to the Financing Entity as are appropriate in order to ensure the most efficient operation and management of the Financing Entity in order to protect consumers.

[Note: Rather than saying "in order to protect consumers", should this say "in order to achieve the object of the FE"? Or perhaps this could just be deleted altogether with no need for replacement language.]

Deemed assets, entity,

A4. Despite any other provision of this Act or the *Business Corporations Act*, the assets and liabilities which are resident in and form part of the property of the Financing Entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries for any purpose.

[Note: You posed a question about excluding an OPG subsidiary from this rule. Please instruct.]

OBTAINING FINANCING

[Note: It will be important to read all of the provisions that follow against the provisions in the existing Act, to ensure there is no overlap/confusion being created due to potential interactions between existing authority and new authority. The drafting focus so far has just been to get the relevant substantive provisions into the draft without evaluating how they fit into the broader scheme of the Act.]

Ontario Power Generation Inc. to obtain financing

A5. (1) The IESO may direct Ontario Power Generation Inc. to cause the Financing Entity to engage in any of the following activities in order to accomplish the hydro financing initiative:

[Note: As a practical matter, how would OPG "cause the FE" to do these things? How is this different from "directing"?]

1. Financing, borrowing or lending to provide the IESO with short-term or long-term financing.

2. [Purchasing/receiving/obtaining the right created under section XX] and making any payments to the IESO that relate to the IESO's activities in support of the hydro financing initiative.

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[Note: Not sure if the regulated assets would always be "purchased" or if other terminology might be needed. Please advise.]

3. Collecting from the IESO amounts that the IESO is required to pay in relation to its activities in support of the hydro financing initiative.

4. Assigning its [the IESO's?] rights to all or part of the regulatory assets established under section XXXX.

[Note: What is para. 4 about? If this is about forcing OPG to make the FE do things, then does this belong in the list? I thought that it was only the IESO that would be assigning the rights to the FE]

5. Such other activities as may be prescribed.

Same

(2) Ontario Power Generation Inc. shall comply with a direction under subsection (1) within the time specified in the direction [and any prescribed rules?].

IESO to enter into transactions

A6. (1) The IESO shall, in order to support the achievement of the hydro financing initiative, enter into transactions with the Financing Entity or any other entity for such amounts as are necessary to support the hydro financing initiative.

[Note: My understanding is that the need for "or any other entity" stems from the need to allow for the IESO to obtain temporary financing in the immediate term, before it is able to access the FE. Do you want to narrow this so that the IESO is only authorized to do this before the FE is up and running? Or do you want to keep it available on an ongoing basis?]

Same

(2) In entering into transactions under subsection (1), the IESO shall comply with the regulations.

RIGHT OF RECOVERY [CREATION OF REGULATORY ASSET]

[Note re the following provisions:
I found a provision dealing with the concept of "regulatory asset" in Bill 210 from 2002 (see s. 79.13 of the OEBA). It deems certain things to be regulatory assets but does not say much more. On the phone, you noted that the term "regulatory asset" does not have any legal meaning on its own but is just an accounting term that has been used to describe the statutorily created right of recovery. However, you also said that there may be a need to use this term in order to convey the intended meaning from an accounting perspective.

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In order to ensure that the drafting captures the policy intent, please answer/address the following questions:

1. Should we be creating a statutory right of recovery or deeming certain amounts to be a regulatory asset? [NTD-LSB: Yes. The term "Regulatory Asset" has currency in commercial law (parliance) and since much of what we're doing is to support a securitization model, the term should remain for now. Further, the term "regulatory asset" was consistently referred to in the documents provided to ENERGY LSB by Blakes. Further, IESO/Stikemans offered up alternative language for the creation of a "regulatory asset" (as an intangible asset of sorts). You said you'd consult on whether the regulatory asset terminology is important to flag in the Bill.

2. You said you're not sure whether or not the Act will require the IESO to sell/assign the right. Please instruct. If it is optional for the IESO to sell/assign, then it seems that the right could in theory remain with the IESO (unless you are saying that the statute can just create the right of the FE to recover without any need for the right to be assigned/sold by the IESO… in which case please explain why we need to deal with the sale/assignment at all). Please clarify.

3. I'm assuming that if we are creating a right, then the right must be held by someone (e.g. the IESO) before it can be assigned/sold? So should the right be created in the Act for the IESO (e.g. the IESO has a right to recover the amounts from distributors and prescribed consumers) since the IESO would then sell/assign/transfer the right to the FE? The FE must also have the right to recover from the IESO itself, so that creates an extra complication.

4. Should there be some indication of when the right of recovery/regulatory assets will no longer continue to exist (e.g. once all of the amounts have been paid?). I notice that your instructions below about the debt indicate that the debt is no longer owing once the amounts are paid, but do we need to indicate that the regulatory asset also ceases to exist at that point?

Right of recovery created

A7. A right to recover the following amounts in full from the IESO, distributors and prescribed consumers is created.

1. The [deferred amount].

2. The amounts of costs relating to the operation or management of the Financing Entity, as are approved by the Board.

[Note: How will the Board be approving these costs? Is this related to the expenditure report submitted to the Board? That provision dealing with Board expenditures doesn't refer to any approval taking place… just a review and recommendations.]

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[Note: Need to mention expenditures?]

3. Other amounts as may be prescribed or as may be approved by the Board.

Note: Are you going to be saying anything about how the interest will be calculated?

Sale [and/or?] assignment of [right? Regulatory assets?]

A8. (1) The IESO [may? Shall?], in accordance with the regulations, sell [and/or?] convey to the Financing Entity the right to recovery created established under section A7 on such terms and conditions as are provided for by the Financing Entity.

[Note: Your instructions include the terms "sell", "assign" and "convey" -- which are correct?]

[Note: Your instructions suggested that something other than the "regulatory assets" may need to be assigned to the FE. Are you referring to the "warehousing" liabilities assumed by the IESO in the early days? What else would need to be assigned? Could these items be listed above in A7 or is there a reason why they need to be kept separate?]

Sale deemed final

(2) The sale and conveyance referred to in subsection (1) is deemed to be final for all purposes.

[Note: What is this intended to achieve? Is this based on precedent language that has been interpreted to have the desired effect?]

Debts

(3) For greater certainty, the [amounts to which the FE has a right of recovery] are debts owing by the IESO, distributors and prescribed consumers to the Financial Entity until the amounts have been fully paid and fully discharged.

[Note: Why is subs. (3) necessary? Isn't it inherent in the sale of the regulatory assets that the FE would have acquired the future right to collect these amounts? Perhaps it is unclear that the amount can be collected from not just the IESO but from others down the chain. But isn't that what the "right of recovery" section above is meant to cover?]

[Note: I haven't checked to see how other similar provisions dealing with debts are drafted. Not sure we need the "for greater certainty" and also not sure what the distinction is between "fully paid" and "fully discharged". This provision will need further consideration. You also noted that you may want to specify who determines when all obligations have been satisfied.]

IESO to recover amounts

A9. The IESO shall recover the amounts set out in section A7 from distributors and prescribed consumers, in accordance with […]:

Note: how are the requirements that would determine recovery for this subsection meant to interact with the GAM reg?

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[Note: The following two subsections are placeholders. You noted that *the provision is going to have to evolve to deal with consumers who exit the grid (disconnect) completely either because they leave the province or they decide to generate their own electricity and completely disconnect. You also want to be able to prescribe* methods of ensuring that the amounts required cannot be "by-passed". I'll need to understand what is meant by "by-passed".]

Distributors liable

(x) The IESO and distributors are entitled to compensation for any shortfall in relation to the amounts the IESO must pay to generators, the Financial Corporation or other persons including prescribed persons, under section 25.33 resulting from the IESO's activities under the hydro financing initiative.

Consumers liable

(X) Prescribed consumers are required to contribute towards the amount of any compensation referred to in subsection (4) in accordance with the amounts and methods prescribed by the regulations and such amounts shall not be by-passed.

USE OF FUNDS TO REDUCE ELECTRICITY BILLS

[Note: Depending on how things land with s. 25.33, this might be a place to explain how the transactions between the IESO and the FE translate into reduction in the electricity bills of RPP consumers. Regulations could specify how the IESO would ensure that the short-term rate reductions that flow from the FE amounts are only received by the targeted class of consumers and that this same class of consumers is the only class responsible for the repayment of FE funds in the long-term.]

ALTERNATIVE LANGUAGE – REGULATORY ASSET -- PROPOSED BY IESO (STIKEMANS)

Regulatory Asset Created

A7. (1) There is hereby created and conferred upon the IESO a "Regulatory Asset" consisting of the right to recover, in addition to the amounts otherwise recoverable, in accordance with the Regulations, the aggregate of the following amounts [from distributors and] prescribed consumers. **[Quare: do we regard the Regulatory Asset as a single asset in a variable amount or as different assets arising on each deferral]:**

1. The [deferred amount, including interest accrued thereon].
2. The amounts of costs relating to the operation or management of the Financing Entity, as are approved by the Board.
3. Other amounts as may be prescribed or as may be approved by the Board.

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(2) The Regulatory Asset created by (1), shall constitute, for all purposes, a property right, shall be transferable by the IESO in accordance with Section A8, and shall constitute an intangible in which a security interest can be created for purposes of the *Personal Property Security Act*.

Election to Transfer Regulatory Asset

A8. (1) The IESO shall, from time to time, in accordance with the Regulations, elect to transfer to the Financing Entity all or any portion of the Regulatory Asset, on such terms and conditions as IESO may determine.

(2) Upon any election by the IESO pursuant to (1), the Financing Entity shall pay to the IESO in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, an amount, not less than the Deferred Amount, determined in accordance with the Regulations.

(3) Upon any election by the IESO pursuant to (1), the Financing Entity shall become the person entitled to the benefit of the Regulatory Asset, or the portion thereof in respect of which the election was made, free and clear of any adverse claim (other than any such claim created by the Financing Entity) and shall be entitled to exercise all of the rights and remedies conferred by or arising in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, and the IESO shall cease to have any rights (except as provided in Section A9) to or in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, all as if the Regulatory Asset, or the portion thereof in respect of which the election was made, had originally been conferred upon the Financing Entity and not the IESO.

(4) Upon any election by the IESO pursuant to (1), the IESO shall have no further rights or obligations in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, and the Regulatory Asset, or the portion thereof in respect of which the election was made, shall not form part of the assets and liabilities of IESO for any purpose.

(5) The LG in Council may adopt regulations providing for the circumstances in which IESO shall make the election or elections provided for in (1).

Financing Entity may Grant Security Interest

A9. (1) The Financing Entity may, at any time after an election referred to in Section A8(1), create a security interest in favour of any person in all or any portion of the Regulatory Asset subject to such election, all on such terms and conditions as the Financing Entity may determine.

(2) Except as provided for in Regulations adopted pursuant to (3), *The Personal Property Security Act* shall apply to any security interest created pursuant to (1), except that the rights of the secured party on default shall be limited to receiving the amounts collected in respect of the Regulatory Asset, or the portion thereof subject to the security interest, as and when collected by the IESO in accordance with A10.

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(3) The LG in Council may adopt regulations providing for the terms on which the security interest provided for in (1) can be created and perfected and for the priority of any such security interest.

IESO to Collect Amounts in Respect of the Regulatory Asset

A10. Subsequent to any election pursuant to Section A8, the IESO shall, as agent on behalf of the Financing Entity and any secured party, use reasonable efforts to collect the amounts owing in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, and shall promptly pay over to the Financing Entity or the secured party the amounts collected.

--------*END OF IESO/BLAKES ALTERNATIVE LANGUAGE FOR REG. ASSET ---*

------- *BLAKES VERSION OF LANGUAGE FOR REGULATORY ASSET*

The Regulatory Asset, Composition,

A7(1) The "regulatory asset" consists of the following:

- **present and future statutory obligation of:**
  - **deferral consumers - to make all deferral repayments (including interest and late payment fees)**
  - **LDCs - to invoice the deferral consumers for the deferral repayments and to remit the amounts collected to the IESO**
  - **IESO - to receive and remit the deferral repayments from LDCs to the OPG Financing Entity**
- **All deferral repayment amounts collected**
- **All amounts in LDC or IESO deferral payment bank accounts**

Validity of Dispositions

(2) This section is reinforcing by statute the "sale" of the asset to the Financing Entity. This has been an important feature of the legislation in other jurisdictions in similar circumstances. Specifically, it says that "Dispositions" of the Regulatory Asset are "true sales", and not subject to challenge. This is an essential requirement for a securitization transaction. This provision identifies possible grounds for a challenge that a sale took place and indicates that those events do not affect the validity of the sale.

Deemed Perfection and Priority of Dispositions

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(3) This is reinforcing the automatic nature of the "sale" of the asset. It Provides for a clean sale to the OPG Financing Entity, free and clear of encumbrances (i.e., no specific need to "perfect" the sale.

Validity of Pledges,
(4) Statutory override permitting the OPG Financing Entity to give a security interest in the "regulatory asset" to investors.

> **This would give the investors (through an indenture) the right to enforce collection of the deferral repayments to pay off amounts owed by the OPG Financing Entity to the investors upon certain defaults by the OPG Financing Entity under an indenture.**

Deemed Perfection and Priority of Pledges
(5) This is reinforcing that a commercial pledge given by OPG Financing Entity is valid and will have priority without specific "perfection". The result is that a pledge of the Regulatory Asset as security in accordance with the Treasury Plan will be given priority to other claims. The Pledge includes proceeds from the Regulatory Asset and is not affected by comingling or the ordinary requirement to file a financing statement under the PPSA.

Enforcement of Property Rights –

(6) The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5. ***[ntd-: NOT an annotation – pulled directly from Blakes' document.]***

Collective Action Required –
(7) This anticipates that the Regulatory Asset will be structured as a variable interest that can be divided between IESO (until it sells) and one or more OPG Financing Entitys. The likely format will be a co-ownership agreement, that will allow for different owners to have a fractional undivided ownership interest in the Regulatory Asset. Those will entitle the owners to a specified share of the cash flows, which will correspond to their finance payment obligations. This will allow for future financing flexibility.

MISCELLANEOUS

Fair Hydro Financing Plan, miscellaneous,

A.8 (1) Consideration will be given to whether any additional 'miscellaneous' provisions are needed (and expected by the market) to support the financing of this

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structure. Some of these provisions are not typical in legislation, and so will need further consideration (in consultation with leg counsel).

Regulations

114(1.5) The LGIC may make regulations to implement the Fair Hydro Financing Initiative

-(a) The power to implement the program (and to set out some of the details of the program) through regulations is important. Decisions remain to be made (once the drafting is a little further advanced) about what provisions/details need to appear in the proposed legislation, and what provisions/details can be set out in regulations.

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ONTARIO ENERGY BOARD ACT, 1998

x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [hydro financing initiative].

[Note: Would need to link with definition in the EA or else spell out the definition here - TBD.]

x. Section 27.1 of the Act would be amended by adding the following paragraph:

Hearings

(1.1) A directive may specify whether the Board is to hold a hearing, the circumstances under which a hearing may or may not be held and, if a hearing is to be held, the type of hearing to be held and the time within which it must be held.

The underlined is what makes this different from the other provisions in the Act that basically have the same wording. There are already a number of places in the Act where you have this type of hearings provision re directives (e.g., s. 27.2 (7)). If you basically want the same authority in each instance, then the wording should be consistent in each case. There are already some discrepancies between the current provisions (e.g., s. 27.2

(7) talks about types of hearings, whereas s. 28 (2) doesn't). Differences in wording will typically be presumed to be differences in meaning. So, the question is what you're intending to authorize in each case, and whether differences are intended. If you want the same thing everywhere, it should all be worded the same. Let me know.

[Note: Waiting for confirmation whether amendments to s. 78.7 are needed. Please advise.]

x. Section 78 of the Act would be amended by adding the following subsection after subsection (3.0.5):

Rates, fair hydro financing initiative activities -IESO, OPG, distributors, etc.
(3.0.6) The OEB would not be precluded from taking into account the performance of duties under this Part by any entity regulated by the OEB, including fees received by such entity in excess of the incremental costs of the provision of such services.

x. Section 79.16 (3) of the Act would be repealed and the following substituted:

Adjustment to eliminate variances

(3) In determining rates under clause (1) (b), the Board shall take into account balances in variance accounts established under section 25.33 of the *Electricity Act, 1998* and, subject to section X of that Act, make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.
[Note: Please let me know what section the highlighted portion is supposed to refer to… is it the provision that says the IESO has the 30 year period to pay off the amount in the variance account for the hydro financing initiative? I wonder if this is confusing and whether the amendment to subs. (3) above works… it almost seems unnecessary to say that the Board has to "take into account" this balance, given that we are setting up a bunch of very specific rules about what has to be done by various entities in order to eliminate this amount. What would the Board be expected to do with information about this variance account? For consideration.]

PART VII.3

COMPLIANCE – FAIR HYDRO FINANCING INITIATIVE

Right of the [OEB] to Inspect Books and Records,
113 (1) OEB may be given the power to investigate compliance with the legislation and the power to examine books and records, etc.

Power to Investigate Compliance and Impose Regulatory Sanctions

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(2) This legislation will not limit the OEB's power to investigate compliance or prevent or preclude the OEB's power to impose sanctions. The OEB can investigate compliance with this part and to impose regulatory sanctions for non-compliance.

Limitation, Board,

(2.1) The OEB cannot, however, take any action to affect the irrevocability of the Transition Charges or the Undertaking of the Province.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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Materials for Review draft OFHP legislation .rtf

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Hilary

Hilary Cox
Executive Assistant/Sr. Policy Advisor (A) | Assistant Deputy Mini

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A proposal to create Legislation.

Fair Hydro Plan Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

ELECTRICITY ACT, 1998

1. (1) Section 1 of the *Electricity Act, 1998* would be amended by adding the following clause:

[Note: GGRA provisions have been removed for now. Please confirm if they should be re-inserted.]

(2) Clause 1 (f) of the Act would be struck out and the following substituted:

(f) to protect the interests of consumers with respect to the adequacy, reliability and quality of electricity service;

(f.1) to protect the interests of consumers with respect to the prices they pay for electricity, including protection of those interests through the Hydro financing initiative;

[Note: Since the Hydro financing initiative is a defined term and is clearly required to be implemented under the new substantive provisions of the Act, I'm still not sure why this needs to be addressed in the purpose clause. However, I have included a purpose provision as per your instructions.]

Article 1 – Purpose

The proposed new legislation will likely include a large number of provisions intended to support the "financeability" of the structure. As a result, it may make sense for (LSB is exploring the potential) the Bill to create a new stand-alone energy statute, much like the *Green Energy and Green Economy Act, 2009* created the *Green Energy Act, 2009*.

The new legislation would have a purpose clause that explains the objective of intergenerational fairness. This would be useful for the markets to see, and may

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help support the validity of the legislation from a constitutional law perspective (charge vs. tax)

x. Subsection 2 (1) of the Act would be amended by adding the following definitions:

"Financing Entity" means the trust established by Ontario Power Generation Inc. under clause XX (a) or the entity prescribed for the purposes of clause XX (b); ("French")

"hydro financing initiative" means those policies of the Government of Ontario related to its decision to ensure costs to Ontario electricity consumers are allocated fairly over time, taking into account the useful life of new sources of and technologies for electricity; ("French")

[Note: I have applied the precedent of the "smart metering initiative" as per your instructions. Just want to reiterate my concern that the reference to government policies is really vague (which initiative/ policies? At which point in time?) and I think this could cause lots of confusion, particularly if the policies evolve over time. It could also have unintended consequences.]

[Note: To consider -- by describing the initiative as we have in the above definition, we are potentially linking the deferred amount to amounts that would otherwise be paid for by consumers as part of the GA. If the deferred amounts are not all about "the useful life of new sources and technologies" then the description of the initiative should likely be broadened. (For example, if some of the deferred amount may be used to cover high wholesale prices, one could argue that the initiative is NOT about allocating costs fairly over time… it's just about pushing the cost increase to future consumers without considering what is "fair" across the generations.]

Article 2 - Definitions

The new legislation will include many new defined terms. One important term will be "Funding Shortfall" (or equivalent wording). This will be the net reduction in cash flows to IESO as a result of the reallocation of a portion of the Global Adjustment to later periods of time. Currently, the "Funding Shortfall" would be limited to the Global Adjustment attributable to the procurement contracts, but this is a question that still has to be settled.

Another important defined term that is worth noting is "Replacement Event". This is an event under which the market would want to replace a person who has responsibility to take essential actions under the program (including LDCs, IESO and OPG), like invoicing and collecting amounts.

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The triggering events are likely to include insolvency and breach of duty/obligation.

Another key defined term is "Transition Charge". This is the amount that will be calculated and applied to the "deferral consumers", based on the amounts of payments due under funding obligations incurred to cover the funding shortfall (i.e., what we have until now been calling "deferral repayments").

Another important defined term will be "Treasury Plan". This will be the written plan prepared by OPG relating to the sale of the "regulatory asset(s)" to the OPG Financing Entity (sometimes previously referred to as the "Financing Trust") and the debt issued by the OPG Financing Entity to the markets.

Another defined term will be "True-up Amount". This is a key provision for the market. It allows for a catch-up for estimate/actual adjustments and to address consumer non-payment credit losses.

A further defined term will be "Undertaking of the Province". This will be a promise by the Government not to impair the program. This will be expected by the market, even though it will be understood that there may be issues for investors to enforce the promise, or get damages if there is a breach.

x. (1) Subsection 6 (1) of the Act would be amended by adding the following clauses:

(q.1) to enter into agreements or arrangements with the Financing Entity;

(q.2) to engage in activities related to making payments to and receiving payments from the Financing Entity under Part V.2, as required under this Act, and to engage in related settlement activities;

Note: Is some of this covered already by clause (i)? Could we address this by expanding upon clause (i)? Trying to understand whether there is any potential overlap.]

(q.3) to engage in activities related to the [sale/disposition/conveyance/assignment] of the [right/regulatory asset] created under section XX, which activities may include,

[Note: As discussed, please confirm terminology.]

(i) incurring liabilities in relation to the [right/asset];

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(ii) [selling/assigning/disposing of?] the [right/asset] to the Financing Entity;

(iii) assigning [the right/asset] to third parties;

[Note: I don't understand (iii) -- I thought the rights to the asset were being assigned to the trust and nobody else?]

(q.4) acting as a recovery agent for the Financing Entity in relation to [the right/asset];

x. (1) Subsections 25.33 (1) and (2) of the Act would be repealed and the following substituted [TBD].

[Note: As per our telephone discussion today (March 27), there seems to be ongoing debate about the policy direction:

1. Do you want to amend the GAM so that the money received from the FE and the money recovered by the FE are part of the initial GA calculation?

2. Do you want to leave the GAM section as is and add a requirement (in a new section) for the IESO to conduct additional adjustments for a subset of the payments referred to in s. 25.33? This second adjustment would be engaged in after the existing GAM is calculated. So it would be a further adjustment of what has already been adjusted under the GAM.

Until this fundamental question is answered, we would be removing the proposed amendments to s. 25.33.]

OPTION 2:

Deferral adjustments, 25.33 amounts.

25.33.2 (0.1) For the purposes of this section and sections 25.34 and 25.35,

(a) "authorized entity" means **[the hydro financing trust established by Ontario Power Generation Inc. for the sole purpose of financing the recovery of the balance in the deferral account, or]** such **[other]** entity as may be prescribed by regulation;

(b) "deferral account" means the deferral account established under section 25.34;

(c) "deferral amount" means the amount recorded in the deferral account for each month during the deferral and recovery period;

(d) "deferral and recovery period" means the period from May 1, 2017 to April 30, 2047;

(e) "deferral consumer" means a consumer who is a member of a class of consumers prescribed by the regulations for the purposes of sections 25.34 and 25.35;

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[NTD: This will be set out in a new subection 4(3) of O. Reg. 95/05 and will reflect OREC-eligible consumers other than non-grid connected customers of IPAs (who would not pay a GA charge anyway). Note that this is not quite the same as "RPP-eligible" consumers.]

(f) "electricity supply cost" means the amount calculated according to the formula:

(A + B + C + D) - E

where,

A is the amounts paid by the IESO to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the *Ontario Energy Board Act, 1998,*

B is the amounts paid by the IESO to entities with whom the IESO has a procurement contract, as determined under the procurement contract,

[NTD: A and B use exactly the same wording as is set out in (a) and (b) of the existing ss. 25.33(1).]

C is

[NTD: C is the "net new" costs associated with the GA deferral. These are costs that the IESO will record in the GA deferral account established under s. 25.34, and that the IESO (or its assignee) will subsequently recover. These costs consist of the interest and financing-related admin costs associated with the GA deferral (which costs will be flowed through from the hydro financing trust to the IESO). These costs do not include the principal amount deferred and recovered, since that is already captured as part of A and B.

The "net new" costs in C will be recoverable solely from a newly prescribed class of consumers - deferral consumers (i.e. those consumers who will benefit from the GA deferral). The rules for the recovery of these costs will be part of a new subsection 4(3) of the RPP Regulation.]

D is any other amounts that may be prescribed by regulation,

[NTD: Paragraph D would give us flexibility to add new cost categories by reg. if/as needed now or later.]

[GGRA-related amendments are removed for the time-being]

and

E is any other amounts that may be prescribed by regulation;

[NTD: Paragraph E would give us flexibility to add new cost categories by reg.

Question for leg counsel: If in the future HOEP were to exceed contract prices and/or regulated rates, presumably the formula would still work (i.e. in such case the amounts for A and B would simply be negative amounts)?] *[ntd-LSB: IESO appears to agree with that idea, based on our shared appreciation of how EA s.25.33 works today.]*

(f) "reduction period" means the period commencing May 1, 2017 and ending April 30, 2018;

(g) "RPP Regulation" means Ontario Regulation 95/05 (Classes of Consumers and Determination of Rates).

Electricity pricing adjustments

Adjustments by IESO

(1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by such classes of market participants in Ontario as are prescribed by regulation, reflect the electricity supply cost.

Adjustments by distributors and retailers

(2) Distributors and retailers shall, through their billing systems, make adjustments in accordance with the regulations that ensure that, over time, payments by such classes of consumers in Ontario as are prescribed by regulation, reflect the electricity supply cost.

[NTD: There will be two "classes of consumers in Ontario that are prescribed" for the purposes of RPP-"plus" deferral – the EA regulation that "prescribes" these two classes will refer to (or be aligned with) the two classes as described in the RPP Regulation. 1) The first class are the deferral consumers (see definition above), and 2) the second class (or defined base consumer) will be the "proxy" Toronto Hydro consumer whose bill will only be allowed to increase year-over-year according to rules prescribed in a new s. 6.1 of the RPP Regulation.]

Variance accounts

(3) The IESO shall, in accordance with the regulations, establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section and under sections 25.34 and 25.35, in accordance with such rules and requirements as may be prescribed by regulation. *[ntd-DAN: I left "this section"*

even though this provision is part of a new s.25.33.2 – did you want "this section" to refer to "section 25.33"? If so, then we'd add this to the list we've started referencing proposed new s.25.34 and s.25.35. Consider.]

[Drafting note: We can prescribe the different variance accounts that must be maintained, and the different amounts that must be tracked and accounted for, by the IESO. Among other things, the IESO will presumably need to establish variance accounts related to the GA deferral and payback, to take into account timing and other differences. Any financing costs associated with these variance accounts (over and above the financing costs passed through to the IESO by the authorized entity (the hydro financing trust) would be subject to Board scrutiny.]

Same, distributors and retailers

(4) Distributors and retailers shall, in accordance with the regulations, establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by them under this section and under sections 25.34 and 25.35, in accordance with such rules and requirements as may be prescribed by regulation.

x. The Act would be amended by adding the following sections:

Deferral account

25.34 (1) The IESO shall establish a deferral account to record, for each month during the reduction period and the deferral and recovery period, the difference between,

(a) the amounts that would be payable by deferral consumers in respect of the electricity supply cost for the month under section 6.1 of the RPP Regulation; and

(b) the amounts payable by deferral consumers in respect of the electricity supply cost for the month under section 6.2 of the RPP Regulation.

[NTD: IESO to confirm whether the differences between (a) and (b) would be recorded monthly.

Explanatory note: The Board will determine a rate under a new s. 6.1 of the RPP Regulation that will essentially follow the same process the Board uses to establish the RPP rate, except that it will establish a rate for the deferral consumers (which is a slightly broader class than RPP consumers). The Board will also determine a "proxy" rate for the deferral consumers, calculated according to a different set of rules set out in a new s. 6.2 of the RPP Regulation. The rules in s. 6.2 will establish the "proxy" rate for a "proxy" Toronto Hydro customer consuming an average of 750 kWh/mth, to achieve an all-in tax-included total bill amount reduction of approximately 17% (the bill reduction for GA deferral + 8% OREC will result in an all-in bill reduction for May 1, 2017 – April 30, 2018 of 25% over the May 1, 2016 – April 30, 2017 period). There will be

additional rules dealing with bill increases and full repayment of the GA deferral by April 30, 2047.]

Note that because we refer to the new provisions in the RPP Regulation, we will need to amend that regulation *before* the introduction of the proposed legislative amendments. Drafting of the proposed RPP Regulation amendments is underway.

Do we need to create a parallel provision requiring distributors and retailers to establish deferral accounts as well?]

(2) The IESO shall record interest on the balance of the deferral account at a rate or rates reflecting the costs incurred by the IESO, or by any assignee under section 25.35, to finance the amounts recorded in the deferral account.

(3) The IESO shall also record in the deferral account the costs incurred by the IESO to finance the amounts recorded in the deferral account.

[NTD: This is a placeholder for what we will need here. The concept is that ss. (2) and (3) will ultimately apply to the interest and admin costs incurred by the hydro financing trust (assignee of the right of recovery under s. 25.35) in providing funds to the IESO to finance the GA deferral. Those interest costs and admin costs will be fully recoverable through section 25.35, subject to Board scrutiny presumably limited to verifying the calculations. This is not intended to address interest and costs incurred by the IESO and recorded in the variance accounts established under ss. 25.33(5).]

Recovery of GA deferral amounts

25.35 (1) The IESO shall have the right to fully recover the balance recorded in the deferral account. **[The Board shall authorize?]** recovery of the balance from the deferral consumers over the deferral recovery period in accordance with the prescribed rules.

[NTD: What role should the Board play in determining the amounts recovered each year (within the smoothing parameters that are prescribed)? For e.g., could the Board set rates such that the year-over-year increase in the proxy Toronto Hydro customer's all-in bill was less than the maximum permitted under the prescribed rules?

The prescribed rules will be set out in the new s. 6.2 of the RPP Regulation, which will determine how much the "proxy" Toronto Hydro customer's monthly average bill can increase year-over-year (after the reduction period). Basically, for the first four years after the reduction period, the increase will be limited to CPI. For the balance of the deferral and recovery period, the increases will be limited to 10%, with an overarching requirement that the deferral amounts be fully repaid by April 30, 2047.]

Assignment of right of recovery

(2) The IESO shall have the right to assign**[, in whole or in part?,]** to **[one or more?]** authorized entities, the IESO's rights under subsection (1).

[NTD: This is largely a placeholder for what needs to be addressed here. We will need to determine how to characterize this transaction. For e.g., will it be an outright assignment? Will it be a series of assignments? Should it be characterized as a "sale"? How will this transaction be implemented – e.g. by way of a contract between the IESO and the Trust? We will need the input of external counsel and others to ensure that it adequately supports the contemplated financings.]

Payments to assignee

(3) In the event of an assignment to an authorized entity under subsection (2), the IESO shall, through its billing and settlement systems, make payments to the authorized entity of the full amounts paid to the IESO in respect of the rights assigned.

[NTD: This is largely a placeholder for what needs to be addressed here. Iin addition to requiring IESO to make payments to the authorized entity, do we need to include explicit provisions giving the assignee the right to recover the amounts in the deferral account that are covered by the assignment?

We will need provisions dealing with billing and payment as between the authorized entity and IESO. We will also have to decide whether the interest and admin costs incurred by the authorized entity will simply be passed through to IESO, or whether the authorized entity (or OPG) will have an opportunity to keep any profits made on financing activities (swaps, etc.) by establishing some sort of "reference rate" that IESO would have to pay (and that might be different than the rate(s) the authorized entity would have to pay). A middle ground that could be considered would be to cap the amount of profits the authorized entity (or OPG) could make.

Along similar lines, the amounts charged by OPG to the authorized entity to provide admin services should be subject to Board review (e.g. for reasonableness). This would not jeopardize the ability of the authorized entity to recover all of its costs (since it would affect the amounts OPG could recover from the authorized entity).

We also need to contemplate a provision that if there is a change of law by the Government of Ontario that materially adversely affects the ability of the authorized entity to fully recover the assigned deferral account amounts, then repayment of those amounts will be accelerated and become immediately due and payable.]

x. The Act would be amended by adding the following provisions after s.29:

Transition Charges -- Ratepayer Obligation to Pay a Transition Charge

s.29.0.1 (1) Each consumer in the class of ratepayers to which this program applies (previously referred to as the "deferral consumers") will have a direct statutory obligation to the OPG Financing Entity to pay its share of the deferral repayments (principal, interest, financing costs).

Indebtedness of Ratepayers –
(2) This will be a debt owed by the consumer directly to the OPG Financing Entity. If it is not paid, the OPG Financing Entity can sue the consumer directly through the agreed procedures. This is identifying an explicit and identifiable revenue stream for the comfort of investors.

Separate tracking - distributors,
(3) This debt is separate from the debt owed by the consumer to its LDC, although the LDC will be the collection agent.

No set-off, etc. *[see similar provision at EA s.29.0.3(2)]*
(4) This debt cannot be netted out against any amount owed by the LDC to the consumer (e.g. year-end credit to consumer on equal monthly billing).

Allocation of Ratepayer Payments
(5) If a consumer pays less than its total invoiced amount, the payment will be allocated pro rata between the deferral repayment and the amounts owing to the LDC.

Transition Charges are Irrevocable

(6). This is intended to prohibit any reversal of amounts that must be paid to meet the terms and conditions of the funding obligations to be incurred under the program.

> **The deferral repayments are due regardless of whether a financing obligation incurred under the treasury plan is consistent with government policy at the time a related payment obligation arises.**
>
> **If the Fair Allocation Plan is amended after a funding obligation is properly incurred, any inconsistency in the payment profile will not impair the existing funding obligation or the pass-through of related payment amounts as Transition Charges.**

Anti-avoidance; No-by-pass

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(7) The idea here tracks the U.S. transactions, which say that the obligation of a consumer to pay Transition Charges cannot be "by-passed". If a consumer leaves the grid, he or she will still be obligated. See the highlighted text in the definition of "Ratepayer" for a sense of how this may be accomplished.

> **This concept is a key to a rated market financing and will need to be developed further.**
>
> **For example, self-generating customers could be charged a flat fee (for example, equal to the amount that would be payable by the "representative" Toronto Hydro customer that underpins the current government policy on the 25% or some other basis.)**

Distributor, agent for Financing Entity,
s.29.0.2(1) LDC is agent for the OPG Financing Entity. LDC must invoice the deferral consumer the deferral repayment amount - referable to the items described in "Finance Amount" (i.e., an amount already borrowed).

IESO - Calculation of the Period Transition Charge

(2) IESO will calculate the total amount of deferral financing that will be repayable in an applicable [e.g. 6 month] period.

(3) IESO will then determine the deferral repayments due from deferral consumers based on a prescribed methodology for allocating payments to individual deferral consumers.

Notice of Transition Charges, IESO to distributors

(4) IESO will then inform each LDC of the amount of the deferral repayments to be included in the invoices issued to each deferral consumer in the LDC's service territory.

Adjustments *[ntd: Consider – Deferral repayment amount final]*

(5) Deferral consumers cannot challenge the amount of the deferral repayment showing on their invoice unless there is a substantial calculation error.

Successors of Electricity Distributors –
(6) Any successor of an LDC will be bound by the same obligations as the original LDC re: billing and collecting deferral repayments.

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Successors of IESO –

(7) Any successor of the IESO will be bound by the same obligations as the original IES re: billing and collecting deferral repayments from distributors *[ntd-LSB: what about from consumers?].*

Appointment of an Alternative Invoicing Agent *[NTD – this provision may be moved closer to the powers/authorities of the OPG financing entity.]*

(8) If a "replacement event" (as defined in any payment obligation incurred to fund a deferral) occurs in respect of an LDC, the OPG Financing Entity can appoint someone else as the OPG Financing Entity's agent to collect deferral repayments. The LDC must sign whatever agreements and assignments are needed to enable the replacement agent to collect the deferral repayments from the LDC's deferral consumers.

Regulatory Asset Owner has Standing

(9) The OPG Financing Entity (or investors through their security) will be able to sue LDCs for failing to properly calculate or invoice the financing repayments.

29.0.3 Collections and Remittances [Collecting and Remitting Deferral Repayments]

(1) If a "replacement event" (as defined in any payment obligation incurred to fund a deferral) occurs in respect of an LDC or the IESO, the OPG Financing Entity can appoint someone else as the OPG Financing Entity's agent to collect and remit deferral repayments. The LDC (or IESO, as applicable) must sign whatever agreements and assignments are needed to enable the replacement agent to collect and remit the deferral repayments. "Replacement Events" are necessary to investors to safeguard against a person holding money in a distressed circumstance.

No Set-off, etc. *[see similar provision at EA s.29.0.1(3)]*

(2) The deferral repayments cannot be netted out against any amounts owed by the party responsible for collecting those repayments.

Sequestration.

(3) If any LDC or the IESO fails to remit deferral repayments, the OPG Financing Entity can get a court to order the LDC (or IESO, as applicable) to require them do so.

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x. Subsection 53.1 (1) of the Act would be repealed and the following substituted:

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, the following:

[Note: I know that the words "in addition to any other objects" appears in the current provision, but it seems very odd. This suggests that the objects are unlimited, which doesn't seem to be the intention but I could be wrong.]

1. Owning and operating generation facilities.

2. Establishing, operating and supervising the activities of entities for the purposes of supporting and promoting the government's hydro financing initiative.

3. Providing financial and other support to the IESO in its activities in relation to the hydro financing initiative.

4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.

5. Providing equity, not exceeding the prescribed amount, to support the financing capacity of the Financing Entity.

Subsidiaries

(1.1) Ontario Power Generation Inc. may create one or more subsidiaries in order to more efficiently conduct its activities or achieve its objects.

x. Section 53.2 of the Act would be repealed and the following substituted:

Rights of the Minister[1]

53.2 (1) The Minister, on behalf of Her Majesty in right of Ontario, may acquire, hold, dispose of and otherwise deal with securities or debt obligations of, or any other interest in, Ontario Power Generation Inc. or any of its subsidiaries.

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[1] FLS - this provision is based on s. 49 of the Act

Agreements

(2) The Minister, on behalf of Her Majesty in right of Ontario, may enter into any agreement or arrangement that the Minister considers necessary or incidental to the exercise of a power under subsection (1).

x. The Act would be amended by adding the following Part:

PART V.2
HYDRO FINANCING INITIATIVE

FAIR HYDRO FINANCING PLAN

Establishment and adoption of the Fair Allocation Plan

A. 1 (1) The Minister of Energy [may/shall] establish a "fair allocation plan"

(a) The purpose of the plan is generally to try and reallocate the portion of GA attributable to the procurement contracts over the anticipated useful life of the generation assets under those contracts.

- **This is the intergenerational funding of the Green Generation Initiaitves.**
- **One policy question is whether the amounts deferred and the period over which the deferred amounts are repaid are to be limited to the portion of GA attributable to the procurement contracts and to the anticipated useful life of the [renewable] generation assets under those contracts.**

- From a constitutional validity perspective (and hence a financeability perspective) these limits are very important.

-Financial/economic modelling to verify this link is required.

Principles and Parameters,

(2) Based on this initial description (which is only illustrative to advance the initial stakeholder discussion), the Minister would determine the details of the "fair allocation plan", but must take into consideration the following principles:

- **The deferred GA costs should be spread over a period not exceeding the anticipated remaining useful life of the generation assets under the procurement contracts**
- **The plan should specify the length of the "reference periods", to identify which deferral consumers are responsible for which deferral repayments**

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- **The share of the deferral repayments to be allocated to deferral consumers in each "reference period" should reflect a reasonable assessment of the remaining anticipated useful life of the generation assets under procurement contracts and perhaps to the benefits received by those deferral consumers from the procurement contracts (e.g. transition off coal)]**

- **No deferral consumer group should bear an unreasonably disproportionate share of the deferral repayments. That could be limited to a maximum amount, determined on a formula basis, if it makes sense tot he stakeholders**

- **In making the allocations, real (i.e. inflation-adjusted) dollars should be usedThe fair allocation plan is made using forward-looking information and projections.**

- **If, after the fact, the Minister determines that a Ratepayer Group paid more than would otherwise would have been the case had the projections for such period been accurate or other considerations come to light, adjustments to the plan could be made.**

Attribution Methodology

(3) The program will need to define how deferral consumers will be allocated an appropriate share of aggregate adjustment amount.

Confirmation][Review] of the Fair Allocation Plan – [OEB?]

Confirmation][Review] of the Fair Allocation Plan – [OEB?]

(4) Consideration will be needed regarding the level of review and confirmation of the plan is needed or appropriate. For example, should the scope of review be limited to calculations only? If there is a need for review, then consideration will be needed as to who will be the reviewer and under what authority, etc.

THE TREASURY PLAN

Power to Prepare and Implement the Treasury Plan –

A.2 (1) The "Treasury Plan" will be prepared by OPG. It must follow the requirements set out in this Part. Accounting considerations will need to be factored into this delegation, as well as the degree of province input initially and on an on-

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going basis. [Note for leg counsel: We will need to create the necessary sub-delegation authority]

Required Terms and Conditions of the Treasury Plan

(2) The Treasury Plan will establish the basis for OPG making funding decisions, which will need to align with the Fair Allocation Plan.

Power to Review and Approve the Treasury Plan

(3) The Minister may designate one or more persons to review, and require changes to the Treasury Plan. (This review could also be given to the Minister.) *[NTD-: Assumin no role for OEB – confirm. Any role for MOF/OFA here?]*

Obligation to Apply IESO Remittances,

(4) OPG will need to ensure that pass-through amounts, transferred to it as agent for the OPG Financing Entity, are only used to repay the debt and related costs.

Non-Recourse,

(5) The Treasury Plan will provide that the investors and other contracting parties will not have recourse to the IESO, LDCs, agents, the OEB or the Province, except where such parties fail to comply with applicable law. This may be modified in the contracts under which a financing arises.

NOTE: The documentation creating the Funding Obligations must expressly state that such obligations are not guaranteed by the Province.

NOTE: See IESO/Stikeman's language for "Regulatory Asset" above.

Incurrences are Binding,

(6) A failure to implement the Treasury Plan will not impair the pass-through of the deferral amounts or the validity of an otherwise valid funding obligation.

- **NOTE: Separate from the legislative provisions, we will also be preparing a very rough sketch of some of the items that might be included in the Treasury Plan direction.**
- **The sketch will be for illustration purposes only and will be for use in discussions with stakeholders including OPG and IESO.**

Crown bound, actions prohibited,

A.3 (1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – *[NTD: alternative* - Crown bound, prohibition against discriminatory action.

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(2) The Province will be prohibited from taking or permitting any action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or collections.

Undertaking and Agreement

(3) Under this Undertaking, the Province will agree for the benefit the OPG Financing Entity that it will not impair the value of the Regulatory Asset or the Transition Charges imposed under this Part. This "pledge" is in line with market expectations. Enforcement issues arise in this sort of undertaking, which will be assessed by the market and rating agencies based on the likelihood that a failure by the Province would lead to a successful damages claim. Unlike in the U.S., the law regarding such a claim is uncertain. Nevertheless, we expect that this sort of Undertaking will be requested in the legislation itself (i.e., requiring an act of the legislature to disavow – which is a higher bar than simply walking away from a contractual undertaking.

[Note: TBD where to place this Part within the Act and how to structure this Part. Temporary number (e.g. A1, A2, A3 etc.) has been used for now.]

FINANCING ENTITY

Financing Entity, established or prescribed

A1. (1) For the purpose of accomplishing the hydro financing initiative, the Minister may,

(a) direct Ontario Power Generation Inc. to establish and operate a trust; or

(b) direct Ontario Power Generation Inc. to [oversee? Administer?] an entity prescribed by the regulations.

[Note: Would the direction of the Minister include any additional instructions re timing etc.?]

Duty of Ontario Power Generation Inc.

(2) Ontario Power Generation Inc. shall comply with the direction of the Minister.

[Note: Once OPG takes action under A1 in accordance with the Minister's direction, what happens if at some point in the future, the Minister wants a different entity to take over the role of the FE? Is this a concern that needs to be addressed?]

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Object of Financing Entity

A2. (1) The object of the Financing Entity is to finance the amounts required to accomplish the hydro financing initiative.

[Note: We are imposing several obligations on the Financing Entity (FE). As a practical matter, how will these obligations be enforced? Who will be responsible for meeting these obligations? (e.g. would there be directors or officers of the trust?). Or will the OPG be responsible for meeting these obligations as the body that establishes/manages the trust or oversees the designated entity?]

Activities

(2) To achieve the object, the Financing Entity shall engage in the following activities:

[Note: Just want to confirm that this should be "shall" and not "may".]

1. Borrowing funds from the Financial Corporation or from such other persons or entities [as may be prescribed?].

2. Investing funds.

3. Making payments and loans to the IESO or such other entity as may be prescribed in accordance with the regulations [or an order of the Board].

[Note: I think it would be best to specify whether the rules would be set out in a reg or in a Board order to avoid confusion.]

[Note: Should the "loans" language be removed, since you noted that the IESO is not "borrowing" from the FE?]

4. Receiving payments from the IESO or such other person or entity as may be prescribed in accordance with the regulations.

5. Issuing securities or debt ***[in the manner prescribed?].***

6. Engaging in any activities, including entering into such transactions, agreements or arrangements as may be prescribed and in accordance with the regulations.

Board review of expenditures, etc.

A3. (1) The Financing Entity shall, at least 60 days after the end of each fiscal year, submit its expenditures relating to its operations for the fiscal year including the expenses it has charged to Ontario Power Generation Inc. or the IESO, or that it has been charged by the Financial Corporation, in relation to those operations, to the Board for review.

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[Note: The list of items that have to be reported on could be more prescriptive (e.g. specifying specific amounts to be set out) or it could also allow for the Board to specify what it wants to see in the report. Let me know if you'd like to adjust the wording of the requirement.]

Board recommendations, etc.

(2) The Board may review the expenditures and charges referred to in subsection (1) and make recommendations to the Financing Entity as are appropriate in order to ensure the most efficient operation and management of the Financing Entity in order to protect consumers.

[Note: Rather than saying "in order to protect consumers", should this say "in order to achieve the object of the FE"? Or perhaps this could just be deleted altogether with no need for replacement language.]

Deemed assets, entity,

A4. Despite any other provision of this Act or the *Business Corporations Act*, the assets and liabilities which are resident in and form part of the property of the Financing Entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries for any purpose.

[Note: You posed a question about excluding an OPG subsidiary from this rule. Please instruct.]

OBTAINING FINANCING

[Note: It will be important to read all of the provisions that follow against the provisions in the existing Act, to ensure there is no overlap/confusion being created due to potential interactions between existing authority and new authority. The drafting focus so far has just been to get the relevant substantive provisions into the draft without evaluating how they fit into the broader scheme of the Act.]

Ontario Power Generation Inc. to obtain financing

A5. (1) The IESO may direct Ontario Power Generation Inc. to cause the Financing Entity to engage in any of the following activities in order to accomplish the hydro financing initiative:

[Note: As a practical matter, how would OPG "cause the FE" to do these things? How is this different from "directing"?]

1. Financing, borrowing or lending to provide the IESO with short-term or long-term financing.

2. [Purchasing/receiving/obtaining the right created under section XX] and making any payments to the IESO that relate to the IESO's activities in support of the hydro financing initiative.

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[Note: Not sure if the regulated assets would always be "purchased" or if other terminology might be needed. Please advise.]

3. Collecting from the IESO amounts that the IESO is required to pay in relation to its activities in support of the hydro financing initiative.

4. Assigning its [the IESO's?] rights to all or part of the regulatory assets established under section XXXX.

[Note: What is para. 4 about? If this is about forcing OPG to make the FE do things, then does this belong in the list? I thought that it was only the IESO that would be assigning the rights to the FE]

5. Such other activities as may be prescribed.

Same

(2) Ontario Power Generation Inc. shall comply with a direction under subsection (1) within the time specified in the direction [and any prescribed rules?].

IESO to enter into transactions

A6. (1) The IESO shall, in order to support the achievement of the hydro financing initiative, enter into transactions with the Financing Entity or any other entity for such amounts as are necessary to support the hydro financing initiative.

[Note: My understanding is that the need for "or any other entity" stems from the need to allow for the IESO to obtain temporary financing in the immediate term, before it is able to access the FE. Do you want to narrow this so that the IESO is only authorized to do this before the FE is up and running? Or do you want to keep it available on an ongoing basis?]

Same

(2) In entering into transactions under subsection (1), the IESO shall comply with the regulations.

RIGHT OF RECOVERY [CREATION OF REGULATORY ASSET]

[Note re the following provisions:
I found a provision dealing with the concept of "regulatory asset" in Bill 210 from 2002 (see s. 79.13 of the OEBA). It deems certain things to be regulatory assets but does not say much more. On the phone, you noted that the term "regulatory asset" does not have any legal meaning on its own but is just an accounting term that has been used to describe the statutorily created right of recovery. However, you also said that there may be a need to use this term in order to convey the intended meaning from an accounting perspective.

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In order to ensure that the drafting captures the policy intent, please answer/address the following questions:

1. Should we be creating a statutory right of recovery or deeming certain amounts to be a regulatory asset? [NTD-LSB: Yes. The term "Regulatory Asset" has currency in commercial law (parliance) and since much of what we're doing is to support a securitization model, the term should remain for now. Further, the term "regulatory asset" was consistently referred to in the documents provided to ENERGY LSB by Blakes. Further, IESO/Stikemans offered up alternative language for the creation of a "regulatory asset" (as an intangible asset of sorts). You said you'd consult on whether the regulatory asset terminology is important to flag in the Bill.

2. You said you're not sure whether or not the Act will require the IESO to sell/assign the right. Please instruct. If it is optional for the IESO to sell/assign, then it seems that the right could in theory remain with the IESO (unless you are saying that the statute can just create the right of the FE to recover without any need for the right to be assigned/sold by the IESO… in which case please explain why we need to deal with the sale/assignment at all). Please clarify.

3. I'm assuming that if we are creating a right, then the right must be held by someone (e.g. the IESO) before it can be assigned/sold? So should the right be created in the Act for the IESO (e.g. the IESO has a right to recover the amounts from distributors and prescribed consumers) since the IESO would then sell/assign/transfer the right to the FE? The FE must also have the right to recover from the IESO itself, so that creates an extra complication.

4. Should there be some indication of when the right of recovery/regulatory assets will no longer continue to exist (e.g. once all of the amounts have been paid?). I notice that your instructions below about the debt indicate that the debt is no longer owing once the amounts are paid, but do we need to indicate that the regulatory asset also ceases to exist at that point?

Right of recovery created

A7. A right to recover the following amounts in full from the IESO, distributors and prescribed consumers is created.

1. The [deferred amount].

2. The amounts of costs relating to the operation or management of the Financing Entity, as are approved by the Board.

[Note: How will the Board be approving these costs? Is this related to the expenditure report submitted to the Board? That provision dealing with Board expenditures doesn't refer to any approval taking place… just a review and recommendations.]

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[Note: Need to mention expenditures?]

3. Other amounts as may be prescribed or as may be approved by the Board.

Note: Are you going to be saying anything about how the interest will be calculated?

Sale [and/or?] assignment of [right? Regulatory assets?]

A8. (1) The IESO [may? Shall?], in accordance with the regulations, sell [and/or?] convey to the Financing Entity the right to recovery created established under section A7 on such terms and conditions as are provided for by the Financing Entity.

[Note: Your instructions include the terms "sell", "assign" and "convey" -- which are correct?]

[Note: Your instructions suggested that something other than the "regulatory assets" may need to be assigned to the FE. Are you referring to the "warehousing" liabilities assumed by the IESO in the early days? What else would need to be assigned? Could these items be listed above in A7 or is there a reason why they need to be kept separate?]

Sale deemed final

(2) The sale and conveyance referred to in subsection (1) is deemed to be final for all purposes.

[Note: What is this intended to achieve? Is this based on precedent language that has been interpreted to have the desired effect?]

Debts

(3) For greater certainty, the [amounts to which the FE has a right of recovery] are debts owing by the IESO, distributors and prescribed consumers to the Financial Entity until the amounts have been fully paid and fully discharged.

[Note: Why is subs. (3) necessary? Isn't it inherent in the sale of the regulatory assets that the FE would have acquired the future right to collect these amounts? Perhaps it is unclear that the amount can be collected from not just the IESO but from others down the chain. But isn't that what the "right of recovery" section above is meant to cover?]

[Note: I haven't checked to see how other similar provisions dealing with debts are drafted. Not sure we need the "for greater certainty" and also not sure what the distinction is between "fully paid" and "fully discharged". This provision will need further consideration. You also noted that you may want to specify who determines when all obligations have been satisfied.]

IESO to recover amounts

A9. The IESO shall recover the amounts set out in section A7 from distributors and prescribed consumers, in accordance with […]:

Note: how are the requirements that would determine recovery for this subsection meant to interact with the GAM reg?

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[Note: The following two subsections are placeholders. You noted that *the provision is going to have to evolve to deal with consumers who exit the grid (disconnect) completely either because they leave the province or they decide to generate their own electricity and completely disconnect. You also want to be able to prescribe* methods of ensuring that the amounts required cannot be "by-passed". I'll need to understand what is meant by "by-passed".]

Distributors liable

(x) The IESO and distributors are entitled to compensation for any shortfall in relation to the amounts the IESO must pay to generators, the Financial Corporation or other persons including prescribed persons, under section 25.33 resulting from the IESO's activities under the hydro financing initiative.

Consumers liable

(X) Prescribed consumers are required to contribute towards the amount of any compensation referred to in subsection (4) in accordance with the amounts and methods prescribed by the regulations and such amounts shall not be by-passed.

USE OF FUNDS TO REDUCE ELECTRICITY BILLS

[Note: Depending on how things land with s. 25.33, this might be a place to explain how the transactions between the IESO and the FE translate into reduction in the electricity bills of RPP consumers. Regulations could specify how the IESO would ensure that the short-term rate reductions that flow from the FE amounts are only received by the targeted class of consumers and that this same class of consumers is the only class responsible for the repayment of FE funds in the long-term.]

ALTERNATIVE LANGUAGE – REGULATORY ASSET -- PROPOSED BY IESO (STIKEMANS)

Regulatory Asset Created

A7. (1) There is hereby created and conferred upon the IESO a "Regulatory Asset" consisting of the right to recover, in addition to the amounts otherwise recoverable, in accordance with the Regulations, the aggregate of the following amounts [from distributors and] prescribed consumers. **[Quare: do we regard the Regulatory Asset as a single asset in a variable amount or as different assets arising on each deferral]:**

1. The [deferred amount, including interest accrued thereon].
2. The amounts of costs relating to the operation or management of the Financing Entity, as are approved by the Board.
3. Other amounts as may be prescribed or as may be approved by the Board.

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(2) The Regulatory Asset created by (1), shall constitute, for all purposes, a property right, shall be transferable by the IESO in accordance with Section A8, and shall constitute an intangible in which a security interest can be created for purposes of the *Personal Property Security Act*.

Election to Transfer Regulatory Asset

A8. (1) The IESO shall, from time to time, in accordance with the Regulations, elect to transfer to the Financing Entity all or any portion of the Regulatory Asset, on such terms and conditions as IESO may determine.

(2) Upon any election by the IESO pursuant to (1), the Financing Entity shall pay to the IESO in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, an amount, not less than the Deferred Amount, determined in accordance with the Regulations.

(3) Upon any election by the IESO pursuant to (1), the Financing Entity shall become the person entitled to the benefit of the Regulatory Asset, or the portion thereof in respect of which the election was made, free and clear of any adverse claim (other than any such claim created by the Financing Entity) and shall be entitled to exercise all of the rights and remedies conferred by or arising in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, and the IESO shall cease to have any rights (except as provided in Section A9) to or in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, all as if the Regulatory Asset, or the portion thereof in respect of which the election was made, had originally been conferred upon the Financing Entity and not the IESO.

(4) Upon any election by the IESO pursuant to (1), the IESO shall have no further rights or obligations in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, and the Regulatory Asset, or the portion thereof in respect of which the election was made, shall not form part of the assets and liabilities of IESO for any purpose.

(5) The LG in Council may adopt regulations providing for the circumstances in which IESO shall make the election or elections provided for in (1).

Financing Entity may Grant Security Interest

A9. (1) The Financing Entity may, at any time after an election referred to in Section A8(1), create a security interest in favour of any person in all or any portion of the Regulatory Asset subject to such election, all on such terms and conditions as the Financing Entity may determine.

(2) Except as provided for in Regulations adopted pursuant to (3), *The Personal Property Security Act* shall apply to any security interest created pursuant to (1), except that the rights of the secured party on default shall be limited to receiving the amounts collected in respect of the Regulatory Asset, or the portion thereof subject to the security interest, as and when collected by the IESO in accordance with A10.

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(3) The LG in Council may adopt regulations providing for the terms on which the security interest provided for in (1) can be created and perfected and for the priority of any such security interest.

IESO to Collect Amounts in Respect of the Regulatory Asset

A10. Subsequent to any election pursuant to Section A8, the IESO shall, as agent on behalf of the Financing Entity and any secured party, use reasonable efforts to collect the amounts owing in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, and shall promptly pay over to the Financing Entity or the secured party the amounts collected.

--------*END OF IESO/BLAKES ALTERNATIVE LANGUAGE FOR REG. ASSET ---*

------- *BLAKES VERSION OF LANGUAGE FOR REGULATORY ASSET*

The Regulatory Asset, Composition,

A7(1) The "regulatory asset" consists of the following:

- **present and future statutory obligation of:**
  - **deferral consumers - to make all deferral repayments (including interest and late payment fees)**
  - **LDCs - to invoice the deferral consumers for the deferral repayments and to remit the amounts collected to the IESO**
  - **IESO - to receive and remit the deferral repayments from LDCs to the OPG Financing Entity**
- **All deferral repayment amounts collected**
- **All amounts in LDC or IESO deferral payment bank accounts**

Validity of Dispositions

(2) This section is reinforcing by statute the "sale" of the asset to the Financing Entity. This has been an important feature of the legislation in other jurisdictions in similar circumstances. Specifically, it says that "Dispositions" of the Regulatory Asset are "true sales", and not subject to challenge. This is an essential requirement for a securitization transaction. This provision identifies possible grounds for a challenge that a sale took place and indicates that those events do not affect the validity of the sale.

Deemed Perfection and Priority of Dispositions

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(3) This is reinforcing the automatic nature of the "sale" of the asset. It Provides for a clean sale to the OPG Financing Entity, free and clear of encumbrances (i.e., no specific need to "perfect" the sale.

Validity of Pledges,
(4) Statutory override permitting the OPG Financing Entity to give a security interest in the "regulatory asset" to investors.

> **This would give the investors (through an indenture) the right to enforce collection of the deferral repayments to pay off amounts owed by the OPG Financing Entity to the investors upon certain defaults by the OPG Financing Entity under an indenture.**

Deemed Perfection and Priority of Pledges
(5) This is reinforcing that a commercial pledge given by OPG Financing Entity is valid and will have priority without specific "perfection". The result is that a pledge of the Regulatory Asset as security in accordance with the Treasury Plan will be given priority to other claims. The Pledge includes proceeds from the Regulatory Asset and is not affected by comingling or the ordinary requirement to file a financing statement under the PPSA.

Enforcement of Property Rights –

(6) The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5. ***[ntd-: NOT an annotation – pulled directly from Blakes' document.]***

Collective Action Required –
(7) This anticipates that the Regulatory Asset will be structured as a variable interest that can be divided between IESO (until it sells) and one or more OPG Financing Entitys. The likely format will be a co-ownership agreement, that will allow for different owners to have a fractional undivided ownership interest in the Regulatory Asset. Those will entitle the owners to a specified share of the cash flows, which will correspond to their finance payment obligations. This will allow for future financing flexibility.

MISCELLANEOUS

Fair Hydro Financing Plan, miscellaneous,

A.8 (1) Consideration will be given to whether any additional 'miscellaneous' provisions are needed (and expected by the market) to support the financing of this

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structure. Some of these provisions are not typical in legislation, and so will need further consideration (in consultation with leg counsel).

Regulations

114(1.5) The LGIC may make regulations to implement the Fair Hydro Financing Initiative

-(a) The power to implement the program (and to set out some of the details of the program) through regulations is important. Decisions remain to be made (once the drafting is a little further advanced) about what provisions/details need to appear in the proposed legislation, and what provisions/details can be set out in regulations.

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ONTARIO ENERGY BOARD ACT, 1998

x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [hydro financing initiative].

[Note: Would need to link with definition in the EA or else spell out the definition here - TBD.]

x. Section 27.1 of the Act would be amended by adding the following paragraph:

Hearings

(1.1) A directive may specify whether the Board is to hold a hearing, the circumstances under which a hearing may or may not be held and, if a hearing is to be held, the type of hearing to be held and the time within which it must be held.

The underlined is what makes this different from the other provisions in the Act that basically have the same wording. There are already a number of places in the Act where you have this type of hearings provision re directives (e.g., s. 27.2 (7)). If you basically want the same authority in each instance, then the wording should be consistent in each case. There are already some discrepancies between the current provisions (e.g., s. 27.2

(7) talks about types of hearings, whereas s. 28 (2) doesn't). Differences in wording will typically be presumed to be differences in meaning. So, the question is what you're intending to authorize in each case, and whether differences are intended. If you want the same thing everywhere, it should all be worded the same. Let me know.

[Note: Waiting for confirmation whether amendments to s. 78.7 are needed. Please advise.]

x. Section 78 of the Act would be amended by adding the following subsection after subsection (3.0.5):

Rates, fair hydro financing initiative activities -IESO, OPG, distributors, etc.
(3.0.6) The OEB would not be precluded from taking into account the performance of duties under this Part by any entity regulated by the OEB, including fees received by such entity in excess of the incremental costs of the provision of such services.

x. Section 79.16 (3) of the Act would be repealed and the following substituted:

Adjustment to eliminate variances

(3) In determining rates under clause (1) (b), the Board shall take into account balances in variance accounts established under section 25.33 of the *Electricity Act, 1998* and, subject to section X of that Act, make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.
[Note: Please let me know what section the highlighted portion is supposed to refer to… is it the provision that says the IESO has the 30 year period to pay off the amount in the variance account for the hydro financing initiative? I wonder if this is confusing and whether the amendment to subs. (3) above works… it almost seems unnecessary to say that the Board has to "take into account" this balance, given that we are setting up a bunch of very specific rules about what has to be done by various entities in order to eliminate this amount. What would the Board be expected to do with information about this variance account? For consideration.]

PART VII.3

COMPLIANCE – FAIR HYDRO FINANCING INITIATIVE

Right of the [OEB] to Inspect Books and Records,
113 (1) OEB may be given the power to investigate compliance with the legislation and the power to examine books and records, etc.

Power to Investigate Compliance and Impose Regulatory Sanctions

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(2) This legislation will not limit the OEB's power to investigate compliance or prevent or preclude the OEB's power to impose sanctions. The OEB can investigate compliance with this part and to impose regulatory sanctions for non-compliance.

Limitation, Board,

(2.1) The OEB cannot, however, take any action to affect the irrevocability of the Transition Charges or the Undertaking of the Province.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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Materials for Review draft OFHP legislation .rtf

From: Cox, Hilary (ENERGY) []
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Subject: Materials for Review draft OFHP legislation
Date: Monday, April 03, 2017 15:25:53
Attachment 1: External - Draft 5 Annotated (Blks DS) GOV2016.146.e05 (April 3 2017).docx

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Please see attached materials for Review of Draft OFHP legislation meeting tomorrow morning.

Hilary

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External - Draft 5 Annotated (Blks DS) GOV2016.146.e05 (April 3 2017).pdf

A proposal to create Legislation.

Fair Hydro Plan Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

ELECTRICITY ACT, 1998

1. (1) Section 1 of the *Electricity Act, 1998* would be amended by adding the following clause:

[Note: GGRA provisions have been removed for now. Please confirm if they should be re-inserted.]

(2) Clause 1 (f) of the Act would be struck out and the following substituted:

(f) to protect the interests of consumers with respect to the adequacy, reliability and quality of electricity service;

(f.1) to protect the interests of consumers with respect to the prices they pay for electricity, including protection of those interests through the Hydro financing initiative;

[Note: Since the Hydro financing initiative is a defined term and is clearly required to be implemented under the new substantive provisions of the Act, I'm still not sure why this needs to be addressed in the purpose clause. However, I have included a purpose provision as per your instructions.]

Article 1 – Purpose

The proposed new legislation will likely include a large number of provisions intended to support the "financeability" of the structure. As a result, it may make sense for (LSB is exploring the potential) the Bill to create a new stand-alone energy statute, much like the *Green Energy and Green Economy Act, 2009* created the *Green Energy Act, 2009*.

The new legislation would have a purpose clause that explains the objective of intergenerational fairness. This would be useful for the markets to see, and may

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help support the validity of the legislation from a constitutional law perspective (charge vs. tax)

x. Subsection 2 (1) of the Act would be amended by adding the following definitions:

"Financing Entity" means the trust established by Ontario Power Generation Inc. under clause XX (a) or the entity prescribed for the purposes of clause XX (b); ("French")

"hydro financing initiative" means those policies of the Government of Ontario related to its decision to ensure costs to Ontario electricity consumers are allocated fairly over time, taking into account the useful life of new sources of and technologies for electricity; ("French")

[Note: I have applied the precedent of the "smart metering initiative" as per your instructions. Just want to reiterate my concern that the reference to government policies is really vague (which initiative/ policies? At which point in time?) and I think this could cause lots of confusion, particularly if the policies evolve over time. It could also have unintended consequences.]

[Note: To consider -- by describing the initiative as we have in the above definition, we are potentially linking the deferred amount to amounts that would otherwise be paid for by consumers as part of the GA. If the deferred amounts are not all about "the useful life of new sources and technologies" then the description of the initiative should likely be broadened. (For example, if some of the deferred amount may be used to cover high wholesale prices, one could argue that the initiative is NOT about allocating costs fairly over time… it's just about pushing the cost increase to future consumers without considering what is "fair" across the generations.]

Article 2 - Definitions

The new legislation will include many new defined terms. One important term will be "Funding Shortfall" (or equivalent wording). This will be the net reduction in cash flows to IESO as a result of the reallocation of a portion of the Global Adjustment to later periods of time. Currently, the "Funding Shortfall" would be limited to the Global Adjustment attributable to the procurement contracts, but this is a question that still has to be settled.

Another important defined term that is worth noting is "Replacement Event". This is an event under which the market would want to replace a person who has responsibility to take essential actions under the program (including LDCs, IESO and OPG), like invoicing and collecting amounts.

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The triggering events are likely to include insolvency and breach of duty/obligation.

Another key defined term is "Transition Charge". This is the amount that will be calculated and applied to the "deferral consumers", based on the amounts of payments due under funding obligations incurred to cover the funding shortfall (i.e., what we have until now been calling "deferral repayments").

Another important defined term will be "Treasury Plan". This will be the written plan prepared by OPG relating to the sale of the "regulatory asset(s)" to the OPG Financing Entity (sometimes previously referred to as the "Financing Trust") and the debt issued by the OPG Financing Entity to the markets.

Another defined term will be "True-up Amount". This is a key provision for the market. It allows for a catch-up for estimate/actual adjustments and to address consumer non-payment credit losses.

A further defined term will be "Undertaking of the Province". This will be a promise by the Government not to impair the program. This will be expected by the market, even though it will be understood that there may be issues for investors to enforce the promise, or get damages if there is a breach.

x. (1) Subsection 6 (1) of the Act would be amended by adding the following clauses:

(q.1) to enter into agreements or arrangements with the Financing Entity;

(q.2) to engage in activities related to making payments to and receiving payments from the Financing Entity under Part V.2, as required under this Act, and to engage in related settlement activities;

Note: Is some of this covered already by clause (i)? Could we address this by expanding upon clause (i)? Trying to understand whether there is any potential overlap.]

(q.3) to engage in activities related to the [sale/disposition/conveyance/assignment] of the [right/regulatory asset] created under section XX, which activities may include,

[Note: As discussed, please confirm terminology.]

(i) incurring liabilities in relation to the [right/asset];

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(ii) [selling/assigning/disposing of?] the [right/asset] to the Financing Entity;

(iii) assigning [the right/asset] to third parties;

[Note: I don't understand (iii) -- I thought the rights to the asset were being assigned to the trust and nobody else?]

(q.4) acting as a recovery agent for the Financing Entity in relation to [the right/asset];

x. (1) Subsections 25.33 (1) and (2) of the Act would be repealed and the following substituted [TBD].

[Note: As per our telephone discussion today (March 27), there seems to be ongoing debate about the policy direction:

1. Do you want to amend the GAM so that the money received from the FE and the money recovered by the FE are part of the initial GA calculation?

2. Do you want to leave the GAM section as is and add a requirement (in a new section) for the IESO to conduct additional adjustments for a subset of the payments referred to in s. 25.33? This second adjustment would be engaged in after the existing GAM is calculated. So it would be a further adjustment of what has already been adjusted under the GAM.

Until this fundamental question is answered, we would be removing the proposed amendments to s. 25.33.]

OPTION 2:

Deferral adjustments, 25.33 amounts.

25.33.2 (0.1) For the purposes of this section and sections 25.34 and 25.35,

(a) "authorized entity" means **[the hydro financing trust established by Ontario Power Generation Inc. for the sole purpose of financing the recovery of the balance in the deferral account, or]** such **[other]** entity as may be prescribed by regulation;

(b) "deferral account" means the deferral account established under section 25.34;

(c) "deferral amount" means the amount recorded in the deferral account for each month during the deferral and recovery period;

(d) "deferral and recovery period" means the period from May 1, 2017 to April 30, 2047;

(e) "deferral consumer" means a consumer who is a member of a class of consumers prescribed by the regulations for the purposes of sections 25.34 and 25.35;

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[NTD: This will be set out in a new subection 4(3) of O. Reg. 95/05 and will reflect OREC-eligible consumers other than non-grid connected customers of IPAs (who would not pay a GA charge anyway). Note that this is not quite the same as "RPP-eligible" consumers.]

(f) "electricity supply cost" means the amount calculated according to the formula:

(A + B + C + D) - E

where,

A is the amounts paid by the IESO to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the *Ontario Energy Board Act, 1998,*

B is the amounts paid by the IESO to entities with whom the IESO has a procurement contract, as determined under the procurement contract,

[NTD: A and B use exactly the same wording as is set out in (a) and (b) of the existing ss. 25.33(1).]

C is

[NTD: C is the "net new" costs associated with the GA deferral. These are costs that the IESO will record in the GA deferral account established under s. 25.34, and that the IESO (or its assignee) will subsequently recover. These costs consist of the interest and financing-related admin costs associated with the GA deferral (which costs will be flowed through from the hydro financing trust to the IESO). These costs do not include the principal amount deferred and recovered, since that is already captured as part of A and B.

The "net new" costs in C will be recoverable solely from a newly prescribed class of consumers - deferral consumers (i.e. those consumers who will benefit from the GA deferral). The rules for the recovery of these costs will be part of a new subsection 4(3) of the RPP Regulation.]

D is any other amounts that may be prescribed by regulation,

[NTD: Paragraph D would give us flexibility to add new cost categories by reg. if/as needed now or later.]

[GGRA-related amendments are removed for the time-being]

and

E is any other amounts that may be prescribed by regulation;

[NTD: Paragraph E would give us flexibility to add new cost categories by reg.

Question for leg counsel: If in the future HOEP were to exceed contract prices and/or regulated rates, presumably the formula would still work (i.e. in such case the amounts for A and B would simply be negative amounts)?] *[ntd-LSB: IESO appears to agree with that idea, based on our shared appreciation of how EA s.25.33 works today.]*

(f) "reduction period" means the period commencing May 1, 2017 and ending April 30, 2018;

(g) "RPP Regulation" means Ontario Regulation 95/05 (Classes of Consumers and Determination of Rates).

Electricity pricing adjustments

Adjustments by IESO

(1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by such classes of market participants in Ontario as are prescribed by regulation, reflect the electricity supply cost.

Adjustments by distributors and retailers

(2) Distributors and retailers shall, through their billing systems, make adjustments in accordance with the regulations that ensure that, over time, payments by such classes of consumers in Ontario as are prescribed by regulation, reflect the electricity supply cost.

[NTD: There will be two "classes of consumers in Ontario that are prescribed" for the purposes of RPP-"plus" deferral – the EA regulation that "prescribes" these two classes will refer to (or be aligned with) the two classes as described in the RPP Regulation. 1) The first class are the deferral consumers (see definition above), and 2) the second class (or defined base consumer) will be the "proxy" Toronto Hydro consumer whose bill will only be allowed to increase year-over-year according to rules prescribed in a new s. 6.1 of the RPP Regulation.]

Variance accounts

(3) The IESO shall, in accordance with the regulations, establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section and under sections 25.34 and 25.35, in accordance with such rules and requirements as may be prescribed by regulation. *[ntd-DAN: I left "this section"*

even though this provision is part of a new s.25.33.2 – did you want "this section" to refer to "section 25.33"? If so, then we'd add this to the list we've started referencing proposed new s.25.34 and s.25.35. Consider.]

[Drafting note: We can prescribe the different variance accounts that must be maintained, and the different amounts that must be tracked and accounted for, by the IESO. Among other things, the IESO will presumably need to establish variance accounts related to the GA deferral and payback, to take into account timing and other differences. Any financing costs associated with these variance accounts (over and above the financing costs passed through to the IESO by the authorized entity (the hydro financing trust) would be subject to Board scrutiny.]

Same, distributors and retailers

(4) Distributors and retailers shall, in accordance with the regulations, establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by them under this section and under sections 25.34 and 25.35, in accordance with such rules and requirements as may be prescribed by regulation.

x. The Act would be amended by adding the following sections:

Deferral account

25.34 (1) The IESO shall establish a deferral account to record, for each month during the reduction period and the deferral and recovery period, the difference between,

(a) the amounts that would be payable by deferral consumers in respect of the electricity supply cost for the month under section 6.1 of the RPP Regulation; and

(b) the amounts payable by deferral consumers in respect of the electricity supply cost for the month under section 6.2 of the RPP Regulation.

[NTD: IESO to confirm whether the differences between (a) and (b) would be recorded monthly.

Explanatory note: The Board will determine a rate under a new s. 6.1 of the RPP Regulation that will essentially follow the same process the Board uses to establish the RPP rate, except that it will establish a rate for the deferral consumers (which is a slightly broader class than RPP consumers). The Board will also determine a "proxy" rate for the deferral consumers, calculated according to a different set of rules set out in a new s. 6.2 of the RPP Regulation. The rules in s. 6.2 will establish the "proxy" rate for a "proxy" Toronto Hydro customer consuming an average of 750 kWh/mth, to achieve an all-in tax-included total bill amount reduction of approximately 17% (the bill reduction for GA deferral + 8% OREC will result in an all-in bill reduction for May 1, 2017 – April 30, 2018 of 25% over the May 1, 2016 – April 30, 2017 period). There will be

additional rules dealing with bill increases and full repayment of the GA deferral by April 30, 2047.]

Note that because we refer to the new provisions in the RPP Regulation, we will need to amend that regulation *before* the introduction of the proposed legislative amendments. Drafting of the proposed RPP Regulation amendments is underway.

Do we need to create a parallel provision requiring distributors and retailers to establish deferral accounts as well?]

(2) The IESO shall record interest on the balance of the deferral account at a rate or rates reflecting the costs incurred by the IESO, or by any assignee under section 25.35, to finance the amounts recorded in the deferral account.

(3) The IESO shall also record in the deferral account the costs incurred by the IESO to finance the amounts recorded in the deferral account.

[NTD: This is a placeholder for what we will need here. The concept is that ss. (2) and (3) will ultimately apply to the interest and admin costs incurred by the hydro financing trust (assignee of the right of recovery under s. 25.35) in providing funds to the IESO to finance the GA deferral. Those interest costs and admin costs will be fully recoverable through section 25.35, subject to Board scrutiny presumably limited to verifying the calculations. This is not intended to address interest and costs incurred by the IESO and recorded in the variance accounts established under ss. 25.33(5).]

Recovery of GA deferral amounts

25.35 (1) The IESO shall have the right to fully recover the balance recorded in the deferral account. **[The Board shall authorize?]** recovery of the balance from the deferral consumers over the deferral recovery period in accordance with the prescribed rules.

[NTD: What role should the Board play in determining the amounts recovered each year (within the smoothing parameters that are prescribed)? For e.g., could the Board set rates such that the year-over-year increase in the proxy Toronto Hydro customer's all-in bill was less than the maximum permitted under the prescribed rules?

The prescribed rules will be set out in the new s. 6.2 of the RPP Regulation, which will determine how much the "proxy" Toronto Hydro customer's monthly average bill can increase year-over-year (after the reduction period). Basically, for the first four years after the reduction period, the increase will be limited to CPI. For the balance of the deferral and recovery period, the increases will be limited to 10%, with an overarching requirement that the deferral amounts be fully repaid by April 30, 2047.]

Assignment of right of recovery

(2) The IESO shall have the right to assign**[, in whole or in part?,]** to **[one or more?]** authorized entities, the IESO's rights under subsection (1).

[NTD: This is largely a placeholder for what needs to be addressed here. We will need to determine how to characterize this transaction. For e.g., will it be an outright assignment? Will it be a series of assignments? Should it be characterized as a "sale"? How will this transaction be implemented – e.g. by way of a contract between the IESO and the Trust? We will need the input of external counsel and others to ensure that it adequately supports the contemplated financings.]

Payments to assignee

(3) In the event of an assignment to an authorized entity under subsection (2), the IESO shall, through its billing and settlement systems, make payments to the authorized entity of the full amounts paid to the IESO in respect of the rights assigned.

[NTD: This is largely a placeholder for what needs to be addressed here. Iin addition to requiring IESO to make payments to the authorized entity, do we need to include explicit provisions giving the assignee the right to recover the amounts in the deferral account that are covered by the assignment?

We will need provisions dealing with billing and payment as between the authorized entity and IESO. We will also have to decide whether the interest and admin costs incurred by the authorized entity will simply be passed through to IESO, or whether the authorized entity (or OPG) will have an opportunity to keep any profits made on financing activities (swaps, etc.) by establishing some sort of "reference rate" that IESO would have to pay (and that might be different than the rate(s) the authorized entity would have to pay). A middle ground that could be considered would be to cap the amount of profits the authorized entity (or OPG) could make.

Along similar lines, the amounts charged by OPG to the authorized entity to provide admin services should be subject to Board review (e.g. for reasonableness). This would not jeopardize the ability of the authorized entity to recover all of its costs (since it would affect the amounts OPG could recover from the authorized entity).

We also need to contemplate a provision that if there is a change of law by the Government of Ontario that materially adversely affects the ability of the authorized entity to fully recover the assigned deferral account amounts, then repayment of those amounts will be accelerated and become immediately due and payable.]

x. The Act would be amended by adding the following provisions after s.29:

Transition Charges -- Ratepayer Obligation to Pay a Transition Charge

s.29.0.1 (1) Each consumer in the class of ratepayers to which this program applies (previously referred to as the "deferral consumers") will have a direct statutory obligation to the OPG Financing Entity to pay its share of the deferral repayments (principal, interest, financing costs).

Indebtedness of Ratepayers –
(2) This will be a debt owed by the consumer directly to the OPG Financing Entity. If it is not paid, the OPG Financing Entity can sue the consumer directly through the agreed procedures. This is identifying an explicit and identifiable revenue stream for the comfort of investors.

Separate tracking - distributors,
(3) This debt is separate from the debt owed by the consumer to its LDC, although the LDC will be the collection agent.

No set-off, etc. *[see similar provision at EA s.29.0.3(2)]*
(4) This debt cannot be netted out against any amount owed by the LDC to the consumer (e.g. year-end credit to consumer on equal monthly billing).

Allocation of Ratepayer Payments
(5) If a consumer pays less than its total invoiced amount, the payment will be allocated pro rata between the deferral repayment and the amounts owing to the LDC.

Transition Charges are Irrevocable

(6). This is intended to prohibit any reversal of amounts that must be paid to meet the terms and conditions of the funding obligations to be incurred under the program.

> **The deferral repayments are due regardless of whether a financing obligation incurred under the treasury plan is consistent with government policy at the time a related payment obligation arises.**
>
> **If the Fair Allocation Plan is amended after a funding obligation is properly incurred, any inconsistency in the payment profile will not impair the existing funding obligation or the pass-through of related payment amounts as Transition Charges.**

Anti-avoidance; No-by-pass

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(7) The idea here tracks the U.S. transactions, which say that the obligation of a consumer to pay Transition Charges cannot be "by-passed". If a consumer leaves the grid, he or she will still be obligated. See the highlighted text in the definition of "Ratepayer" for a sense of how this may be accomplished.

> **This concept is a key to a rated market financing and will need to be developed further.**
>
> **For example, self-generating customers could be charged a flat fee (for example, equal to the amount that would be payable by the "representative" Toronto Hydro customer that underpins the current government policy on the 25% or some other basis.)**

Distributor, agent for Financing Entity,
s.29.0.2(1) LDC is agent for the OPG Financing Entity. LDC must invoice the deferral consumer the deferral repayment amount - referable to the items described in "Finance Amount" (i.e., an amount already borrowed).

IESO - Calculation of the Period Transition Charge

(2) IESO will calculate the total amount of deferral financing that will be repayable in an applicable [e.g. 6 month] period.

(3) IESO will then determine the deferral repayments due from deferral consumers based on a prescribed methodology for allocating payments to individual deferral consumers.

Notice of Transition Charges, IESO to distributors

(4) IESO will then inform each LDC of the amount of the deferral repayments to be included in the invoices issued to each deferral consumer in the LDC's service territory.

Adjustments *[ntd: Consider – Deferral repayment amount final]*

(5) Deferral consumers cannot challenge the amount of the deferral repayment showing on their invoice unless there is a substantial calculation error.

Successors of Electricity Distributors –
(6) Any successor of an LDC will be bound by the same obligations as the original LDC re: billing and collecting deferral repayments.

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Successors of IESO –

(7) Any successor of the IESO will be bound by the same obligations as the original IES re: billing and collecting deferral repayments from distributors *[ntd-LSB: what about from consumers?].*

Appointment of an Alternative Invoicing Agent *[NTD – this provision may be moved closer to the powers/authorities of the OPG financing entity.]*

(8) If a "replacement event" (as defined in any payment obligation incurred to fund a deferral) occurs in respect of an LDC, the OPG Financing Entity can appoint someone else as the OPG Financing Entity's agent to collect deferral repayments. The LDC must sign whatever agreements and assignments are needed to enable the replacement agent to collect the deferral repayments from the LDC's deferral consumers.

Regulatory Asset Owner has Standing

(9) The OPG Financing Entity (or investors through their security) will be able to sue LDCs for failing to properly calculate or invoice the financing repayments.

29.0.3 Collections and Remittances [Collecting and Remitting Deferral Repayments]

(1) If a "replacement event" (as defined in any payment obligation incurred to fund a deferral) occurs in respect of an LDC or the IESO, the OPG Financing Entity can appoint someone else as the OPG Financing Entity's agent to collect and remit deferral repayments. The LDC (or IESO, as applicable) must sign whatever agreements and assignments are needed to enable the replacement agent to collect and remit the deferral repayments. "Replacement Events" are necessary to investors to safeguard against a person holding money in a distressed circumstance.

No Set-off, etc. *[see similar provision at EA s.29.0.1(3)]*

(2) The deferral repayments cannot be netted out against any amounts owed by the party responsible for collecting those repayments.

Sequestration.

(3) If any LDC or the IESO fails to remit deferral repayments, the OPG Financing Entity can get a court to order the LDC (or IESO, as applicable) to require them do so.

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x. Subsection 53.1 (1) of the Act would be repealed and the following substituted:

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, the following:

[Note: I know that the words "in addition to any other objects" appears in the current provision, but it seems very odd. This suggests that the objects are unlimited, which doesn't seem to be the intention but I could be wrong.]

1. Owning and operating generation facilities.

2. Establishing, operating and supervising the activities of entities for the purposes of supporting and promoting the government's hydro financing initiative.

3. Providing financial and other support to the IESO in its activities in relation to the hydro financing initiative.

4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.

5. Providing equity, not exceeding the prescribed amount, to support the financing capacity of the Financing Entity.

Subsidiaries

(1.1) Ontario Power Generation Inc. may create one or more subsidiaries in order to more efficiently conduct its activities or achieve its objects.

x. Section 53.2 of the Act would be repealed and the following substituted:

Rights of the Minister[1]

53.2 (1) The Minister, on behalf of Her Majesty in right of Ontario, may acquire, hold, dispose of and otherwise deal with securities or debt obligations of, or any other interest in, Ontario Power Generation Inc. or any of its subsidiaries.

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[1] FLS - this provision is based on s. 49 of the Act

Agreements

(2) The Minister, on behalf of Her Majesty in right of Ontario, may enter into any agreement or arrangement that the Minister considers necessary or incidental to the exercise of a power under subsection (1).

x. The Act would be amended by adding the following Part:

PART V.2
HYDRO FINANCING INITIATIVE

FAIR HYDRO FINANCING PLAN

Establishment and adoption of the Fair Allocation Plan

A. 1 (1) The Minister of Energy [may/shall] establish a "fair allocation plan"

(a) The purpose of the plan is generally to try and reallocate the portion of GA attributable to the procurement contracts over the anticipated useful life of the generation assets under those contracts.

- **This is the intergenerational funding of the Green Generation Initiaitves.**
- **One policy question is whether the amounts deferred and the period over which the deferred amounts are repaid are to be limited to the portion of GA attributable to the procurement contracts and to the anticipated useful life of the [renewable] generation assets under those contracts.**

- From a constitutional validity perspective (and hence a financeability perspective) these limits are very important.

-Financial/economic modelling to verify this link is required.

Principles and Parameters,

(2) Based on this initial description (which is only illustrative to advance the initial stakeholder discussion), the Minister would determine the details of the "fair allocation plan", but must take into consideration the following principles:

- **The deferred GA costs should be spread over a period not exceeding the anticipated remaining useful life of the generation assets under the procurement contracts**
- **The plan should specify the length of the "reference periods", to identify which deferral consumers are responsible for which deferral repayments**

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- **The share of the deferral repayments to be allocated to deferral consumers in each "reference period" should reflect a reasonable assessment of the remaining anticipated useful life of the generation assets under procurement contracts and perhaps to the benefits received by those deferral consumers from the procurement contracts (e.g. transition off coal)]**

- **No deferral consumer group should bear an unreasonably disproportionate share of the deferral repayments. That could be limited to a maximum amount, determined on a formula basis, if it makes sense tot he stakeholders**

- **In making the allocations, real (i.e. inflation-adjusted) dollars should be usedThe fair allocation plan is made using forward-looking information and projections.**

- **If, after the fact, the Minister determines that a Ratepayer Group paid more than would otherwise would have been the case had the projections for such period been accurate or other considerations come to light, adjustments to the plan could be made.**

Attribution Methodology

(3) The program will need to define how deferral consumers will be allocated an appropriate share of aggregate adjustment amount.

Confirmation][Review] of the Fair Allocation Plan – [OEB?]

Confirmation][Review] of the Fair Allocation Plan – [OEB?]

(4) Consideration will be needed regarding the level of review and confirmation of the plan is needed or appropriate. For example, should the scope of review be limited to calculations only? If there is a need for review, then consideration will be needed as to who will be the reviewer and under what authority, etc.

THE TREASURY PLAN

Power to Prepare and Implement the Treasury Plan –

A.2 (1) The "Treasury Plan" will be prepared by OPG. It must follow the requirements set out in this Part. Accounting considerations will need to be factored into this delegation, as well as the degree of province input initially and on an on-

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going basis. [Note for leg counsel: We will need to create the necessary sub-delegation authority]

Required Terms and Conditions of the Treasury Plan

(2) The Treasury Plan will establish the basis for OPG making funding decisions, which will need to align with the Fair Allocation Plan.

Power to Review and Approve the Treasury Plan

(3) The Minister may designate one or more persons to review, and require changes to the Treasury Plan. (This review could also be given to the Minister.) *[NTD-: Assumin no role for OEB – confirm. Any role for MOF/OFA here?]*

Obligation to Apply IESO Remittances,

(4) OPG will need to ensure that pass-through amounts, transferred to it as agent for the OPG Financing Entity, are only used to repay the debt and related costs.

Non-Recourse,

(5) The Treasury Plan will provide that the investors and other contracting parties will not have recourse to the IESO, LDCs, agents, the OEB or the Province, except where such parties fail to comply with applicable law. This may be modified in the contracts under which a financing arises.

NOTE: The documentation creating the Funding Obligations must expressly state that such obligations are not guaranteed by the Province.

NOTE: See IESO/Stikeman's language for "Regulatory Asset" above.

Incurrences are Binding,

(6) A failure to implement the Treasury Plan will not impair the pass-through of the deferral amounts or the validity of an otherwise valid funding obligation.

- **NOTE: Separate from the legislative provisions, we will also be preparing a very rough sketch of some of the items that might be included in the Treasury Plan direction.**
- **The sketch will be for illustration purposes only and will be for use in discussions with stakeholders including OPG and IESO.**

Crown bound, actions prohibited,

A.3 (1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – *[NTD: alternative* - Crown bound, prohibition against discriminatory action.

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(2) The Province will be prohibited from taking or permitting any action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or collections.

Undertaking and Agreement

(3) Under this Undertaking, the Province will agree for the benefit the OPG Financing Entity that it will not impair the value of the Regulatory Asset or the Transition Charges imposed under this Part. This "pledge" is in line with market expectations. Enforcement issues arise in this sort of undertaking, which will be assessed by the market and rating agencies based on the likelihood that a failure by the Province would lead to a successful damages claim. Unlike in the U.S., the law regarding such a claim is uncertain. Nevertheless, we expect that this sort of Undertaking will be requested in the legislation itself (i.e., requiring an act of the legislature to disavow – which is a higher bar than simply walking away from a contractual undertaking.

[Note: TBD where to place this Part within the Act and how to structure this Part. Temporary number (e.g. A1, A2, A3 etc.) has been used for now.]

FINANCING ENTITY

Financing Entity, established or prescribed

A1. (1) For the purpose of accomplishing the hydro financing initiative, the Minister may,

(a) direct Ontario Power Generation Inc. to establish and operate a trust; or

(b) direct Ontario Power Generation Inc. to [oversee? Administer?] an entity prescribed by the regulations.

[Note: Would the direction of the Minister include any additional instructions re timing etc.?]

Duty of Ontario Power Generation Inc.

(2) Ontario Power Generation Inc. shall comply with the direction of the Minister.

[Note: Once OPG takes action under A1 in accordance with the Minister's direction, what happens if at some point in the future, the Minister wants a different entity to take over the role of the FE? Is this a concern that needs to be addressed?]

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Object of Financing Entity

A2. (1) The object of the Financing Entity is to finance the amounts required to accomplish the hydro financing initiative.

[Note: We are imposing several obligations on the Financing Entity (FE). As a practical matter, how will these obligations be enforced? Who will be responsible for meeting these obligations? (e.g. would there be directors or officers of the trust?). Or will the OPG be responsible for meeting these obligations as the body that establishes/manages the trust or oversees the designated entity?]

Activities

(2) To achieve the object, the Financing Entity shall engage in the following activities:

[Note: Just want to confirm that this should be "shall" and not "may".]

1. Borrowing funds from the Financial Corporation or from such other persons or entities [as may be prescribed?].

2. Investing funds.

3. Making payments and loans to the IESO or such other entity as may be prescribed in accordance with the regulations [or an order of the Board].

[Note: I think it would be best to specify whether the rules would be set out in a reg or in a Board order to avoid confusion.]

[Note: Should the "loans" language be removed, since you noted that the IESO is not "borrowing" from the FE?]

4. Receiving payments from the IESO or such other person or entity as may be prescribed in accordance with the regulations.

5. Issuing securities or debt ***[in the manner prescribed?].***

6. Engaging in any activities, including entering into such transactions, agreements or arrangements as may be prescribed and in accordance with the regulations.

Board review of expenditures, etc.

A3. (1) The Financing Entity shall, at least 60 days after the end of each fiscal year, submit its expenditures relating to its operations for the fiscal year including the expenses it has charged to Ontario Power Generation Inc. or the IESO, or that it has been charged by the Financial Corporation, in relation to those operations, to the Board for review.

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[Note: The list of items that have to be reported on could be more prescriptive (e.g. specifying specific amounts to be set out) or it could also allow for the Board to specify what it wants to see in the report. Let me know if you'd like to adjust the wording of the requirement.]

Board recommendations, etc.

(2) The Board may review the expenditures and charges referred to in subsection (1) and make recommendations to the Financing Entity as are appropriate in order to ensure the most efficient operation and management of the Financing Entity in order to protect consumers.

[Note: Rather than saying "in order to protect consumers", should this say "in order to achieve the object of the FE"? Or perhaps this could just be deleted altogether with no need for replacement language.]

Deemed assets, entity,

A4. Despite any other provision of this Act or the *Business Corporations Act*, the assets and liabilities which are resident in and form part of the property of the Financing Entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries for any purpose.

[Note: You posed a question about excluding an OPG subsidiary from this rule. Please instruct.]

OBTAINING FINANCING

[Note: It will be important to read all of the provisions that follow against the provisions in the existing Act, to ensure there is no overlap/confusion being created due to potential interactions between existing authority and new authority. The drafting focus so far has just been to get the relevant substantive provisions into the draft without evaluating how they fit into the broader scheme of the Act.]

Ontario Power Generation Inc. to obtain financing

A5. (1) The IESO may direct Ontario Power Generation Inc. to cause the Financing Entity to engage in any of the following activities in order to accomplish the hydro financing initiative:

[Note: As a practical matter, how would OPG "cause the FE" to do these things? How is this different from "directing"?]

1. Financing, borrowing or lending to provide the IESO with short-term or long-term financing.

2. [Purchasing/receiving/obtaining the right created under section XX] and making any payments to the IESO that relate to the IESO's activities in support of the hydro financing initiative.

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[Note: Not sure if the regulated assets would always be "purchased" or if other terminology might be needed. Please advise.]

3. Collecting from the IESO amounts that the IESO is required to pay in relation to its activities in support of the hydro financing initiative.

4. Assigning its [the IESO's?] rights to all or part of the regulatory assets established under section XXXX.

[Note: What is para. 4 about? If this is about forcing OPG to make the FE do things, then does this belong in the list? I thought that it was only the IESO that would be assigning the rights to the FE]

5. Such other activities as may be prescribed.

Same

(2) Ontario Power Generation Inc. shall comply with a direction under subsection (1) within the time specified in the direction [and any prescribed rules?].

IESO to enter into transactions

A6. (1) The IESO shall, in order to support the achievement of the hydro financing initiative, enter into transactions with the Financing Entity or any other entity for such amounts as are necessary to support the hydro financing initiative.

[Note: My understanding is that the need for "or any other entity" stems from the need to allow for the IESO to obtain temporary financing in the immediate term, before it is able to access the FE. Do you want to narrow this so that the IESO is only authorized to do this before the FE is up and running? Or do you want to keep it available on an ongoing basis?]

Same

(2) In entering into transactions under subsection (1), the IESO shall comply with the regulations.

RIGHT OF RECOVERY [CREATION OF REGULATORY ASSET]

[Note re the following provisions:
I found a provision dealing with the concept of "regulatory asset" in Bill 210 from 2002 (see s. 79.13 of the OEBA). It deems certain things to be regulatory assets but does not say much more. On the phone, you noted that the term "regulatory asset" does not have any legal meaning on its own but is just an accounting term that has been used to describe the statutorily created right of recovery. However, you also said that there may be a need to use this term in order to convey the intended meaning from an accounting perspective.

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In order to ensure that the drafting captures the policy intent, please answer/address the following questions:

1. Should we be creating a statutory right of recovery or deeming certain amounts to be a regulatory asset? [NTD-LSB: Yes. The term "Regulatory Asset" has currency in commercial law (parliance) and since much of what we're doing is to support a securitization model, the term should remain for now. Further, the term "regulatory asset" was consistently referred to in the documents provided to ENERGY LSB by Blakes. Further, IESO/Stikemans offered up alternative language for the creation of a "regulatory asset" (as an intangible asset of sorts). You said you'd consult on whether the regulatory asset terminology is important to flag in the Bill.

2. You said you're not sure whether or not the Act will require the IESO to sell/assign the right. Please instruct. If it is optional for the IESO to sell/assign, then it seems that the right could in theory remain with the IESO (unless you are saying that the statute can just create the right of the FE to recover without any need for the right to be assigned/sold by the IESO… in which case please explain why we need to deal with the sale/assignment at all). Please clarify.

3. I'm assuming that if we are creating a right, then the right must be held by someone (e.g. the IESO) before it can be assigned/sold? So should the right be created in the Act for the IESO (e.g. the IESO has a right to recover the amounts from distributors and prescribed consumers) since the IESO would then sell/assign/transfer the right to the FE? The FE must also have the right to recover from the IESO itself, so that creates an extra complication.

4. Should there be some indication of when the right of recovery/regulatory assets will no longer continue to exist (e.g. once all of the amounts have been paid?). I notice that your instructions below about the debt indicate that the debt is no longer owing once the amounts are paid, but do we need to indicate that the regulatory asset also ceases to exist at that point?

Right of recovery created

A7. A right to recover the following amounts in full from the IESO, distributors and prescribed consumers is created.

1. The [deferred amount].

2. The amounts of costs relating to the operation or management of the Financing Entity, as are approved by the Board.

[Note: How will the Board be approving these costs? Is this related to the expenditure report submitted to the Board? That provision dealing with Board expenditures doesn't refer to any approval taking place… just a review and recommendations.]

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[Note: Need to mention expenditures?]

3. Other amounts as may be prescribed or as may be approved by the Board.

Note: Are you going to be saying anything about how the interest will be calculated?

Sale [and/or?] assignment of [right? Regulatory assets?]

A8. (1) The IESO [may? Shall?], in accordance with the regulations, sell [and/or?] convey to the Financing Entity the right to recovery created established under section A7 on such terms and conditions as are provided for by the Financing Entity.

[Note: Your instructions include the terms "sell", "assign" and "convey" -- which are correct?]

[Note: Your instructions suggested that something other than the "regulatory assets" may need to be assigned to the FE. Are you referring to the "warehousing" liabilities assumed by the IESO in the early days? What else would need to be assigned? Could these items be listed above in A7 or is there a reason why they need to be kept separate?]

Sale deemed final

(2) The sale and conveyance referred to in subsection (1) is deemed to be final for all purposes.

[Note: What is this intended to achieve? Is this based on precedent language that has been interpreted to have the desired effect?]

Debts

(3) For greater certainty, the [amounts to which the FE has a right of recovery] are debts owing by the IESO, distributors and prescribed consumers to the Financial Entity until the amounts have been fully paid and fully discharged.

[Note: Why is subs. (3) necessary? Isn't it inherent in the sale of the regulatory assets that the FE would have acquired the future right to collect these amounts? Perhaps it is unclear that the amount can be collected from not just the IESO but from others down the chain. But isn't that what the "right of recovery" section above is meant to cover?]

[Note: I haven't checked to see how other similar provisions dealing with debts are drafted. Not sure we need the "for greater certainty" and also not sure what the distinction is between "fully paid" and "fully discharged". This provision will need further consideration. You also noted that you may want to specify who determines when all obligations have been satisfied.]

IESO to recover amounts

A9. The IESO shall recover the amounts set out in section A7 from distributors and prescribed consumers, in accordance with […]:

Note: how are the requirements that would determine recovery for this subsection meant to interact with the GAM reg?

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[Note: The following two subsections are placeholders. You noted that *the provision is going to have to evolve to deal with consumers who exit the grid (disconnect) completely either because they leave the province or they decide to generate their own electricity and completely disconnect. You also want to be able to prescribe* methods of ensuring that the amounts required cannot be "by-passed". I'll need to understand what is meant by "by-passed".]

Distributors liable

(x) The IESO and distributors are entitled to compensation for any shortfall in relation to the amounts the IESO must pay to generators, the Financial Corporation or other persons including prescribed persons, under section 25.33 resulting from the IESO's activities under the hydro financing initiative.

Consumers liable

(X) Prescribed consumers are required to contribute towards the amount of any compensation referred to in subsection (4) in accordance with the amounts and methods prescribed by the regulations and such amounts shall not be by-passed.

USE OF FUNDS TO REDUCE ELECTRICITY BILLS

[Note: Depending on how things land with s. 25.33, this might be a place to explain how the transactions between the IESO and the FE translate into reduction in the electricity bills of RPP consumers. Regulations could specify how the IESO would ensure that the short-term rate reductions that flow from the FE amounts are only received by the targeted class of consumers and that this same class of consumers is the only class responsible for the repayment of FE funds in the long-term.]

ALTERNATIVE LANGUAGE – REGULATORY ASSET -- PROPOSED BY IESO (STIKEMANS)

Regulatory Asset Created

A7. (1) There is hereby created and conferred upon the IESO a "Regulatory Asset" consisting of the right to recover, in addition to the amounts otherwise recoverable, in accordance with the Regulations, the aggregate of the following amounts [from distributors and] prescribed consumers. **[Quare: do we regard the Regulatory Asset as a single asset in a variable amount or as different assets arising on each deferral]:**

1. The [deferred amount, including interest accrued thereon].
2. The amounts of costs relating to the operation or management of the Financing Entity, as are approved by the Board.
3. Other amounts as may be prescribed or as may be approved by the Board.

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(2) The Regulatory Asset created by (1), shall constitute, for all purposes, a property right, shall be transferable by the IESO in accordance with Section A8, and shall constitute an intangible in which a security interest can be created for purposes of the *Personal Property Security Act*.

Election to Transfer Regulatory Asset

A8. (1) The IESO shall, from time to time, in accordance with the Regulations, elect to transfer to the Financing Entity all or any portion of the Regulatory Asset, on such terms and conditions as IESO may determine.

(2) Upon any election by the IESO pursuant to (1), the Financing Entity shall pay to the IESO in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, an amount, not less than the Deferred Amount, determined in accordance with the Regulations.

(3) Upon any election by the IESO pursuant to (1), the Financing Entity shall become the person entitled to the benefit of the Regulatory Asset, or the portion thereof in respect of which the election was made, free and clear of any adverse claim (other than any such claim created by the Financing Entity) and shall be entitled to exercise all of the rights and remedies conferred by or arising in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, and the IESO shall cease to have any rights (except as provided in Section A9) to or in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, all as if the Regulatory Asset, or the portion thereof in respect of which the election was made, had originally been conferred upon the Financing Entity and not the IESO.

(4) Upon any election by the IESO pursuant to (1), the IESO shall have no further rights or obligations in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, and the Regulatory Asset, or the portion thereof in respect of which the election was made, shall not form part of the assets and liabilities of IESO for any purpose.

(5) The LG in Council may adopt regulations providing for the circumstances in which IESO shall make the election or elections provided for in (1).

Financing Entity may Grant Security Interest

A9. (1) The Financing Entity may, at any time after an election referred to in Section A8(1), create a security interest in favour of any person in all or any portion of the Regulatory Asset subject to such election, all on such terms and conditions as the Financing Entity may determine.

(2) Except as provided for in Regulations adopted pursuant to (3), *The Personal Property Security Act* shall apply to any security interest created pursuant to (1), except that the rights of the secured party on default shall be limited to receiving the amounts collected in respect of the Regulatory Asset, or the portion thereof subject to the security interest, as and when collected by the IESO in accordance with A10.

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(3) The LG in Council may adopt regulations providing for the terms on which the security interest provided for in (1) can be created and perfected and for the priority of any such security interest.

IESO to Collect Amounts in Respect of the Regulatory Asset

A10. Subsequent to any election pursuant to Section A8, the IESO shall, as agent on behalf of the Financing Entity and any secured party, use reasonable efforts to collect the amounts owing in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, and shall promptly pay over to the Financing Entity or the secured party the amounts collected.

--------*END OF IESO/BLAKES ALTERNATIVE LANGUAGE FOR REG. ASSET ---*

------- *BLAKES VERSION OF LANGUAGE FOR REGULATORY ASSET*

The Regulatory Asset, Composition,

A7(1) The "regulatory asset" consists of the following:

- **present and future statutory obligation of:**
  - **deferral consumers - to make all deferral repayments (including interest and late payment fees)**
  - **LDCs - to invoice the deferral consumers for the deferral repayments and to remit the amounts collected to the IESO**
  - **IESO - to receive and remit the deferral repayments from LDCs to the OPG Financing Entity**
- **All deferral repayment amounts collected**
- **All amounts in LDC or IESO deferral payment bank accounts**

Validity of Dispositions

(2) This section is reinforcing by statute the "sale" of the asset to the Financing Entity. This has been an important feature of the legislation in other jurisdictions in similar circumstances. Specifically, it says that "Dispositions" of the Regulatory Asset are "true sales", and not subject to challenge. This is an essential requirement for a securitization transaction. This provision identifies possible grounds for a challenge that a sale took place and indicates that those events do not affect the validity of the sale.

Deemed Perfection and Priority of Dispositions

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(3) This is reinforcing the automatic nature of the "sale" of the asset. It Provides for a clean sale to the OPG Financing Entity, free and clear of encumbrances (i.e., no specific need to "perfect" the sale.

Validity of Pledges,
(4) Statutory override permitting the OPG Financing Entity to give a security interest in the "regulatory asset" to investors.

> **This would give the investors (through an indenture) the right to enforce collection of the deferral repayments to pay off amounts owed by the OPG Financing Entity to the investors upon certain defaults by the OPG Financing Entity under an indenture.**

Deemed Perfection and Priority of Pledges
(5) This is reinforcing that a commercial pledge given by OPG Financing Entity is valid and will have priority without specific "perfection". The result is that a pledge of the Regulatory Asset as security in accordance with the Treasury Plan will be given priority to other claims. The Pledge includes proceeds from the Regulatory Asset and is not affected by comingling or the ordinary requirement to file a financing statement under the PPSA.

Enforcement of Property Rights –

(6) The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5. ***[ntd-: NOT an annotation – pulled directly from Blakes' document.]***

Collective Action Required –
(7) This anticipates that the Regulatory Asset will be structured as a variable interest that can be divided between IESO (until it sells) and one or more OPG Financing Entitys. The likely format will be a co-ownership agreement, that will allow for different owners to have a fractional undivided ownership interest in the Regulatory Asset. Those will entitle the owners to a specified share of the cash flows, which will correspond to their finance payment obligations. This will allow for future financing flexibility.

MISCELLANEOUS

Fair Hydro Financing Plan, miscellaneous,

A.8 (1) Consideration will be given to whether any additional 'miscellaneous' provisions are needed (and expected by the market) to support the financing of this

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structure. Some of these provisions are not typical in legislation, and so will need further consideration (in consultation with leg counsel).

Regulations

114(1.5) The LGIC may make regulations to implement the Fair Hydro Financing Initiative

-(a) The power to implement the program (and to set out some of the details of the program) through regulations is important. Decisions remain to be made (once the drafting is a little further advanced) about what provisions/details need to appear in the proposed legislation, and what provisions/details can be set out in regulations.

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ONTARIO ENERGY BOARD ACT, 1998

x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [hydro financing initiative].

[Note: Would need to link with definition in the EA or else spell out the definition here - TBD.]

x. Section 27.1 of the Act would be amended by adding the following paragraph:

Hearings

(1.1) A directive may specify whether the Board is to hold a hearing, the circumstances under which a hearing may or may not be held and, if a hearing is to be held, the type of hearing to be held and the time within which it must be held.

The underlined is what makes this different from the other provisions in the Act that basically have the same wording. There are already a number of places in the Act where you have this type of hearings provision re directives (e.g., s. 27.2 (7)). If you basically want the same authority in each instance, then the wording should be consistent in each case. There are already some discrepancies between the current provisions (e.g., s. 27.2

(7) talks about types of hearings, whereas s. 28 (2) doesn't). Differences in wording will typically be presumed to be differences in meaning. So, the question is what you're intending to authorize in each case, and whether differences are intended. If you want the same thing everywhere, it should all be worded the same. Let me know.

[Note: Waiting for confirmation whether amendments to s. 78.7 are needed. Please advise.]

x. Section 78 of the Act would be amended by adding the following subsection after subsection (3.0.5):

Rates, fair hydro financing initiative activities -IESO, OPG, distributors, etc.
(3.0.6) The OEB would not be precluded from taking into account the performance of duties under this Part by any entity regulated by the OEB, including fees received by such entity in excess of the incremental costs of the provision of such services.

x. Section 79.16 (3) of the Act would be repealed and the following substituted:

Adjustment to eliminate variances

(3) In determining rates under clause (1) (b), the Board shall take into account balances in variance accounts established under section 25.33 of the *Electricity Act, 1998* and, subject to section X of that Act, make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.
[Note: Please let me know what section the highlighted portion is supposed to refer to… is it the provision that says the IESO has the 30 year period to pay off the amount in the variance account for the hydro financing initiative? I wonder if this is confusing and whether the amendment to subs. (3) above works… it almost seems unnecessary to say that the Board has to "take into account" this balance, given that we are setting up a bunch of very specific rules about what has to be done by various entities in order to eliminate this amount. What would the Board be expected to do with information about this variance account? For consideration.]

PART VII.3

COMPLIANCE – FAIR HYDRO FINANCING INITIATIVE

Right of the [OEB] to Inspect Books and Records,
113 (1) OEB may be given the power to investigate compliance with the legislation and the power to examine books and records, etc.

Power to Investigate Compliance and Impose Regulatory Sanctions

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(2) This legislation will not limit the OEB's power to investigate compliance or prevent or preclude the OEB's power to impose sanctions. The OEB can investigate compliance with this part and to impose regulatory sanctions for non-compliance.

Limitation, Board,

(2.1) The OEB cannot, however, take any action to affect the irrevocability of the Transition Charges or the Undertaking of the Province.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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ng Fiscal Impact Analysis _ KPMG, Alan V., Alan H., Omar Javed, Ron Kwan, Francisco Chinchon, Scott Nelms, Murray Lin

From:	Veerman, Alan (MOF)
To:	sbeer1@kpmg.ca; MacDonald, Mark R (markmacdonald@kpmg.ca); Alan Hibben Personal; alan.hibben@hydroone.com; Jessica Davis (Jessica.Davis@hydroone.com); omar.javed@hydroone.com; Kwan, Ronald (OFA); Chinchon, Francisco (OFA); Nelms, Scott (MOF); Lindo, Murray (TBS); Danek, Mary (TBS)
Cc:	Petsche, Nadine (TBS); Virani, Shyrose (TBS)
Subject:	Meeting | Fiscal Impact Analysis | KPMG, Alan V., Alan H., Omar Javed, Ron Kwan, Francisco Chinchon, Scott Nelms, Murray Lindo
Start:	January 19, 2015 4:30:00 PM
End:	January 19, 2015 5:30:00 PM
Location:	7 Queens Park Cres., Frost building South, 2nd floor, ADM boardroom. Please check in w/ Security upon arrival and call Mary Danek at 416-327-2727 to be escorted to Boardroom | DIAL IN: Local 416-212-8013 / LD: 1-866-633-1033 /Conf. ID 4950903

Hello All,

Please note location update for this meeting: 7 Queens Park Crescent, Frost building South, 2nd floor, ADM's boardroom. Please check in with Security upon arrival and call Mary Danek at 416-327-2727 to be escorted to Boardroom

Dialing In Details: [DIAL IN] Local: (416) 212-8013 / Long distance: 1-866-633-1033 / Conference ID or Access Code: 4950903

Attendees:

Simon Beer, KPMG

Damien Mitchell , KPMG

Karen Taylor , KPMG

Michel Picard, KPMG

Shawn Stern, KPMG

Edwin Ng, KPMG

Mark MacDonald, KPMG

Alan Hibben, H1

Omar Javed, H1

Scott Nelms, ENERGY

Alan Veerman, Assets Council

Ron Kwan, OFA

Francisco Chinchon, OFA

ADM Murray Lindo, TBS

Meeting re Provincial Protection & Assurances Agreement.rtf

From: Montgomery, Kaitlin (MOF) []
To: Ramchandani, Rima [rramchandani@torys.com]; 'john.s.lee@opg.com' []; 'ken.ryfa@opg.com' []; 'aobrian@hunton.com' []; 'MFitzpatrick@hunton.com' []; Mansoori, Nina []; 'jenny.jorda@opg.com' []; Montgomery, Kaitlin (MOF) []; 'PMilligan@osler.com' []; 'tyler.mcauley@opg.com' []; 'RSebastiano@osler.com' []; Nelms, Scott (MOF) []; 'leslie.wong@opg.com' []; 'Katrina.Niehaus@gs.com' []; Palikrousis, Rita []; LAURETA LAPIRA May -FIN & C CTRL []; GORE Michael -FIN & C CTRL []; Benaiah, Ian []; Thambirajah, Nirushan []; Khan, Nur []; Maciel, Andrew []; Murray, Tim []; Laing, Mark []; Kandeepan, Ken (OFA) []; Hilloowala, Maharukh []; Whitfield, Tobias P. (MOF) []; Veinot, Cindy (TBS) []; Mayman, Gadi (OFA) []; McKinlay, Tom (ENERGY) []; Delaney, Brian []; Turnbull, Vickie []
Subject: Meeting re Provincial Protection & Assurances Agreement
Date: Tuesday, July 11, 2017 10:47:15

When you arrive at reception, please mention you are attending the Fair Hydro meeting. Lunch will be provided.

For those participating by phone, the dial-in details are as follows:

Dial-in: 1.800.600.0998
Access Code: 8657666#

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Memo Outline V1np_cv.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Memo Outline V1np_cv
Date: Friday, May 26, 2017 08:57:25
Attachment 1: Memo Outline V1np_cv.docx

LeeAnne,

Just sending a version of the doc that reflects additional comments made today.

N

Memo Outline V1np_cv.pdf

(introduce policy rational, including role of OPG in debt markets and exercising discretion w.r.t. participation)

Introduction

Introduce policy rational -

Describe current state – cash expenditures recovered in current rates (current structure provides for a variance account that is settled within 12 months – so not immediate aka monthly but not long-term)

Describe the objective of the FEP – lower current cost to ratepayers by deferring the recovery of cash expenditures to future periods (for energy already consumed by ratepayers).

Commented [VC(1]: Let's use FHP – Fair Hydro Plan

Objective

Assess the impact of the FEP on the financial statements of the GRE.

Basis of Accounting

GRE – PSAS

OGOs – line-by-line consolidation – PSAS

GBEs – modified equity accounting – IFRS

Analysis (in general, IESO first, then standalone trust, then trust in GRE)

IESO is OGO (as at Dec/16), so impact on IESO will flow through to GRE (entity may change to GBE in future)

Describe role of IESO - market settlement mechanism

Describe initial impact of FEP on IESO – creates funding shortfall (for costs already incurred on energy already consumed by ratepayers)

IESO has concluded it can recognize the shortfall as a RRA (ref to GAAP hierarchy – relevance of US GAAP)

Describe general concept of RRA

IESO is an OGO – must follow PSAS in GRE

Discuss pros and cons of RRA recognition under PSAS

Show comparison of IESO JEs under both scenarios (RRA vs. no RRA)

I think we should include in this section some commentary on the fact that the Province's statements are currently impacted by RRA – through OPG and H1 (and that IFRS14 implies ref to USGAAP). Using RRA in IESO is not introducing a new concept into the financial statements of the Province if the substance of the RRA in IESO is similar to the substance of the RRAs in the two GBEs. One question to consider is whether there is substance to using a different accounting treatment in a commercial entity vs. a non-commercial entity. If OPG took on the role of settling the market, should we get a different answer (e.g. could have structured in a different way)

Commented [NP2]: RRA doesn't require consideration of commercial vs. non-commercial but rather that a portion of the business be rate regulated (and RRA can be created through legislation despite the AG's position)

Discuss need for funding of shortfall and proposed plan (sale of right to trust)

IESO has concluded that details of transaction would support sale treatment.

Discuss pros and cons of sale treatment

Assuming sale treatment, show comparison of IESO JEs under both scenarios (RRA vs. no RRA)

Impact of trust on GRE will depend on two things: (i) who controls the trust, and (ii) how transaction is reported in trust.

Assume, to start, that trust will apply IFRS (for province's CFS, OPG and H1 will be reflected on an IFRS basis, even though both entities will continue to report on a US GAAP basis)

OPG has concluded that trust will recognize intangible asset as a result of the purchase transaction.

Discuss pros and cons of sale treatment and recognition of intangible asset. – not sure what is going to be discussed here – what's the argument not to recognize an intangible asset in the stand-alone f/s of OPG?

Analysis of whether OPG taking on this role impacts is status as a GBE

Show JEs

OPG has concluded they control the trust (discretionary decision) and, therefore, will consolidate.

Commented [VC(3]: Nadine – not sure what you mean by discretionary?

As GBE, OPG is included in GRE using modified equity. Therefore, net assets of trust are included in GRE (investment in GBE).

Provide support for non-Provincial control of Trust and d~~D~~iscuss pros and cons of control (include consideration as to whether Province could control if OPG doesn't).

Discuss 3020 issue if IESO cannot recognize RRA

Show comparison of JEs under both scenarios (modified equity via OPG vs. direct consolidation by GRE + sub-topics of RRA vs. no RRA).

Consider:

- Reference to OEB?
- Definition of an asset (at provincial level, not to be funded through tax base; ref to FAO's comments on mis-match of revenues and expenses as would be the case if RR accounting wasn't accepted – IASB discussions ongoing and recognizing the merits of RRA; see also OPG/Tory's docs.)
- Reference to PSAS consolidation requirements (no requirement for independence and no elimination of assets/liabs of consolidated orgs upon consolidation just because province controls OEB)
- Impacts if OPG no longer controls the trust
- Impacts if regulatory charge is challenged as unconstitutional and the government legislates the charge as a tax
- What is the impact of 3rd party financing provided on the strength of the ability to collect from future ratepayers (assuming the guarantee is narrowing defined)?
- There are indemnities being provided by the province to IESO and OPG – how do these impact the analysis? (Impact on Provincial control of Trust and/or sale of assets by IESO?)
- The AG issued a statement on May 24 at the Committee Hearings -- should address those views. We should have Hansard of the Q&As by the end of the week as well, which we should consider.
- The FAO issued their report this week – not sure there is anything in that document that we need to address in this memo.
- What triggers would cause reassessment of the accounting.

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Memo Outline.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]
Subject: Memo Outline
Date: Tuesday, May 23, 2017 08:32:58
Attachment 1: image001.gif
Attachment 2: Memo Outline V1.docx

Nadine/Cindy,

Attached is a memo outline. Please let me know your thoughts. If you're okay with it, I'll start populating.

Regards,

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

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Memo Outline V1.pdf

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Memorandum re Recognition of Regulatory Assets Under IFRS.DOC.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Memorandum re Recognition of Regulatory Assets Under IFRS.DOC
Date: Monday, July 17, 2017 14:08:20
Attachment 1: Memorandum re Recognition of Regulatory Assets Under IFRS.DOC

Lee Anne,

Please see highlighted sections in the attached memo.

N

Memorandum re Recognition of Regulatory Assets Under IFRS.pdf

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www.torys.com

April ■, 2011

PRIVILEGED AND CONFIDENTIAL

Ontario Power Generation Inc.
700 University Avenue
Toronto, ON
M5G 1X6

Attention: Mr. Carlton Mathias, Law Division

Dear Mr. Mathias:

Re: The Legal Basis of OPG's Regulatory Deferral and Variance Accounts

You have asked us to consider the legal basis of Ontario Power Generation Inc.'s ("OPG's") regulatory deferral and variance accounts in order to assist you in determining whether they are recognizable as "assets" and "liabilities" for financial reporting purposes under International Financial Reporting Standards ("IFRS").

In considering this issue, you have asked us to consider whether deferral and variance account balances are recoverable in a hypothetical circumstance where OPG ceases operations and does not have any energy output from its prescribed facilities. You have also asked us to consider how OPG can be assured that the amounts representing OPG's approved deferral and variance account balances will actually be paid to OPG, as well as whether OPG's ability to collect these amounts is dependent upon the renewal of the licence of the Independent Electricity System Operator.

I. CONCLUSIONS

OPG's deferral and variance accounts are established either by regulation or by orders of the Ontario Energy Board (the "OEB") through the proper exercise of its jurisdiction as the administrative tribunal responsible for regulating the electricity industry in Ontario. The establishing of such an account pursuant to regulation or the granting of approval by the OEB to establish such an account confers upon OPG a right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred. Courts have found that prudence is deemed to exist until such time as the OEB (in its discretion), at a later date, values or assesses the balance of that account and determines that the recorded balance is wholly recoverable or that certain of the recorded amounts have in fact not been prudently incurred and are not recoverable.

Given that OPG's recovery or payment of the amounts recorded in its deferral and variance accounts, and subsequently disposed of by the OEB, are part of the calculation of OPG's payment amounts under section 78.1 of the *Ontario Energy Board Act, 1998* (the "OEB Act"), OPG is entitled to have recorded amounts assessed and to recover those amounts pursuant to

the OEB's order. Correspondingly, the OEB, as a matter of law, is obligated to establish OPG's payment amounts in accordance with the rules prescribed by the regulations in accordance with the just and reasonable standard (as applicable). In doing so, the OEB must assess the balances in the previously established accounts for prudence and accuracy and issue a Decision and Order on their disposition.

For certain of OPG's deferral and variance accounts, the legal origins of which are found in Ontario Regulation 53/05 ("O. Reg. 53/05"), under the OEB Act, the OEB does not have jurisdiction over whether the account may be established. For at least two of these accounts, the OEB also does not have jurisdiction to undertake a prudence review to determine if any recorded amounts should be excluded.

Once the OEB has approved the balance of an account for recovery, with or without undertaking a prudence review (as applicable), the specific amount or balance that OPG will be allowed to recover will have been determined. The subsequent issuance by the OEB of a payment amounts order will establish the mechanism by which such specific approved amounts will be recovered and remitted to OPG.

Commented [OPCD1]: Amounts do not have to be billed in order to be reported as assets.

The OEB's review and approval of the balance in a deferral or variance account is a process for determining the quantum and timing for the payment to or from OPG in respect of that account, which will be reflected in a Decision and Order of the OEB. As indicated, OPG's legal right to record amounts in an account and to account for the amounts recorded on the basis that they have been prudently incurred, subject to the OEB in its discretion subsequently determining otherwise, is established through the authorization of the account by the OEB or pursuant to regulation. OPG's right to recover prudently incurred amounts therefore arises as and when such amounts are recorded in an approved account, in accordance with the parameters established by the OEB or by regulation for that account, subject to the OEB's subsequent prudence review to assess the value of the account.

In the circumstance where OPG ceases operations and does not have any energy output from its prescribed facilities, it is our opinion that the OEB would have the jurisdiction and the obligation to establish a rate or payment amount that would allow OPG to recover or obligate OPG to disburse prudent amounts recorded in a deferral or variance account. Such a rate or payment amount would not have to be based on dollars per unit of electricity output from the prescribed facilities. This is no different than under normal operating circumstances.

The OEB has broad jurisdiction in setting payment amounts for OPG and it would not be reasonable for the legislature to have given the OEB the legislative power to authorize the establishment of accounts without also giving the OEB the power to dispose of the amounts recorded in such accounts, including in circumstances where there is no future output. Moreover, to interpret the applicable legislation in a manner that only allows for payment amounts on a volumetric basis is in our view unreasonable because it would not be consistent with the rules of statutory interpretation.

Commented [OPCD2]: Not dependent on future consumption

Pursuant to Section 78.1 of the OEB Act, the IESO is required to make such payments to OPG in accordance with orders from the OEB. By statute, the IESO is established as a corporation, the business of which, by legislation, is to be carried out without the purpose of gain or profit. As such, all money it collects must be used for the purpose of fulfilling its obligations in respect of the IESO-administered market and the IESO-controlled grid. These purposes include the making of payments to OPG in accordance with orders of the OEB under Section 78.1. Moreover, by entering into participation agreements, the IESO and market participants such as OPG agree to be contractually bound by the Market Rules. To remain revenue neutral,

consistent with its not-for-profit status, under the Market Rules, if any market participant fails to make a payment, including in respect of amounts associated with OPG's deferral and variance accounts, then the IESO has various remedies available to ensure it can collect the funds it needs to make the payments it is required to make to OPG and other generators.

In the context of the legislative scheme governing Ontario's electricity system, the IESO's licence is not the only aspect that gives authority to or imposes obligations on the IESO. In fact, the IESO has various statutory obligations which exist independently of the IESO's licence and are not undertaken by the IESO as a condition of the licence. The IESO's obligation to pay the payment amounts to OPG as a prescribed generator under Subsections 78.1(1) and 78.1(2)(b) is a legal obligation that is independent of the IESO's licensing requirements. Likewise, the OEB has a statutory obligation under Section 78.1 of the OEB Act to set payment amounts in accordance with the applicable regulation and the just and reasonable standard (as applicable) and, although the recovery of the OEB-approved payment in accordance with its order is fulfilled by the IESO under Subsections 78.1(1) and 78.1(2)(b), the OEB's obligation to set such payment amounts is legally independent of the existence of the IESO's licence. If the licence ceases to exist, then the obligations of the IESO and the OEB under Section 78.1 would remain. For the OEB to fulfill its obligation to set payment amounts in accordance with the regulation and the just and reasonable standard, there is a need for there to be an effective mechanism in place that enables OPG to actually receive its payment amounts. Accordingly, the OEB would only be able to cancel or refuse to renew the IESO's licence (a) if it could find that doing so would be in the public interest, and (b) if it is able to meet its statutory obligations, including its obligations in respect of setting just and reasonable payment amounts that provide for a fair return to OPG. In making such a licensing decision, the OEB would also have to consider that the IESO's obligations under Section 78.1 exist independent of and are outside the scope of the licence from the OEB.

II. BACKGROUND

A. Regulatory Assets and International Financial Reporting Standards

The OEB sets the requirements that regulated utilities in Ontario must meet for *regulatory* accounting, reporting and filing purposes. The Canadian Accounting Standards Board and other standard-setting bodies set the accounting principles required for *financial* reporting. Regulated utilities have separate obligations to adhere to both regulatory accounting and financial accounting requirements. The Canadian Accounting Standards Board has required that Canadian Generally Accepted Accounting Principles ("CGAAP") for publicly accountable enterprises transition to IFRS. Although this transition is generally effective January 1, 2011, a one year deferral in implementation of IFRS is available to eligible rate-regulated enterprises. It is our understanding that OPG is eligible for and has elected to apply this one-year deferral.

The transition to IFRS has raised a variety of issues and concerns for the OEB and rate-regulated utilities in Ontario, as well as for economic regulators and utilities in other Canadian jurisdictions. One significant concern relates to the recognition of regulatory assets and liabilities. As will be described further below, regulatory assets and liabilities arise from positive or negative balances, respectively, in deferral or variance accounts.

It is our understanding that, under CGAAP for publicly accountable enterprises in effect prior to IFRS conversion, regulated entities are permitted to record regulatory assets and liabilities either pursuant to specific guidance issued by the Canadian Accounting Standards Board or as a result of their ability to refer to the specific guidance issued by the Financial Accounting Standards Board in the United States (e.g., Codification Topic 980, *Accounting for the Effects of*

Certain Types of Regulation, formerly Financial Accounting Standards No. 71). Under IFRS, there is no specific guidance related to accounting for the effects of rate regulation. As a result, we further understand that the recognition of regulatory assets and liabilities for financial reporting purposes continues to be the subject of discussion and debate among affected utilities, accounting firms and the International Accounting Standards Board ("IASB").

The application of the recognition criteria under IFRS to amounts that are currently being reported by OPG and other regulated utilities as regulatory assets and liabilities under CGAAP is a matter that is strictly for the consideration of accounting experts. However, it is against this background that the balance of this memorandum considers the legal rights and obligations of OPG to recover from or disburse to ratepayers the balances in its deferral and variance accounts under current conditions, as well as in circumstances where OPG ceases operations and does not have any energy output from its prescribed facilities.

III. LEGISLATIVE FRAMEWORK

A. Jurisdiction of the OEB

In Ontario, the OEB is established under the OEB Act as an administrative tribunal responsible for the regulation and supervision of the natural gas and electricity industries. The OEB derives its powers from the Ontario Legislature primarily under the OEB Act and the *Electricity Act, 1998* (the "Electricity Act"), including regulations thereunder, and is further governed by the *Statutory Powers Procedures Act* ("SPPA"). In addition to its legislative sources of power, jurisdiction for the OEB arises from the doctrine of jurisdiction by necessary implication, under which the powers conferred by an enabling statute are construed to include not only those powers that are expressly granted but also, by implication, all powers which are practically necessary for the accomplishment of the object intended to be secured by the statutory regime.[1]

B. Setting Rates and Payment Amounts

The OEB's jurisdiction to set rates or payment amounts arises from Section 36 of the OEB Act in respect of gas transmission, distribution and storage rates, from Section 78 of the OEB Act in respect of electricity transmission and distribution rates and, of particular relevance to OPG, from Section 78.1 of the OEB Act in respect of payment amounts for prescribed electricity generation. Section 78.1 states (emphasis added):

> **Payments to prescribed generator**
>
> **78.1** (1) The IESO shall make payments to a generator prescribed by the regulations, or to the OPA on behalf of a generator prescribed by the regulations, with respect to output that is generated by a unit at a generation facility prescribed by the regulations.
>
> **Payment amount**
>
> (2) Each payment referred to in subsection (1) shall be the amount determined,
>
> (a) in accordance with the regulations to the extent the payment relates to a period that is on or after the day this section comes into force and before the later of,

[1] David M. Brown, *Energy Regulation in Ontario*, Chapter. 2 "OEB Structure, Powers and Jurisdiction" at para 2:30:30; Ruth Sullivan, *Sullivan on the Construction of Statutes* (5th ed.), LexisNexis Canada Inc, 2008 at p. 184.

(i) the day prescribed for the purposes of this subsection, and

(ii) the effective date of the Board's first order in respect of the generator; and

(b) in accordance with the order of the Board then in effect to the extent the payment relates to a period that is on or after the later of,

(i) the day prescribed for the purposes of this subsection, and

(ii) the effective date of the Board's first order under this section in respect of the generator.

OPA may act as settlement agent

(3) The OPA may act as a settlement agent to settle amounts payable to a generator under this section.

Board orders

(4) The Board shall make an order under this section in accordance with the rules prescribed by the regulations and may include in the order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment.

Fixing other prices

(5) The Board may fix such other payment amounts as it finds to be just and reasonable,

(a) on an application for an order under this section, if the Board is not satisfied that the amount applied for is just and reasonable; or

(b) at any other time, if the Board is not satisfied that the current payment amount is just and reasonable.

Burden of proof

(6) Subject to subsection (7), the burden of proof is on the applicant in an application made under this section.

Order

(7) If the Board on its own motion or at the request of the Minister commences a proceeding to determine whether an amount that the Board may approve or fix under this section is just and reasonable,

(a) the burden of establishing that the amount is just and reasonable is on the generator; and

(b) the Board shall make an order approving or fixing an amount that is just and reasonable.

Application

(8) Subsections (4), (5) and (7) apply only on and after the day prescribed by the regulations for the purposes of subsection (2).

For purposes of Subsection 78.1(1), Section 1 of O. Reg. 53/05 establishes that OPG is a "prescribed generator" and Section 2 of O. Reg. 53/05 establishes that the "prescribed generation facilities" are comprised of the five hydroelectric generating stations in OPG's Niagara Plant Group, the R. H. Saunders hydroelectric generating station, the Pickering 'A' and 'B' Nuclear Generating Stations and the Darlington Nuclear Generating Station.

Subsection 78.1(2)(b) requires that each such payment made to OPG by the IESO shall be in accordance with the order of the OEB then in effect. The OEB is required under Subsection 78.1(4) to make such orders in accordance with the rules prescribed by the regulations, most importantly O. Reg. 53/05, and, in discharging its responsibility, include in such orders conditions, classifications or practices, including in respect of the calculation of the payment amount. As part of this jurisdiction, the OEB has the ability to authorize variance and deferral accounts as part of the OEB's rate setting powers.

Under Subsection 78.1(5) the OEB may fix such other payment amounts (i.e. payment amounts other than those arising from Subsection 78.1(4)) as it finds to be just and reasonable in circumstances where either the payment amount applied for is not just and reasonable, or if it finds the current payment amount to be unjust and unreasonable. In either circumstance, where the OEB establishes such other payment amounts, these other payment amounts must be established in accordance with the just and reasonable standard. This is consistent with the setting of rates under Sections 36 and 78 of the OEB Act, where the OEB's determination of payment amounts is on the basis of the "just and reasonable" standard. The Supreme Court of Canada has described just and reasonable rates as "rates, which, under the circumstances, would be fair to the consumer on the one hand, and which, on the other hand, would secure to the company a fair return for the capital invested."[2] These two components of the just and reasonable standard - that rates be fair to the consumer and yield fair compensation to the utility and its owner - are also embodied in the OEB's objects regarding the regulation of electricity, namely through its objectives of protecting consumer interests and facilitating a financially viable electricity industry.[3]

Fair compensation to the utility is comprised of two elements: (1) the right to recover all prudently incurred costs, and (2) the right to a fair return on invested capital. With respect to prudently incurred costs, the Ontario Divisional Court has held that a utility has a right to recover its prudently incurred costs, as follows:

> Essentially, a utility is entitled to recover its prudently incurred costs . . . Expenditures are deemed to be prudent, in the absence of some evidence suggesting the contrary. However, costs that are found to be dishonestly incurred, or which are negligent or wasteful losses, are excluded from the legitimate operating costs of the utility in determining rates that may be charged. The examination of whether an expenditure was prudent must be based on the particular circumstances at the time the decision to incur those costs was made. That is so even if in hindsight it is obvious the decision was a bad one.[4]

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[2] *Northwestern Utilities Ltd. v. Edmonton (City), Board of Public Utility Commissioners of Alberta*, [1929] 2 D.L.R. 4, [1929] S.C.R. 186 at p. 192-193.

[3] OEB Act, s. 1(1).

[4] *Enbridge Gas Distribution Inc. v. Ontario Energy Board* (2005), 75 O.R. (3d) 72 (Div. Ct.); rev'd on other grounds, (2006), 41 Admin L.R. (4th) 69.

It is clear that this presumption of prudence applies in circumstances where the OEB is carrying out an after-the-fact prudence review, such as would be the case for a review that is undertaken for the purpose of determining whether to allow recovery of amounts previously recorded in a deferral or variance account.[5]

With respect to the right to a fair return, the Supreme Court of Canada explains that "by a fair return (it) is meant that the company will be allowed as large a return on the capital invested in its enterprise (which will be net to the company) as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to that of the company's enterprise."[6] Allowing a utility to earn a fair return has been regarded as essential to the preservation of the financial integrity of a utility, which is of mutual concern to the utility and its customers.[7]

C. Variance and Deferral Accounts

Variance and deferral accounts are tools that the OEB uses to deal with uncertainty, including circumstances that are difficult to forecast and that may be beyond the control of the regulated utility. The use of these accounts protects the interests not only of utilities, but also the interests of ratepayers. Once the deferral or variance accounts are established, either by regulation or OEB order, the amounts recorded in the accounts must be assessed for prudence by the OEB (to the extent the OEB has jurisdiction to do so) and the resulting approved amounts must be paid to or by OPG as the amounts are a part of OPG's just and reasonable payment amounts, as explained above.

A "variance account" may be used to track underestimates or overestimates of specific costs or revenues so as to enable the amount of the variance to be disposed of, normally through higher or lower payment amounts established by the OEB in the future. For example, recognizing the uncertainties associated with fluctuating world uranium prices and with a view to protecting OPG and ratepayers, the OEB approved OPG's request in EB-2007-0905 to establish a variance account to capture the differences between forecast and actual nuclear fuel expenses. In this way, if OPG's actual fuel costs proved to be higher than its forecasted costs then OPG would be entitled in the future to receive the shortfall from ratepayers, provided that the shortfall was a result of prudent actions by OPG and has been accurately recorded in the account. Alternatively, if OPG's actual fuel costs proved to be lower than its forecasted costs, then OPG would have over-recovered and would be required by the OEB to disburse such amounts back to ratepayers, subject to the review for prudence and accuracy.

A "deferral account" may be used, for example, to track specific costs incurred by a utility with respect to a project or circumstance until a future date, after which the costs recorded in the account are subject to prudence review by the OEB before the utility will be allowed to begin recovering those costs from ratepayers. For example, O. Reg. 53/05 authorized OPG to establish a deferral account to record non-capital costs associated with a large nuclear project that involved the return-to-service of certain nuclear generating units. The regulation further

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[5] Ontario Energy Board, *Decision With Reasons - Application by Ontario Power Generation Inc. for Payment Amounts for Prescribed Facilities for 2011 and 2012 (EB-2010-0008)*, March 10, 2011 at p. 19.

[6] *Supra* note 2 at p. 193.

[7] *Union Gas Ltd. v. Ontario (Energy Board)* (1983), 1 D.L.R. (4th) 698 (Ont. Div. Ct.) at p. 711, as cited in Brown, *supra* note 6 at 2:40:10.

required that the OEB ensure OPG recover the balance in the account over a certain period of time, which the OEB determined in EB-2007-0905.

The nature of the rights that arise from the authorization of a deferral or variance account by the OEB or under O. Reg. 53/05 are discussed in the analysis section, below. For accounts that have already been authorized, as part of the OEB's rate-setting function and its powers with respect to variance and deferral accounts, the OEB will periodically[8] review a utility's variance and deferral accounts to ensure that the balances reflect amounts that are prudent and have been accurately recorded. Based on such review, the OEB makes a determination as to how much of the recorded balance the utility will recover (or repay) and the period over which such amount shall be recovered (or repaid). This determination will be made by way of a Decision from the OEB. In the normal course (i.e. where the accounts are reviewed in the context of a rate or payment amount application), the utility will then be required to file a draft payment amounts order or draft rate order, which is reviewed by the OEB. Once the final payment amounts order or rate order is approved by the OEB, the IESO will be required to implement the order by paying OPG in accordance with the order.

Where the balance recorded in a variance or deferral account is in a debit position and the OEB has accepted that balance as reflecting costs prudently incurred and accurately recorded, this will be referred to as a "regulatory asset" and will represent the specific amount that the utility will have a right to recover in such manner as is ordered by the OEB. Similarly, where the balance recorded in a variance or deferral account is in a credit position and the OEB has accepted that balance as reflecting costs prudently incurred and accurately recorded, this will be referred to as a "regulatory liability" and will represent the specific amount that the utility will have an obligation to disburse in such manner as is ordered by the OEB.

For the analysis in Section IV below, it is important to set out in some detail the legal origins of OPG's variance and deferral accounts.

Transitional Accounts

Under O. Reg. 53/05, OPG was required to establish five variance accounts and three deferral accounts in the years prior to OPG's first application to the OEB for determination of payment amounts under Section 78.1 of the OEB Act (the "Transitional Accounts"). OPG recorded amounts in the Transitional Accounts *up to* the effective date of the OEB's first payment amounts order, which was April 1, 2008. The OEB considered the balances accrued in the Transitional Accounts during the course of hearing OPG's first application under Section 78.1 (EB-2007-0905) and determined the amount for each account, recorded up to December 31, 2007, that OPG would be able to recover or would be obligated to repay.[9] The OEB allowed recovery or obligated repayment of these amounts over periods of approximately two, three or four years, depending on the account.

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[8] While normally this will be in the context of a rate or payment amount application, OPG could apply to have the OEB undertake such a review at any time through a separate proceeding. Similarly, the OEB has the right to undertake such a review at any time on its own motion. See s. 78.1(5) of the *OEB Act*.

[9] Amounts recorded in the Transitional Accounts between January 1, 2007 and March 31, 2008 were considered in EB-2010-0008.

Mandated Continuing Accounts

Under O. Reg. 53/05, OPG was also required to establish one variance account and two deferral accounts which were to be substantially the same as three of the Transition Accounts, but which were for purposes of capturing certain costs incurred *on and after* the effective date of the OEB's first order under Section 78.1 (the "Mandated Continuing Accounts"). OPG continues to be required under O. Reg. 53/05 to keep and track amounts in each of these Mandated Continuing Accounts. The Mandated Continuing Accounts are:

- Section 5(4) - Pickering 'A' Return to Service Deferral Account
- Section 5.2 - Nuclear Liability Deferral Account
- Section 5.4 - Nuclear Development Variance Account

Board Ordered Continuing Accounts

In addition to the Mandated Continuing Accounts, in EB-2007-0905 OPG requested that the OEB authorize the continuation on and after the effective date of the OEB's first order under Section 78.1 of three variance accounts that had been required under O. Reg. 53/05, but for which the regulation did not mandate their continuation beyond the effective date of the OEB's first order (the "Board Ordered Continuing Accounts"). The Board accepted OPG's proposal for the Board Ordered Continuing Accounts, which are:

- Hydroelectric Water Conditions Variance Account
- Ancillary Services Net Revenue Variance Account
- Capacity Refurbishment Variance Account[10]

Board Ordered Accounts

Although not expressly mandated by O. Reg. 53/05, the Board determined in its Decision in EB-2007-0905 that it was necessary to give effect to certain provisions of O. Reg. 53/05 that continue to apply on and after the effective date of the OEB's first order. As a result, the OEB authorized OPG to establish the:

- Bruce Lease Net Revenues Variance Account

Another category of accounts arising from the Board's first order under Section 78.1 are new accounts that had not been required at any time under O. Reg. 53/05, but which OPG requested and the OEB approved of in its Decision in EB-2007-0905 (the "Board Ordered Accounts"). In addition to the account above, included in this category are the following variance accounts also approved by the Board:

- Nuclear Fuel Cost Variance Account

[10] Though not expressly required under O. Reg 53/05, the Board found that the Capacity Refurbishment Variance Account is implicitly required due to the obligation in s. 6(2)4 of the regulation. See *Infra* note 13 at pp. 122-123.

- Income and Other Taxes Variance Account
- Hydroelectric Interim Period Shortfall Variance Account
- Nuclear Interim Period Shortfall Variance Account

During a related proceeding (EB-2009-0038) arising from EB-2007-0905, the Board also approved the following:

- Tax Loss Variance Account

In EB-2009-0174, a proceeding dealing with the manner of calculating entries into the deferral and variance accounts after December 31, 2009 until the effective date of the next payment amounts order for OPG, the OEB also established two additional accounts:

- Hydroelectric Deferral and Variance Over/Under Recovery Variance Account
- Nuclear Deferral and Variance Over/Under Recovery Variance Account

In EB-2010-0008, OPG applied for new payment amounts for the 2011 to 2012 period. In its Decision with Reasons dated March 10, 2011, the OEB approved the continuation of existing hydroelectric accounts, nuclear accounts and accounts common to both the regulated hydroelectric and nuclear businesses as proposed by OPG, as well as two new hydroelectric accounts.[11] OPG's accounts for 2011 and 2012 are therefore as follows:

- Existing Common Accounts:
  - Ancillary Services Net Revenue Variance Account
  - Income and Other Taxes Variance Account
  - Tax Loss Variance Account
- Existing Hydroelectric Accounts:
  - Hydroelectric Water Conditions Variance Account
  - Hydroelectric Deferral and Variance Over/Under Recovery Variance Account
- Existing Nuclear Accounts:
  - Nuclear Liability Deferral Account (Section 5.2)
  - Nuclear Development Variance Account (Section 5.4)

[11] *Supra* Note 5 at pp. 128-142. On March 30, 2011 OPG filed a Notice of Motion to review and vary the Decision and Order, in which OPG requested the establishment of a Pension and Other Post Employment Benefits Cost Variance Account. The Motion proceeding is in progress.

- Capacity Refurbishment Variance Account
- Nuclear Fuel Cost Variance Account
- Bruce Lease Net Revenues Variance Account
- Nuclear Deferral and Variance Over/Under Recovery Variance Account

- Existing Accounts to be Continued for Recording of Amortization and Interest Amounts Only and to be Closed Upon Balances Being Recovered:
  - Hydroelectric Interim Period Shortfall Variance Account
  - Pickering 'A' Return to Service Deferral Account (Section 5(4))
  - Transmission Outages and Restrictions Variance Account
  - Nuclear Interim Period Shortfall Variance Account
- New Hydroelectric Accounts:
  - Surplus Baseload Generation (Hydroelectric)
  - Hydroelectric Incentive Mechanism

IV. ANALYSIS

A. Legal Basis for OPG's Regulatory Deferral and Variance Accounts

The legal basis for OPG's regulatory deferral and variance accounts must be considered in the context of the regulatory cycle that OPG is subject to as a rate-regulated utility, as described below.

As with other rate-regulated entities, OPG may apply to the OEB or the OEB may require OPG to apply for new payment amounts from time to time. The OEB then holds an adversarial hearing to consider the application, during which the application is subject to rigorous review and scrutiny by OEB staff members, intervening parties and the OEB panel itself. After considering the evidence and arguments presented, the OEB panel issues a Decision setting out the panel's findings with respect to each of the aspects of the application, including the various requests for cost recovery that normally comprise such an application. The Decision will also set out the OEB panel's determinations with respect to any proposed new deferral or variance accounts, the continuation of existing accounts, and the specific amounts that may be recovered with respect to the balances previously recorded in the existing accounts.

With respect to any new deferral or variance accounts that an applicant *proposes* to establish, the panel of the OEB will make a determination as to whether the applicant shall be permitted to establish such accounts and record amounts in that account. Based on OEB practice, this will generally depend upon whether the OEB is persuaded that the proposed account satisfies the criteria of causation, materiality, management inability to control and prudence. In this context, "causation" refers to the requirement that the amounts to be recorded in the proposed account must be outside of the basis upon which rates will derived for the applicable period;

"materiality" refers to the requirement that the amounts expected to be recorded in the proposed account will significantly influence the operation of the regulated business; "management inability to control" refers to the requirement that there be uncertainty associated with the amounts that are expected to be recorded in the account and, due to this uncertainty such amounts are not easily predictable and not easily controlled by the utility's management; and "prudence" refers to the need for the amounts recorded to have been prudently incurred.

If approval to establish a new account is granted by the OEB, then the utility will be obligated to accurately record relevant amounts in the account for the applicable period with the presumption that the balance of the account is accurately recorded and prudently incurred, such that it will be recoverable, subject to review by the Board for the purpose of verifying the presumption. The OEB will then need to conduct a prudence review that will normally, but not necessarily, take place in the course of reviewing a subsequent application for new payment amounts or rates by the utility.

With respect to each *existing* deferral and variance account, the panel will make findings as to whether the amounts recorded in the account have been accurately recorded and whether they are prudent. Based on these findings, the panel will determine how much the utility will recover from or return to ratepayers in respect of each account. The amounts recoverable from deferral and variance accounts may be recovered through one or more separate rate riders or through such other means as the Board approves. The rate mechanism for recovery of amounts from ratepayers or for repayment of amounts to ratepayers, as set out by the OEB, does not alter or limit OPG's right to receive or obligation to disburse prudent and accurately recorded amounts in the accounts.

The prudence review would apply the established regulatory principles referred to earlier, namely, that:

- Amounts will be deemed to be prudent in the absence of reasonable grounds to suggest the contrary;
- Costs that are found to have been dishonestly incurred, or which are negligent or wasteful losses, may be excluded from recovery; and
- The examination of prudence must be carried out without the benefit of hindsight (i.e. based on the particular circumstances at the time the decision to incur those costs was made).

1. Deferral and Variance Account Balances Pending OEB Review

OPG's legal rights in respect of its deferral and variance accounts must be considered in respect of the forgoing.

The circumstance of OPG having account balances pending OEB review arises where pursuant to an Order in a prior proceeding before the OEB, or under O. Reg. 53/05, OPG has been authorized to establish and record amounts in a deferral or variance account, either for a particular period or until such time as the OEB orders otherwise, but the period has not expired or there has not been a subsequent OEB order. While OPG will have recorded amounts in the account during that period of time, the OEB will not yet have reviewed the balances in the accounts to determine if they reflect accurately recorded and prudent amounts. The critical issue in this scenario relates to the nature of the rights conferred on OPG by the granting of

approval to establish a deferral or variance account. Where the Board authorizes OPG to establish such an account or if the account is established by regulation, OPG will have acquired a right to record amounts in such an account. These amounts, when recorded, will reflect costs that have been incurred or revenue earned by OPG for the benefit of ratepayers.

Pursuant to established principles governing the Board's obligation to review the prudence of recorded expenditures prior to allowing for their recovery, as discussed above, the expenditures recorded in the account are deemed to have been prudently incurred in the absence of reasonable grounds to suggest the contrary. As such, in our view, the granting of approval to establish a deferral or variance account confers upon OPG a legal right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred. Courts have found that prudence is deemed to exist until such time as the OEB (in its discretion) may, at a later date, value or assess the balance of that account and determine that the recorded balance is wholly recoverable or that certain of the recorded amounts have in fact not been prudently incurred and are not recoverable. This subsequent assessment of prudence by the Board will therefore only have the effect of confirming or altering the specific amount that shall be recovered or that must be repaid by OPG in respect of the account. The prudence review will not affect the right to record amounts or the recovery of prudently incurred amounts.

We note that any amounts recorded in approved deferral and variance accounts must ultimately be disposed of by the OEB, whether done pursuant to an application brought to the OEB or by the OEB on its own motion. This arises from the OEB's obligation to set just and reasonable rates and payment amounts.[12]

While the focus of discussion in this section has thus far been on the rights associated with deferral and variance accounts that have been established through orders of the OEB, it is important to recognize the specific rights associated with each of OPG's accounts that arise by operation of O. Reg. 53/05.

The Mandated Continuing Accounts are clearly different from the rest of OPG's accounts because, rather than having been established on the basis of an order issued by the Board, OPG is required under O. Reg. 53/05 to have established and to maintain from the effective date of the OEB's first order under Section 78.1 of the OEB Act each of the three Mandated Continuing Accounts. OPG thereby acquired its rights resulting from the establishment of these accounts by way of regulation. As such, the OEB has no discretion with respect to the continuation of these accounts.

Moreover, for two of the Mandated Continuing Accounts, it appears that the OEB has no jurisdiction to undertake prudence reviews. These accounts - the Pickering 'A' Return to Service Deferral Account and the Nuclear Liability Deferral Account - are established on the same basis as accounts for which the OEB determined in EB-2007-0905 that it has no discretion to evaluate prudence.[13]

For the Pickering 'A' Return to Service Deferral Account, paragraph 6(2) 3 of O. Reg. 53/05 requires the OEB to ensure that OPG recovers the balance recorded in the deferral account established under subsection 5(4), which requires OPG to establish a deferral account that

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[12] *Dow Chemical Canada Inc. v. Union Gas Ltd.* (1982), 141 D.L.R. (3d) 641 at pp. 658-9 (Ont. H.C.J.), affirmed 150 D.L.R. (3d) 267 (C.A.).

[13] Ontario Energy Board, *Decision With Reasons - Application by Ontario Power Generation Inc. for Payment Amounts for Prescribed Facilities (EB-2007-0905)*, November 3, 2008 at p. 9.

records certain costs associated with the planned return to service of all units at the Pickering 'A' Nuclear Generating Station. Subsection 5(4) gave rise to a Transitional Account, as well as a Mandated Continuing Account.[14] For the Nuclear Liability Deferral Account, paragraph 6(2)7 of O. Reg. 53/05 requires the OEB to ensure that OPG recovers the balances recorded in the deferral accounts established under subsections 5.1(1) and 5.2(1). These subsections each require OPG to establish a deferral account to record the revenue requirement impacts of changes in its nuclear decommissioning liability, however 5.1(1) applies to the period prior to the OEB's first order and is therefore a Transitional Account while 5.2(1) applies to the period following the OEB's first order and is therefore a Mandated Continuing Account.[15] Based on the OEB's findings in EB-2007-0905 that it had no discretion to evaluate prudence with respect to the Transitional Accounts under subsections 5(4) and 5.1(1), it appears that the Board would similarly have no discretion to evaluate prudence with respect to the Mandated Continuing Accounts established under subsections 5(4) and 5.2(1) of O. Reg. 53/05.

For the Capacity Refurbishment Variance Account, which is a Board Ordered Continuing Account, the OEB notes in its Decision in EB-2007-0905 that this account is required in light of the obligation imposed on the Board by paragraph 6(2)4 of O. Reg. 53/05.[16] Under 6(2)4, the Board is required to ensure that OPG recovers the amounts recorded in this account. If such amounts were within project budgets approved by OPG's Board of Directors prior to the Board's first order under Section 78.1 but where such costs were actually incurred and recorded in the account subsequent to the Board's first order, then it appears based on a reading of 6(2)4 that an argument could be made that the OEB would have no jurisdiction to evaluate prudence. However, if the amounts were not approved by OPG's Board of Directors prior to the first order of the Board, then this argument would not be available.

Finally, special consideration should be given to the Bruce Lease Net Revenues Variance Account. As noted earlier, this account was not expressly mandated by O. Reg. 53/05 but in its Decision the Board determined that it was necessary for OPG to establish this account in order to give effect to certain provisions of O. Reg. 53/05.[17] In particular, the Board directed OPG to establish this account in order to give effect to paragraphs 6(2)9 and 6(2)10 of the regulation. Paragraph 6(2)9 requires the OEB to ensure that OPG recovers all of the costs it incurs with respect to the Bruce Nuclear Generating Stations. Paragraph 6(2)10 provides that if OPG's revenues earned from the Bruce Nuclear Generating Stations exceed OPG's costs in respect of those stations, then the excess shall be applied to reduce OPG's revenue requirement for purposes of the payment amounts under Section 78.1(1) of the OEB Act. Based on its findings in EB-2007-0905, it seems that the Board will be obligated to require that OPG maintain this account for so long as it leases the Bruce Nuclear Generating Stations. In addition, based on paragraph 6(2)9, which does not expressly require the OEB to undertake a prudence review, it appears that an argument could be made that the OEB does not have jurisdiction to carry out a prudence review of costs recorded in this account.

In summary, OPG acquires rights, as described above, in connection with its deferral and variance accounts, either from O. Reg. 53/05 or from the granting of approval by the OEB to establish such accounts. For some of the accounts established under O. Reg. 53/05, it appears that the OEB has no discretion with respect to their continuation. Moreover, for certain of the

[14] Ibid at p. 122.

[15] Ibid.

[16] Ibid at p. 123.

[17] Ibid at p. 112.

accounts established under O. Reg. 53/05, as discussed, the OEB has no jurisdiction to evaluate the prudence of recorded amounts.

2. Deferral and Variance Account Balances Approved for Incorporation into Payment Amounts

In the scenario being considered here, OPG has in a prior proceeding or by way of O. Reg. 53/05 been authorized to establish a deferral or variance account. OPG has recorded amounts in the account over the applicable period and it has applied to the OEB, as part of a comprehensive application to determine new payment amounts for its regulated facilities or through a separate proceeding, to dispose of the balance of that account as of a particular date. The OEB has reviewed the balance of the account to ensure that it reflects amounts that are prudent and accurately recorded. Based on its review, the OEB has determined a specific amount as being the balance of the account and has also given approval for OPG to recover that amount over a particular period.

Further to the rights conferred upon OPG on being authorized to establish the account, as described in the previous section, in this scenario, as a result of the OEB having carried out the prudency review (where it has the jurisdiction to do so) and issued its Decision, the specific balance for the account that OPG will be allowed to recover will have been established. Based upon the law set out above, OPG will have a legal right to recover (or legal obligation to repay) that balance, pursuant to a payment amounts order issued by the OEB and the IESO will be required to recover the balance and remit it to OPG (or recover the balance from OPG and repay it to consumers) in accordance with the OEB's order.

B. Regulatory Assets in the Absence of Future Services

As noted, you have asked us to consider whether deferral and variance account balances are recoverable (or payable) in a circumstance where OPG ceases operations and does not have any energy output from its prescribed facilities. Our consideration of this issue is set out below.

It is our opinion based on the analysis below, that the OEB has both the obligation and the jurisdiction to establish a rate or payment amount that would allow OPG to recover prudently incurred and accurately recorded amounts recorded in a deferral or variance account notwithstanding that OPG produces no output. The OEB's obligations with respect to reviewing and disposing of the balances recorded in the accounts are not altered by the fact that there is no future output, as the amounts recorded in the accounts are part of the OEB's determination of "just and reasonable" rates or payment amounts.

A circumstance where there is no output would imply that the current volumetric rate through which OPG recovers costs (dollars per MWh produced) would not permit recovery of costs. As a result, an alternative rate formulation with a fixed charge or a volumetric rate recoverable from energy consumed, rather than produced, would have to be implemented to recover costs prudently incurred, including amounts recorded in variance and deferral accounts. Therefore, the question is whether the OEB can establish a rate or payment amount that is not based on dollars per output and would permit recovery of deferral or variance account balances.

As noted above, whether an expenditure is prudent must be based on the particular circumstances at the time the decision to incur the cost was made.[18] As deferral and variance

[18] *Supra* note 4.

account balances reflect costs previously incurred or revenues previously earned, it is reasonable to conclude that, based upon a set of facts, once these costs or revenues have been found to be prudent by the OEB, then they will remain prudent and recoverable irrespective of the lack of future output. Likewise, for amounts recorded in a deferral or variance account established by the OEB or under O. Reg. 53/05, but not yet assessed as to whether they are prudent, the amounts recorded are presumed at law to have resulted from prudent actions, unless shown to be otherwise. As discussed above, the Board has the obligation to establish just and reasonable rates, which includes the establishment of deferral and variance accounts and their subsequent disposition. If the Board has the power to direct the segregation of expenditures pending a rate application, it must by necessary implication have the power to direct the applicant to deal with the amounts so separated in a future rate application. Courts have found that:

> It cannot reasonably be presumed that the legislature intended to so truncate the Board's jurisdiction so as to allow it to accomplish only a partial result, with no power to finalize and complete a regulatory order. When legislation attempts to create a comprehensive regulatory framework, the tribunal must have the powers which by practical necessity and necessary implication flow from the regulatory authority explicitly conferred upon it.[19]

The OEB has both the jurisdiction and the obligation to establish a rate or payment amount that allows OPG to recover such prudently incurred amounts in the event that there is no output by OPG's prescribed facilities. The OEB also has jurisdiction to set payment amounts on a non-volumetric basis. Based on Subsections 78.1(4) and (5) of the OEB Act, as well as from section 6(1) of O. Reg. 53/05, the OEB has broad jurisdiction in the setting of payment amounts for OPG's regulated facilities, including the power to set payment amounts on a non-volumetric basis so long as such amounts are consistent with the just and reasonable standard. These provisions are as follows:

- Section 78.1(4) provides that "the Board shall make an order under this section in accordance with the rules prescribed by the regulations and may include in the order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment. (emphasis added)

- Section 78.1(5) provides that "the Board may fix such other payment amounts as it finds to be just and reasonable, (a) on an application for an order under this section, if the Board is not satisfied that the amount applied for is just and reasonable; or (b) at any other time, if the Board is not satisfied that the current payment amount is just and reasonable. (emphasis added)

- Section 6(1) of O. Reg. 53/05 states that "Subject to subsection (2), the Board may establish the form, methodology, assumptions and calculations used in making an order that determines payment amounts for the purpose of section 78.1 of the Act." (emphasis added)

Therefore, based on the foregoing, the OEB's obligations are twofold. First, the legislature has imposed on the OEB an obligation - pursuant to section 78.1(4) - when making a payment amount order for OPG to follow the rules prescribed by the regulations. Second, the legislature has imposed on the OEB an obligation - pursuant to section 78.1(5)(a) - to set just and reasonable payment amounts in respect of amounts that do not arise from section 78.1(4). More specifically, under section 78.1(4), the OEB is required to make its payment amount order for

[19] *Supra* note 12.

OPG in accordance with the provisions set out in O. Reg. 53/05. To the extent that there are payment amounts associated with the prescribed facilities but which are outside the scope of O. Reg. 53/05, pursuant to section 78.1(5) the OEB is permitted to establish such other payments so long as those other payment amounts are found to be just and reasonable. The OEB will have the opportunity to establish such other just and reasonable payment amounts either on an application for an order under section 78.1 or at any other time on the OEB's own motion.

Various utilities in Ontario have from time to time levied OEB-approved fixed charges. The OEB has jurisdiction to establish a rate or payment amount permitting the recovery by OPG of a fixed charge if the charge is just and reasonable.

Under the legislative scheme the OEB has jurisdiction to establish the rate or payment amount pursuant to Section 78.1 of the OEB Act. The IESO has the obligation to pay that rate or payment amount to OPG and is subject to the OEB's authority to set the payment amount. Subsection 78.1(2) provides as follows:

> Each payment referred to in Subsection (1) shall be the amount determined, ...
>
> (b) In accordance with the order of the Board then in effect to the extent that payment relates to a period that is on or after the later of,
>
> (i) the date prescribed for the purposes of this subsection, and
>
> (ii) the effective date of the Board's first order under this section in respect of the generator." (emphasis added)

The reference to subsection (1) in Subsection 78.1(2) is in regard to the provision which states:

> The IESO shall make payments to a generator prescribed by the regulations... with respect to output that is generated by a unit at a generation facility prescribed by the regulations. (emphasis added)

We note that Subsection 78.1(1) makes reference to payments to a generator "with respect to output that is generated." However, this language does not imply that the rate or payment amount is to be limited to a volumetric payment on the basis of dollars per MWh produced.

The modern principle of statutory interpretation states that "the words of an act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act and the intention of parliament."[20] On this basis, in regard to the judicial interpretation of the words "with respect to" found in Subsection 78.1(1), these words have been interpreted to have a similar meaning as terms such as "in relation to", "with reference to" or "in connection with".[21] In *Markevich v. Canada*, Major J. of the Supreme Court of Canada wrote:

> The words "in respect of" have been held by this Court to be words of the broadest scope that convey some link between two subject matters. See *Nowegijick v. The Queen*, [1983] 1 S.C.R. 29, at p. 39, per Dickson J. (as he then was):

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[20] Elmer A. Driedger, *The Construction of Statutes* (Toronto: Butterworths, 1974) , at p. 67, as cited in Sullivan, *Supra* note 1 at p. 1.

[21] *Skelly v. Assist Realty Ltd.*, (1991), 16 C.H.R.R. D/1 at D/6, 92 C.L.L.C. 17, 014 (B.C. Human Rights Council).

> The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.[22]

As a result, a court would likely interpret Subsection 78.1(1) to mean that the IESO must make payments to OPG that have some connection with output that is generated by the units at OPG's regulated facilities. Payment amounts related to deferral and variance accounts recovered during periods where there are no outputs fit within this interpretation as those balances reflect or have some connection with past output from the prescribed facilities.

In addition, this interpretation is consistent with the presumption, in the interpretation of statutes, against internal conflict. Sullivan in her authoritative text states:

> The parts are presumed to fit together logically to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work together dynamically, each contributing something toward accomplishing the intended goal. This presumption is the basis for analyzing legislative schemes, which is often the most persuasive form of analysis. The presumption of coherence is also expressed as a presumption against internal conflict. It is presumed that the body of legislation enacted by a legislature does not contain contradictions or inconsistencies . . .[23]

It is internally consistent to interpret the legislative scheme of Section 78.1 as imposing upon the OEB the obligation to set rates or payment amounts in the manner described above, including the obligation to authorize the recovery of deferral and variance account balances, with full and broad powers to do so and imposing upon the IESO the responsibility for paying to OPG the payment amounts prescribed by the Board's order. In the circumstance where there is no output from the prescribed facilities, such a payment amount could reflect a fixed charge or some other form of charge not on a volumetric basis for the output of the prescribed facilities so as to allow for the recovery of OPG's deferral and variance account balances.

C. Recovery of Approved Balances

Once the OEB has approved recovery of an account balance, the specific amount OPG will be entitled to recover through payment amounts is approved by the OEB. As noted, the IESO's obligation to pay that rate or payment amount to OPG is subject to the OEB's authority to set the payment amount. In this context, you have asked us to consider how OPG can be assured that the IESO will actually collect and pay those amounts to OPG. In this regard, we will consider the legal requirement for the IESO to collect the amounts on behalf of OPG and whether the IESO has effective mechanisms in place to ensure its ability to collect those amounts in full.

1. Powers and Duties of the IESO

The IESO is established under Part II of the *Electricity Act, 1998* (the "*Electricity Act*") as a corporation without share capital.[24] The business and affairs of the IESO are required by

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[22] [2003] S.C.J. No. 8, [2003] 1 S.C.R. 94 (S.C.C.).

[23] Sullivan, *Supra* note 1 at 223.

[24] *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A, Subsection 4(1).

legislation to be carried out without the purpose of gain and any profits must be used by the IESO for the purpose of carrying out its objects.[25] Among other things, the IESO's statutory objects include the exercise of the powers and the performance of the duties assigned to it under the *Electricity Act*, the Market Rules and it's licence.[26]

In accordance with its objects, under the *Electricity Act*, the IESO may make rules governing the IESO controlled-grid. Such rules may include provisions, among other things, authorizing and governing the making of orders by the IESO, including orders imposing financial penalties on electricity market participants, authorizing a person to participate in the IESO-administered market, or terminating, suspending or restricting a person's rights to participate in the IESO-administered markets.[27] The rules made by the IESO under Section 32 of the *Electricity Act* are the *Market Rules for the Ontario Electricity Market* or, more commonly, the "Market Rules".[28]

With respect to the IESO's obligations under Section 5(1) of the *Electricity Act* to exercise the powers and perform the duties assigned to it under it's licence, this refers to the licence that the IESO is required to obtain and hold from the OEB in order to operate the market established by the Market Rules.[29] The IESO's current system operator licence took effect on July 31, 2008 and is currently valid until July 30, 2013.[30] By issuing the licence, the OEB authorizes the IESO to direct the operation of the transmission system in accordance with the Market Rules, applicable agreements and subject to the conditions set out in the licence.[31] The licence also authorizes the IESO to operate the IESO-administered markets and to do such things as may be permitted by the Market Rules or required to be done by the IESO to further the establishment and operation of the market.[32] Under the licence, the IESO is required to comply with all applicable provisions of the Market Rules.[33]

Consistent with its status as a not-for-profit corporation, the IESO fulfills its statutory mandate by acting as a clearinghouse to settle the flows of money between persons that are authorized to participate in the IESO-administered electricity market. To understand the flows of money in the market, it is first helpful to understand at a very basic level the flow of electricity in the market. Put simply, electricity generators provide electricity to the IESO-controlled grid. This electricity generally flows from generating stations, along transmission lines operated by transmitters, and then either to loads, such as large industrial facilities, that are directly connected to the transmission system or to distribution systems operated by local distribution companies that deliver the electricity to residential customers, small businesses and other end-users.

With respect to the flow of money in the market, distributors are responsible for collecting payments from their customers based on quantities of electricity consumed, together with any

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[25] *Ibid*. at Subsection 5(2).

[26] *Ibid*. at Subsection 5(1).

[27] *Ibid*. at Section 32.

[28] See http://www.ieso.ca/imoweb/pubs/marketRules/mr_marketRules.pdf

[29] *Ontario Energy Board Act*, Subsection 57(h).

[30] *Independent Electricity System Operator Licence, EI-2008-0096*, Issued by the Ontario Energy Board June 26, 2008 and corrected October 23, 2008.

[31] *Ibid* at Section 3.1.

[32] *Ibid* at Section 3.2.

[33] *Ibid* at Section 7.1.

other charges that are required to be collected.[34] The IESO then receives these amounts from distributors, as well as amounts from directly connected loads. From these sources of incoming payments, the IESO is then required to ensure that distributors and transmitters receive the amounts that they are approved to receive pursuant to rates set by the OEB. The IESO must also ensure that generators are paid the amounts that they are entitled to be paid for the injection of electricity into the IESO-controlled grid.. This includes generators under contract with the OPA or Ontario Electricity Financial Corporation ("OEFC"), as well generators, namely OPG, whose payment amounts are established by order of the OEB pursuant to Section 78.1 of the OEB Act. Other than keeping the amounts that the IESO is permitted to keep in accordance with its own rate order from the OEB, which amounts cover the IESO's internal operating costs, the IESO is required to remain not-for-profit: all amounts that it receives from market participants must be paid out to such other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

2. The Market Rules

The Market Rule requirements that apply to persons seeking authorization to participate in the Ontario electricity market are key to the IESO's ability to collect amounts and remit payment to OPG. In accordance with the Market Rules, no person shall participate in the IESO-administered markets unless that person has been authorized by the IESO to do so.[35] Moreover, no person shall be authorized by the IESO to be a market participant unless the IESO is satisfied:

- that the person agrees to be bound by the Market Rules by executing a participation agreement,[36]
- that the person will satisfy the prudential support requirements of Appendix 2.3 of the Market Rules and any other financial requirements set forth in the Market Rules applicable to all market participants,[37] and
- that the person holds a licence from the Ontario Energy Board permitting them to, among other things, own or operate a distribution system or a transmission system, or permitting them to generate electricity for sale through the IESO-administered market, to retail electricity, to purchase electricity through the IESO-administered market, or to sell electricity through the IESO-administered market.[38]

Once satisfied that the application for participation is complete, the IESO may authorize the applicant to participate in the IESO-administered market, but only if the applicant files an executed participation agreement in such form as established by the IESO.[39] Under the participation agreement, the IESO and the market participant agree, among other things, to be

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[34] Distributor rights and powers with respect to collection are governed by the *Distribution System Code* and the *Retail Settlement Code*, discussion of which is beyond the scope of this letter.

[35] *Market Rules*, Chapter 2, Section 1.2.1.

[36] *Ibid* at Section 1.2.2.3.

[37] *Ibid* at Section 1.2.2.2.

[38] *Ibid* at Section 1.2.2.4.

[39] *Ibid* at Section 3.1.5.2.

bound by and to comply with the Market Rules.[40] The IESO's established form of participation agreement, which is published as part of the Market Rules, provides as follows:

> **Article 3 - Compliance with Market Rules**
>
> 3.1 **Applicant Compliance:** The Applicant hereby agrees to be bound by and to comply with all of the provisions of the market rules so far as they are applicable to the Applicant once it has been authorized by the IESO as a market participant.
>
> 3.2 **IESO Compliance:** The IESO hereby agrees to be bound by and to comply with all of the provisions of the market rules so far as they are applicable to the IESO.[41]

By virtue of Article 3, the Market Rules are effectively incorporated by reference into and therefore form part of the participation agreement. Indeed, as noted in the recitals set out in the participation agreement, "the market rules contemplate that the market rules will have the effect of a contract between each market participant and the IESO by virtue of the execution of a participation agreement."[42] As an authorized market participant, OPG has entered into a participation agreement with the IESO under which each party has agreed to be bound by and to comply with the Market Rules insofar as they are applicable to one another. Accordingly, by means of the participation agreement, the IESO is contractually obligated to pay OPG the amounts that OPG has a right to receive and, furthermore, to collect such amounts in accordance with the Market Rules in order to meet its payment obligations to OPG. Under this contractual relationship, in the event of non-payment, there would be remedies available to OPG pursuant to the dispute resolution mechanisms under the Market Rules, through the Ontario Energy Board and through the Courts.

In addition to making such authorization conditional on the filing of an executed participation agreement, the IESO's authorization is conditional upon the person satisfying the prudential support requirements set out in the Market Rules.[43]

Prudential support is financial security to cover financial obligations that a market participant might owe to the market in the event the market participant is unable to pay. Each market participant is required to meet its obligation under the Market Rules to provide and to maintain prudential support by providing to the IESO, and maintaining with the IESO, prudential support in an amount determined in accordance with the Market Rules.[44] The amount of prudential support that must be provided will reflect the market participant's maximum net exposure, less any allowable reductions, as calculated in accordance with Chapter 2 of the Market Rules.[45]

If a market participant does not make a payment in full when due, where such payment is required under the Market Rules, this will be an event of default under the Market Rules.[46]

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[40] *Ibid*. See also Market Rules, Chapter 11 (Definitions), "participation agreement".

[41] IESO, *Participation Agreement*, Issue 14.0, June 2, 2010.

[42] *Ibid*. at Recital 'D'.

[43] *Market Rules*, Chapter 2, Section 1.2.2.2.

[44] *Ibid*. at Section 5.7.1.

[45] See Section 5.3 re calculation of maximum net exposure and Section 5.8 re allowable reductions.

[46] *Market Rules*, Chapter 3, Section 6.3.1.1.

Where such an event of default has been committed by a market participant, the IESO has the right to issue a notice of intent to suspend the market participant unless it remedies the default within the specified period and to immediately draw upon part or all of the market participant's prudential support for any amount owing to the IESO.[47] The market participant may remedy the event of default by satisfying any outstanding financial or other obligations giving rise to the event of default and by satisfying the IESO that the circumstances which constituted the event of default no longer exist.[48] If the market participant has not remedied the event of default within the applicable period or due to persistent breaches of the Market Rules, the IESO may issue a suspension order to the market participant, rendering them ineligible to trade or enter into any transactions in the IESO-administered markets or to cause or permit electricity to be conveyed into, through our out of the IESO-controlled grid.[49]

Where the IESO has issued a suspension order to a defaulting market participant, the IESO has the right to issue a notice of default levy and to take any steps that it has not already taken to realize any prudential support held in respect of that defaulting market participant.[50] The IESO then has the ability to impose one or more default levies on non-defaulting market participants.[51] This power to impose a default levy provides the IESO with the right to recover from all non-defaulting market participants any amounts owing to the IESO and that have not been paid in full by the defaulting market participant, along with any costs and expenses reasonably incurred by the IESO to investigate the default and to realize any prudential support and to implement the default levy.[52]

The IESO, therefore, does not assume any debt in the circumstances of a market participant defaulting on a payment. Rather, the IESO will first try to recover the full amount of the default, along with related costs and expenses, by realizing on the prudential support provided by the defaulting market participant. To the extent that there are any further amounts owing to the IESO, the IESO will then issue a default levy in order to recover such further amounts from all non-defaulting market participants. If the IESO is subsequently able to recover further amounts from the defaulting market participant, then such amounts will be allocated back to those non-defaulting market participants on whom the default levy was previously imposed.[53] In short, the Market Rules ensure that the IESO remains revenue neutral, while ensuring its ability to make all payments that it is required to make, including payments to generators such as OPG.

Also worth noting is Section 5.4 of the participation agreement, which establishes the ongoing liability of market participants as follows:

> 5.4 **Ongoing Liability:** Notwithstanding the provisions of section 5.2 or 5.3 above, if the Applicant becomes a terminated market participant or otherwise ceases to be a market participant, as the case may be, the Applicant shall remain subject to and liable for all of its obligations and liabilities as a market participant which were incurred or arose under the market rules prior to the date on which the termination order was issued or the date on

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[47] *Ibid*. at Section 6.3.3.

[48] *Ibid*. at Section 6.3.6.

[49] *Ibid*. at Sections 6.3A.1 and 6.3A.3.

[50] *Market Rules*, Chapter 2, Section 8.2.2.

[51] *Ibid*. at Sections 8.3 and 8.4.

[52] *Ibid*. at Section 8.1.1.

[53] *Ibid*. at Section 8.8.2.

> which it otherwise ceased to be a market participant, as the case may be, regardless of the date on which any claim relating thereto may be made.

Pursuant to Section 78.1 of the OEB Act, the IESO is required to make such payments to OPG in accordance with orders from the OEB. By statute, the IESO is established as a corporation, the business of which, by legislation, is to be carried out without the purpose of gain or profit. As such, all money it collects must be used for the purpose of fulfilling its obligations in respect of the IESO-administered market and the IESO-controlled grid. These purposes include the making of payments to OPG in accordance with orders of the OEB under Section 78.1. Moreover, by entering into participation agreements, the IESO and market participants such as OPG agree to be contractually bound by the Market Rules. To remain revenue neutral, consistent with its not-for-profit status, under the Market Rules, if any market participant fails to make a payment, including in respect of amounts associated with OPG's deferral and variance accounts, then the IESO has various remedies available to ensure it can collect the funds it needs to make the payments it is required to make to OPG and other generators.

3. Significance of IESO's Licence

You have asked us to consider whether OPG's ability to collect amounts recorded in its deferral and variance accounts, pursuant to an order by the OEB under Section 78.1 of the OEB Act, is dependent upon the renewal of the IESO's licence. It is our conclusion that the IESO's obligation to pay the payment amounts to OPG as a prescribed generator under Subsections 78.1(1) and 78.1(2)(b) is a legal obligation that is independent of the IESO's licensing requirements.

As noted, the IESO currently holds an electricity system operator licence (EI-2008-0096), which took effect on July 31, 2008 and is valid until July 30, 2013. The OEB may extend the term of this licence pursuant to section 5.1 of the licence. For the five-year period prior to the effective date of its current licence, the IESO held a similar licence (EI-2003-0088) from the OEB. The requirement to hold such a licence arises from Section 57 of the OEB Act, which states, among other things, that "no . . . person shall, unless licensed to do so under this Part, . . . (g) direct the operation of transmission systems in Ontario; (or) (h) operate the market established by the market rules."[54]

By issuing the licence, the OEB licenses the IESO to:

> direct the operation of the transmission system(s) in accordance with Agreements and the Market Rules, subject to the conditions set out in this Licence (and)
>
> operate the IESO administered markets and to do such things as may be permitted by the Market Rules or required to be done by the Licensee in furtherance of the establishment and operation of the market(s) to be administered by the Licensee, subject to the conditions set out in this Licence.[55]

The licence also requires the IESO to comply with all applicable Market Rules.[56]

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[54] *Ontario Energy Board Act*, Subsections 57(g) and (h).

[55] *Independent Electricity System Operator Licence* (EI-2008-0096), Section 3.

[56] *Ibid*. at Section 4.

It is important to place the IESO's licence in context. In the context of the legislative scheme governing Ontario's electricity system, the IESO's licence is not the only aspect that gives authority to or imposes obligations on the IESO. In fact, the IESO has various statutory obligations which exist independently of the IESO's licence and are not undertaken by the IESO as a condition of the licence.

As noted, Subsection 78.1(1) imposes on the IESO the obligation "to make payments to a generator prescribed by regulations" and Subsection 78.1(2)(b) requires that such payment be in accordance with the order of the OEB. These provisions are significant since, based upon the wording of these provisions: (1) the IESO's obligation to pay the prescribed generator, OPG, is not subject to the IESO's licences; and (2) the IESO's obligation to pay is subject to the OEB order, which must discharge the OEB's obligation to set payment amounts in accordance with the regulations and the just and reasonable standard (as applicable).

As noted above, the licence and the requirement to obtain a licence is limited in its scope to the direction of the operation of the transmission system and the operation of the market established by the market rules. Pursuant to the market rules, the IESO and market participants are bound to those market rules by way of a contractual arrangement, which is established by the participation agreement that is signed by the IESO and all market participants. The IESO's obligations under section 78.1(1) and section 78.1(2)(b) are not governed by the market rules or the contractual arrangement underlying the market rules. Therefore, one can reasonably conclude that the IESO's obligations under section 78.1(1) and section 78.1(2)(b) exist independent of the licence from the OEB. If the licence ceased to exist, the obligations of the IESO and those of the OEB under Section 78.1 would remain.

Similar to the obligation on the IESO under Section 78.1 of the OEB Act, the legislative scheme also establishes obligations for the IESO to make payments under Sections 78.2 to 78.5 of the OEB Act:

- Under 78.2, the IESO is required to make payments to the Ontario Electricity Financial Corporation (OEFC) with respect to electricity supply contracts that the OEFC has with generators.

- Under 78.3, the IESO is required to make payments to the OPA with respect to electricity output generated by units at facilities in respect of which the OPA has entered into procurement contracts.

- Under 78.4, the IESO is required to make payments to the OPA with respect to amounts payable to entities with whom the OPA has entered into procurement contracts for electricity generation capacity.

- Under 78.5, the IESO is required to make payments to distributors or the OPA with respect to amounts approved by the OEB for conservation and demand management programs.

In each of these circumstances, the obligation on the IESO is established by legislation and is independent of any obligations that might otherwise be imposed on the IESO under a licence issued by the OEB.

The IESO also has a number of rights, powers and obligations under Parts II.2 and III of the *Electricity Act* in respect of the electricity markets and the management of supply, capacity and demand. One such obligation, which is of particular significance, is the requirement under

Section 25.33 of the *Electricity Act* for the IESO, through its billing and settlement systems, to make adjustments in accordance with regulations to ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect amounts paid, in accordance with the regulations, to generators, distributors, the OPA and the OEFC, whether the amounts are determined under the Market Rules or under Sections 78.1 to 78.5 of the OEB Act. The adjustments that the IESO is required to make under this provision, which are further described in O. Reg. 429/04, are known as the "Global Adjustment".

The administration of the Global Adjustment is a critical function established by legislation as it results in the collection and payment of amounts which are based on the difference between the total of all market payments for electricity consumed in the province and the total of all rates and payment amounts to which generators under contract with the OPA and regulated generators are entitled. For OPG, the Global Adjustment ensures that the IESO determines, collects and then pays to OPG the differences between the market price for generation from its prescribed facilities and the regulated rates established by the OEB under Section 78.1 for the prescribed facilities. The IESO's obligation to perform the Global Adjustment is imposed by legislation and is detailed in the regulations thereunder. This obligation is legally independent of any obligations that might otherwise be imposed on the IESO under a licence issued by the OEB.

A decision by the OEB to renew or terminate the IESO licence must be considered within the limits of OEB's jurisdiction. The framework within which the OEB is empowered to make decisions was recently summarized by the Ontario Court of Appeal in *Toronto Hydro-Electric System Ltd. v. Ontario (Energy Board)*, as follows:

> The analysis must begin with the legislation that establishes the OEB and gives the OEB its powers. The OEB's objectives in respect of electricity are stated in s. 1 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Sch. B (the "Act"):
>
> > *Boards objectives, electricity*
> >
> > *1.(1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:*
> >
> > *1. To protect the interests of customers with respect to prices and the adequacy, reliability and quality of electricity service.*
> >
> > *2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.*
>
> In short, the OEB is to balance the interests of ratepayers in terms of prices and service while at the same time ensuring a financially viable electricity industry that is both economically efficient and cost effective.[57] (emphasis added)

With respect to the circumstances where a decision of a tribunal, such as the OEB, will be found to be outside of its jurisdiction and therefore invalid, the court goes on to state:

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[57] *Toronto Hydro-Electric System Ltd. v. Ontario (Energy Board)*, 99 O.R. (3d) 481, Ont. C.A., Apr. 20, 2010 (leave to appeal to SCC denied, Dec. 2, 2010) at paras 12 to 14.

> Courts should hesitate to analyze the decisions of specialized tribunals through the lens of jurisdiction unless it is clear that the tribunal exceeded its statutory powers by entering into an area of inquiry outside of what the legislature intended. If the decision of a specialized tribunal aims to achieve a valid statutory purpose, and the enabling statute includes a broad grant of open-ended power to achieve that purpose, the matter should be considered within the jurisdiction of the tribunal. ...In contrast, where a tribunal is pursuing an illegitimate objective, or is engaging in actions that clearly defy the limits of its statutory authority, then a reviewing court may properly declare its decisions to be *ultra vires* (i.e. beyond its power or authority).[58] (emphasis added)

Based on the foregoing, it is clear that the OEB is required to make decisions, including licensing decisions, in accordance with its mandate to protect the public interest as set out in Section 1(1) of the OEB Act. Statutory objectives imposed on a tribunal, such as those listed in Section 1(1) of the OEB Act, limit the extent of the tribunal's discretion in making decisions, as delegated by the Legislature, and the tribunal has no power to make a decision outside of the limits of the discretion granted to it.[59] Any attempt to do so will, upon review by a court, be deemed *ultra vires* and declared invalid.[60] The OEB's public interest mandate includes the need to protect the interests of ratepayers, as well as to ensure the maintenance of a financially viable electricity industry. To the extent that the OEB makes a decision that is inconsistent with these statutorily mandated objectives, a reviewing court would, therefore, be likely to declare such decision to be invalid on the basis that the OEB acted outside of its jurisdiction in making the decision. The OEB cannot arbitrarily decide to cancel the IESO's licence or to not renew the IESO's licence. Rather, the OEB must make licensing decisions in accordance with its public interest mandate.[61]

In exercising its licensing powers, the OEB's discretion is constrained by the need to fulfill its statutory public interest mandate in conjunction with its obligation to set just and reasonable rates and payment amounts. Under Section 78.1, the OEB is obligated to make payment amount orders in accordance with the regulation and in accordance with the just and reasonable standard (as applicable) in connection with OPG's prescribed facilities. The obligations are not conditional upon the OEB issuing or renewing the IESO's licence. Although the obligation under Subsections 78.1(1) and 78.1(2)(b) is legally independent from the IESO's licence, if the licence is terminated or not renewed, then the obligation under Subsections 78.1(1) and 78.1(2)(b) would continue. However, from a practical perspective, without a valid licence the IESO would not be in a position to carry out the settlement function for the market under the market rules by flowing funds between customers or end-users and generators. Since the underlying obligations in Section 78.1 (and other statutory provisions set out above) are not eliminated as a consequence of licence termination, this appears to be an impractical result.

The OEB has an obligation to act and make decisions in accordance with its public interest mandate, which includes an obligation to establish just and reasonable payment amounts for OPG under Section 78.1. As discussed earlier in this letter, the Supreme Court of Canada has described just and reasonable rates as "rates, which, under the circumstances, would be fair to the consumer on the one hand, and which, on the other hand, would secure to the company a fair return for the capital invested."[62] Fair compensation to a utility is comprised of the right to recover all prudently incurred costs, and the right to a fair return on invested capital. As noted,

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[58] *Ibid*. at para 24 (parenthesis and emphasis added).

[59] See D. Jones and A. de Villars, *Principles of Administrative Law* (5th ed.), Carswell, 2009 at p. 93-94.

[60] *Ibid*. at 94.

[61] *Toronto Hydro-Electric System Ltd. v. Ontario (Energy Board), Supra* note 58.

[62] *Supra* note 2.

allowing a utility to earn a fair return has been regarded by the courts as being essential to the preservation of the financial integrity of a utility, which is of mutual concern to the utility and its customers.[63] Accordingly, in the context of its public interest mandate, which includes the objective of facilitating the maintenance of a financially viable electricity industry and establishing just and reasonable rates and payment amounts, it is necessary for there to be an effective mechanism in place that enables OPG to actually receive its payment amounts pursuant to orders of the OEB under Section 78.1.

It would be incumbent on the OEB to consider these significant implications in the course of exercising its licensing authority in accordance with the public interest and its purposes and objects under Section 1 of the OEB Act. A decision to the contrary would be beyond its jurisdiction and could be rendered null and void by a reviewing court.[64]

Accordingly, the OEB would only be able to cancel or refuse to renew the IESO's licence (a) if it could find that doing so would be in the public interest, and (b) if it is able to meet its statutory obligations, including its obligations in respect of setting just and reasonable payment amounts that provide for a fair return to OPG. In exercising its licensing powers, the OEB would also have to consider that, as discussed, the IESO's obligations under Section 78.1 exist independent of and are outside the scope of the licence from the OEB.

D. Reliance

This opinion is given exclusively in connection with the consideration by OPG, as well as OPG's accounting advisors and auditors, of the appropriate treatment of OPG's regulatory deferral and variance accounts for financial reporting purposes under IFRS and for no other purpose. This opinion is addressed to and is solely for the benefit of OPG and may not be relied upon by any other person including, but not limited to, OPG's accounting advisors and auditors.

We trust the forgoing is satisfactory.

Yours truly,

Torys LLP

[63] *Supra* note 7.

[64] *Supra* note 59 at 188-189.

Monday availability _.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Michel Picard [mpicard@kpmg.ca]
Subject: Monday availability ?
Date: Friday, November 17, 2017 18:19:59

For call to prep for Tuesday Cpa meeting.

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My twocents.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: My twocents
Date: Tuesday, March 28, 2017 13:58:37
Attachment 1: Control Assessment_Affordability Fund new format mar 26F Draft.doc

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Control Assessment_Affordability Fund new format mar 26F Draft.pdf

Accounting Analysis of Affordability Fund Trust

ISSUE

Would the proposed Affordability Fund Trust (the Affordability Fund) be consolidated under Public Sector Accounting Board (PSAB) standards in the Province's consolidated financial statements?

RECOMMENDATION

Based on the terms and conditions of the executed Trust Declaration and the Transfer Payment Agreement, the Affordability Fund should be classified as a Trust under Administration of Hydro One and therefore not consolidated as part of the government reporting entity.

Commented [m1]: I believe it should be a trust under H1's administration.

To further confirm the economic substance of the relationship between the Province and the Trust, OPCD also assessed relevant terms and conditions of the Trust Declaration and Transfer Payment Agreement in accordance with the control criteria in PS1300 and found that the overall preponderance of evidence indicated that the Trust is not controlled by the government. The results of the detailed analysis is in Appendix I which conclude that only two of PSAB's criteria of control are met, reflecting the Province's ability to (i) establish the mandate of the organization and (ii) the restricting the organization's investments.

With regards to the first criteria, although the Province established the Affordability Fund, it does not have the ability to amend the mandate of the Trust but has a protective right over the amendments.

Regarding the second control criteria noted, the government established the Affordability Fund to support the Ministry of Energy's rate reduction program. While the Trust documents restrict the nature of investments in which the Trust can invest to maintain liquidity and stewardship over the funds, it does not weigh heavily on the control assessment.

BACKGROUND

The Ministry of Energy plans to transfer $100M before year-end to a recently formed, limited purpose Trust to establish a new Affordability Fund that will provide energy efficiency measures to electricity customers. Specifically, the Affordability Fund will provide assistance to customers who do not qualify for existing low income conservation programs (e.g. the existing Home Assistance Program (HAP) delivered by LDCs under the Conservation First Framework) and who have difficulty paying their electricity bills.

Commented [m2]: Should this be past tense?

The Affordability Fund is intended to be available for distributions to beneficiaries who would be identified based on recommendations from LDCs based on principles and indicative eligible measures listed in Annex A of the Declaration of Trust. Beneficiaries could include customers in frequent arrears or facing disconnection. Priority is expected to be given to homes which are primarily heated by electricity.

In order to provide funding to the Trust, the Ministry of Energy entered into a Transfer Payment Agreement (TPA) with the Trustee of the Trust (Computershare). Computershare will in the near future be replaced by an independent Board of Trustees which will be appointed based on the advice of an independent Advisory Committee. The Ministry of Energy expects to flow the approved funding ($100M) to the Trust account established by Computershare on March XX _, 2017.

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The Replacement Board of Trustees (to replace the Original Trustee, Computershare) is expected to be comprised of:

- [six] residents of Ontario who have expressed that they are willing to act as members of the Board of Trustees and who, individually and collectively, satisfy the following criteria (collectively, the "Selection Factors"):

  a) each member demonstrates an understanding of the electricity sector including the electricity distribution sector;
  b) each member demonstrates an expertise in conservation and low income programs;
  c) three of the identified individuals will be representatives from separate electricity distributors, two individuals will be representatives from separate social services agencies and one individual member, who will be a non-voting member, will be an employee or representative of the Government of Ontario; and
  d) it is expected that representation by the Government of Ontario will be non-controlling.

In accordance with the Trust Declaration, the Trust has engaged with Hydro One to provide administrative services and has the discretion to engage with other entities as service providers to assist with administering the Trust. It is expected that the Trust would consider using administrative services agreements to clearly document services and expectations in delegating its authority. The Trust would distribute funds to identified customers of LDCs across the province (including Hydro One's distribution division) at the discretion of the Trustees, based primarily on the recommendations of the applicable LDCs.

The Declaration of Trust confers broad powers and discretion to the Trustee, to act in the best interest of the beneficiaries. The Trustees are expected to conduct themselves in good faith and have regard to guiding principles set out in the Declaration of Trust (and indicated by the Province in the TPA) in exercising their duties under the Trust Declaration and TPA in distributing funds to LDCs for the benefit of beneficiaries across the province.

The Trust Declaration will be subject to further modification by the Trustee, subject to the Province's protective right under the TPA to consent, where such consent is not to be unreasonably withheld or delayed. The input and involvement of LDCs across the province is anticipated and integral to the success of the Trust in meeting its purpose. The **Principles,** to be considered in the exercise of its discretion**,** are set out in both the Trust Declaration and the TPA.

In addition, a **Permitted Delegation Annex** forms part of the Declaration of Trust, which refers to an expectation that the Trust would rely on participating LDCs to assist with achieving the purpose of the Trust, including an expectation to (a) appoint, employ or retain Implementation Agents for the purpose of discharging its duties and obligations under the Declaration; and (b) enter into, perform, enforce and amend implementation agreements.

Without limiting the Trustee's discretion to negotiate and settle the terms and conditions of the above-mentioned implementation agreements, the Permitted Delegation Annex also outlines certain expected components for the Trust to consider for inclusion in the implementation agreements, recognizing that the ultimate agreements would be subject to negotiation between the Trust and individual Electricity Distributors and the acceptance and agreement of the applicable Electricity Distributor counterparty. The Annex is subject to the Trustee's overall discretion and the Trustees are not bound to use the guidance provided.

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ACCOUNTING ANALYSIS

In accordance with PS1300, the Affordability Fund can be considered a trust under administration and should therefore be excluded from the government reporting entity (ref. PS 1300.40). Exclusion from the government entity is appropriate where there is a legal trust, as with the Affordability Fund, as the property transferred by the Ministry of Energy is conveyed to the Trustee (Computershare) to be administered as directed by the Trust Declaration. The Original Trustee, and subsequently the Replacement Trustee Board hold title to the property for the benefit of the beneficiaries.

Under the terms of the Trust Declaration, the Trust fulfills its fiduciary duty and the Province retains no unilateral authority to change the conditions set out in the Trust Declaration. Under PS1300, the assets and activities of Trusts under Administration would therefore be excluded from the government's consolidated financial statements.

Both the Trust Declaration and the Transfer Payment Agreement clearly, and consistently convey the ability of the Trust to act independently in exercising its discretion over entering into agreements with Implementation Agents, funding allocation decisions, and design of eligible measures. The extent to which the government can influence the decisions or activities of the Trust is restricted by the Principles Annex, the suggestions on elements of the administrative/implementation agreements that the Trust is expected to enter into with LDCs, and suggested considerations for eligible measures which might be covered by the program. In none of the documents is the Trust mandated to adopt the government's suggestions.

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Control is defined as the ability of one party to govern the financial and operating policies of the other party. According to PS1300, financial and operating policies are principles and practices that determine how an organization conducts its activities which can impact the achievement of its mission and mandate. While the government has established the Trust's fundamental purpose, it has not restricted or limited the ability of the Trustees to make future decisions. Furthermore, the Trust has been established for the benefit of electricity customers. The government does not expect to derive a financial or non-financial benefit from the Trust, nor is the government exposed to the risk of any loss from the Trust.

A number of report-backs requirements are included in the Transfer Payment Agreement which are consistent with OPCD's Trust Guidance, and guidance on One-Time Transfers. In addition, the TPA includes certain audit rights and protective similar to those included in other transfer payment agreements. For example, the government will require the Trust to submit reports for information purposes on the nature and extent of its funding activities, and allow for audits at the discretion of the Province, to provide assurance that the funds have been used for the purposes intended. In accordance with PS1300, such reports are not considered evidence of control because the government's interest in the Trust extends to ensuring that that the Trust is achieving success in satisfying its fiduciary duty and achieving the purposes of the Trust which is to help the most vulnerable electricity customers.

In addition to considering PSAB guidance for Trusts under Administration, OPCD also undertook an assessment of government control over the Trust under PSAB's
"indicators of control". In addition to its legal form as a Trust, OPCD considered the economic substance of the relationship between the government and the Trust. Relevant aspects and implications of the relationship were considered in determining whether or not the government controls the Trust. OPCD's Trust Guidance and One-Time Transfer Guidance developed in conjunction with the Office of the Auditor General are also attached as Appendices.

There are a total of 11 PSAB prescribed control indicators that provide evidence of control: 4 persuasive indicators of control and 7 other control indicators. It is the preponderance of evidence that would be considered in assessing whether a government controls an organization.

The following governing documents were reviewed in support of the analysis of the Province's control over the Affordability Fund Trust:

1. Trust Declaration, including related schedules
2. Transfer Payment Agreement
3. PSAB 1300 (esp. PS1300.40-.46)
4. OPCD Trust Guidance
5. OPCD Guidance on One-Time Transfers

Both the TPA and the Trust Declaration clearly reflect the government's intention not to interfere with the unfettered discretion of the Trustees in exercising their fiduciary duties on behalf of the beneficiaries. In particular, Schedule A, Section 1.1(g) (Interpretations) of the TPA includes the following:

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

Appendix I shows the detailed analysis of the Affordability Fund Trust based on a consideration of the of the PSAB indicators of control.

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APPENDIX I

Affordability Fund Trust
Indicators of Control Analysis
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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
Primary (more persuasive) indicators (CICA PS 1300.18):		
i. Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization	• Original Trustee (Computershare) is the governing body of the Trust until the Replacement Board of Trustees is selected. As at March 31st, Trustee will hold funds transferred and government will not have power to remove Original Trustee nor have access to the funds transferred. • The government does not control the Original Trustee or the Advisory Committee, and will not control the Replacement Board of Trustees.	X
ii. Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses	• The government does not have an on-going access to assets transferred to the Trust, and any future access will only be through protective clauses (termination/default for material breach). • At the Final Distribution Date, any excess funds will be distributed to a non-controlled Residual Beneficiary in accordance with clause 3.3 of the Trust Declaration. • The government does not have any exposure to losses. **Trust Declaration (sec. 4.2 extracts)** ***(c)Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. ***(e)Power to Dispose of Assets.*** The Trustee shall have the power to sell, convey, assign, transfer, exchange and in any other manner dispose of the Assets or any part or parts thereof free and clear of any and all trusts established under this Declaration, by public or private sale, for cash or on credit, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as the Trustee in its sole and absolute discretion may consider appropriate or advisable, and to execute and deliver and perform any agreement, deed, conveyance, transfer or other document or instrument in connection with the foregoing. ***(o)Title to Assets.*** The Trustee shall have the power to cause all or any part of the Assets to be held by or registered, in its sole and absolute discretion, in the name of any Person.	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
3. Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization	"**Declaration of Trust**" means the declaration of trust made as of March 23, 2017, under which the Affordability Fund Trust was established, as such declaration of trust may be amended, restated, supplemented or otherwise modified from time to time with the consent of the Province in accordance with Section 20.2 (see below). **20.2 Declaration of Trust.** The Recipient covenants that it shall not amend, restate or terminate the Declaration of Trust without obtaining the written consent of the Province in respect of same, such consent not to be unreasonably withheld or delayed. **Note: The right of the Province to consent is a protective right only.** **Trust Declaration:** **6.1Amendments** Subject to the requirements of the Transfer Payment Agreement, the Trustee shall have the power in its sole and absolute discretion from time to time without the approval of any Beneficiary or any court to amend, vary, supplement, replace or restate this Declaration in its entirety or any portion thereof; provided, however that it is expected that any amendment shall be consistent with the intent of the principles set forth in the Principles Annex and with the intended scope and effect of the permitted delegations and activities of any Implementation Agent pursuant to the Permitted Delegations Annex. Without in any way limiting the foregoing, any such amendments, variations, supplements, replacements or restatements **Principles Annex (In Trust Declaration):** The Trustee shall have regard to, but shall not be specifically bound by, the following principles in applying its discretion in relation to the administration of the Trust: Schedule A of the Declaration to which it refers lists 'Indicative Eligible Measures' for consideration by the Trustees. In addition, the Permitted Delegation Annex includes non-mandatory elements for consideration by the Trustees in the Implementation Agreements that the Trust may choose to enter into with LDCs (without limiting the Trustee's discretion to negotiate and settle the terms and conditions of such agreements). **Governance in the TPA.** The Recipient covenants that it will develop and maintain in writing until the Agreement is no longer in effect: a) decision-making mechanisms and procedures to enable the Recipient to hold, invest, manage, apply and distribute the Funds in accordance with the Declaration of Trust in	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	furtherance of the Purpose; and b) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7.0. Section 5.8, Rules and Procedures of the Trust Declaration provides further expectations which are typical of a Trust and which do not reflect control by the Province.	
4. Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations	Only after the Final Distribution Date or in the event of default will the government have any power or rights in relation to the remaining funds in the Trust. Specific extracts are included below which demonstrate that the province would not have unilateral power to dissolve the organization and access its assets during the normal course of the Trust's existence. With regards to the control criteria's suggestion of dissolving the organization and accessing assets, it should be noted that there are expected to be no assets at the end of the Trust's existence that could be returned back to the Province. The termination of the Trust at the end of the program and following the Final Distribution Date will be an administrative undertaking by the Trustees. The only circumstance that assets might return to the province is contingent and under protective clauses (termination/default) which are not indicative of a unilateral right available to the Province to dissolve the Trust. **<u>Trust Declaration</u>** **7.1 Duration** Subject to sections 7.2 and 7.3, the Trust will continue in full force and effect so long as there are any Assets and until all of the debts, liabilities and obligations of the Trust have been paid and satisfied in full. **7.2 Termination and Distribution of Assets** The Trustee shall terminate the Trust and wind up its affairs as soon as practicable after the Final Distribution Date. In connection with the termination of the Trust, the Trustee shall identify the Residual Beneficiaries and distribute or cause to be distributed the remaining Assets, in cash or in kind or partly in each, to the Residual Beneficiaries, in each case in accordance with section 3.3. Despite the foregoing, the Trust will only be terminated and wound up after the Trustee, in its sole and absolute discretion, determines that all debts, liabilities and obligations of the Trust have been paid or otherwise adequately provided for and satisfied and upon receipt of such releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. **7.3 Distribution of Assets on Final Distribution Date**	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	If the Trust holds Assets on the Final Distribution Date, the Trustee shall pay or provide reserves for the payment, and otherwise shall satisfy, all debts, liabilities and obligations of the Trust and shall provide or arrange to provide such investigations, audits, releases, indemnities and discharges as the Trustee, relying on the opinion of counsel, deems necessary for the protection of the Beneficiaries and for its own protection. Thereafter, any remaining Assets shall be paid to the Residual Beneficiaries in accordance with section 3.3. **TPA References** **11 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT** **11.1 Events of Default.** An Event of Default will occur if: a) the Recipient fails to perform or observe any covenant in this Agreement and such failure has and continues to have a material adverse effect on the Province and remains unremedied during any Notice period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; b) any representation or warranty made by the Recipient in the Agreement shall prove to have been incorrect in any material respect when made or deemed made, and, if capable of remedy, continues to be incorrect in any material respect during any Notice period applicable under section 11.2 after the earlier to occur of (i) the actual knowledge thereof by the Recipient or (ii) receipt by the Recipient of Notice thereof from the Province; c) it is determined that the Recipient has breached its Standard of Care (within the meaning given in and context of the Declaration of Trust) in discharging its material duties under the Declaration of Trust, with the result that all or a significant part of the Funds have not been or are not being applied in furtherance of the Purpose or are being applied in a manner that is directly contrary or without regard to the Purpose, and, if such breach is capable of remedy, it continues and remains unremedied during any Notice Period applicable under section 11.2 after the earlier of (i) actual knowledge thereof by the Recipient, or (ii) receipt by the Recipient of Notice thereof from the Province; d) an insolvency event shall have occurred and be continuing with respect to the Recipient. **11.2 Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions: (a) provide the Recipient with Notice allowing the Recipient an opportunity to remedy the Event of	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	Default during a specified Notice Period; (b) seek an order of specific performance, including an order that the Recipient pursue its available remedies against third parties; (c) require, by Notice of demand, that the Recipient transfer to the Province (without any need for compensation, indemnity or consideration to the Recipient or any Beneficiary or other third party) any and all Assets remaining in the possession or under the control of the Recipient that can reasonably be traced or attributed to the Funds after first providing for the completion and performance by the Recipient of any unperformed contractual obligations of the Recipient undertaken in compliance with the Declaration of Trust on or prior to transfer; and (d) terminate the Agreement, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient. The transfer of Funds in accordance with the Agreement is made by the Province with the expressed intention and reservation that the transferred Funds shall be returned to the Province and the entitlements of the Recipient in remaining Funds shall thereby be revoked with reversion thereof to the Province in the circumstances contemplated in Section 11.2(c). **11.3 Opportunity to Remedy.** If, in accordance with section 11.2, the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of: (a) the particulars of the Event of Default; and (b) the length of time within which the Recipient may cure such Event of Default without the Province pursuing any other remedy (the "Notice Period"). No right to access assets following Final Date of Distribution: **Declaration of Trust** 3.3Distributions to Residual Beneficiaries Prior to the Final Distribution Date, the Trustee shall identify the Residual Beneficiary, or if more than one the Residual Beneficiaries and their respective allocations, by consulting with and having regard to the recommendations of the Ontario Energy Board, based on those charitable organizations which provide support services for Low Income Energy Assistance Program Emergency Financial Assistance (LEAP EFA) and the Ontario Electricity Support Program (OESP) or other charities that OEB may identify as relating	

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	to the Purpose. Following the Final Distribution Date, the Trustee shall, subject to compliance with section 7.3 and completion of a final audit, distribute all remaining Assets (including capital or income) to the Residual Beneficiaries, in each case in the amounts and to the extent determined by the Trustee in its discretion hereunder (having consulted with and having had regard to the recommendations of the Ontario Energy Board as aforesaid) and to the exclusion of the other Beneficiaries.	
5. Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members	The Original Trustee will establish the Trust and will not be controlled by the Province. In accordance with the Trust Declaration and the TPA, the government will not control the Original Trustee, and will not have a controlling interest in either the Advisory Committee nor the Replacement Trustee Board. The process for Replacement of the Original Trustee by the Replacement Board of Trustees is described in section 5.7 of the Trust Declaration. Although the Original Trustee (Computershare) may have been selected by the Province, and the Advisory Committee members were listed on the Trust Declaration, neither the Original Trustee nor the Advisory Committee will be controlled by the Province. It is relevant to note that PSAB also provides the following guidance with regards to government involvement in appointing governing bodies: PS1300.20 For each indicator that applies in a particular circumstance, the degree of government influence would determine its importance as evidence of control. In weighing the evidence, it would be necessary to consider the indicators collectively as well as individually. For example, where an organization is governed by a publicly elected board, this is not necessarily, in and of itself, sufficient evidence to conclude that the government does not control the organization. Similarly, where a government appoints a majority of the members of the governing body of an organization, this is not necessarily, in and of itself, sufficient evidence that the government controls the organization.	X
6. Appoint or remove the CEO or other key personnel	Right does not exist. N/A	X
7. Establish or amend the mission or mandate of the organization	Through an agreement with the Trustee (Computershare), it is the entity as settlor and as Trustee which has established the trust. Once established, the Province's Role, under section 4.4 of the TPA is limited to providing funds to the Trust. For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Trust and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	✓

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
8. Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis	Right does not exist. No intention or documentation demonstrating that province would manage/influence the Trust on a line by line basis. **TPA 4.4 Province's Role Limited to Providing Funds.** For greater clarity, the Province's role under the Agreement is limited to providing Funds to the Recipient and the Province is not responsible for carrying out or overseeing the terms of the Declaration of Trust.	X
9. Establish borrowing or investment limits or restrict the organization's investments	Trust Declaration, Section 1.1 Definitions (j) "***Eligible Investments***" means (i) a deposit receipt, note, certificate or instrument issued, guaranteed or endorsed by a bank listed in Schedule I to the *Bank Act* (Canada), which provides that the principal and any interest shall be fully paid no later than one year after the day the investment was made, or (ii) a deposit account at a bank listed in Schedule I to the *Bank Act* (Canada). ***4.2*** (a) ***Power to Own, Hold and Manage.*** Subject to section 4.2(d), the Trustee shall have the power to own, hold and manage the Assets in such manner as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable. (b) ***Power to Invest in Eligible Investments.*** The Trustee shall have the power to invest the Assets only in Eligible Investments, and to change such Eligible Investments at any time and from time to time, all as the Trustee, in its sole and absolute discretion, may consider appropriate or advisable, but always having regard to the Trustee's expectations regarding the timing of payments to be made to the Beneficiaries hereunder. If an investment of Assets in Eligible Investments would not be authorized under the applicable trust laws of Ontario, the Trustee shall nevertheless be permitted to make an investment of the Assets in such Eligible Investments. The Trustee will have no liability for the diminution in the value of any investment in Eligible Investments made hereunder. *Although some restrictions, given the need for liquidity for the funds and envisioned short term nature of the program, it is unlikely that the Trust would have contemplated investing the funds in any different types of instruments as designated in the Trust docs.*	✓
10. Restrict the revenue-generating capacity of the organization, notably the sources of revenue	There are no revenue generating restrictions in the Trust documents; however, there are references indicating that the Funds are expected to be used for not for profit purposes. It should also be noted that the nature of a Trust is not to generate revenue or make a profit, but to fulfil a fiduciary duty on behalf of the beneficiaries. No explicit restriction mentioned in the Trust Declaration or TPA related to other activities of the trust; however,	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	expectation that funds provided by the province will not be used for profitable purposes by the LDCs.	
11. Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources	The Trust Declaration and the TPA are not intended to interfere with the discretion of the Trust to establish or amend its own financial and operating policies. However, the Province does provide non-compulsory Principles which are expected to be considered by the Trustee in executing its administration of the Trust. In addition to the guiding Principles, the Trust Declaration includes a Permitted Delegation Annex, which provides that the Trustee will be permitted, and is expected to seek to delegate its powers and duties to LDCs. These sections are descriptions of matters that would typically be expected in an Implementation Agreement (without limiting the discretion of the trustee to negotiate and settle the terms and conditions of such agreements). **Section 4.2 of the Declaration lists the Enumerated Powers of the Declaration, including:** The Trustee shall have the following specific powers and authorities: a) *Transfer Payment Agreement.* b) *Contracts and Undertakings.* c) *Power to Own, Hold and Manage. .* d) *Power to Invest in Eligible Investments.* e) *Power to Dispose of Assets.* f) *Power to Apply Assets and Proceeds to Make Distributions to Beneficiaries.* g) *Power to Delegate and to Appoint Agents, etc.* h) *Power to Operate Accounts.* i) *Power to Collect, etc.* j) *Power to Obtain Insurance.* k) *Power to Pay Trustee's Fees.* l) *Power to Pay Taxes.* m) *Power to Appoint Auditors.* n) *Form of Accounts.* o) *Title to Assets.* p) *Delegation of Discretion.* q) *Additional Powers.* None of the above noted powers are restrictive or suggest that the government is controlling the activities of the Trust. The TPA Extract includes the following reference which does not conflict the non-controlled nature of the Trust and/or are consistent with OPCD's guidance on One-Time Transfer Payments or Trust Guidance reviewed previously with the Office of the Auditor General: 4.2 The Trustee is expected to conduct its activities in a manner that complies in all material respects with the Transfer Payment Agreement, including to:	X

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INDICATORS OF CONTROL	EVIDENCE OF CONTROL	CONTROL EXISTS?
	i. act prudently and in furtherance of the Purpose; ii. report not less frequently than annually the results of its activities for information purposes to the Province in connection with the Program; iii. comply with the Province's request for any independent verification or audit if determined to be necessary or appropriate by the Province; iv. return Assets that have not been distributed if it is determined that the Trustee has breached its Standard of Care in discharging its material duties under the Declaration, and has not cured such material breach despite having been given a reasonable opportunity by the Province to do so in light of the circumstances of such material breach, with the result that all or a significant part of the Assets have not been or are not being applied and distributed in furtherance of the Purpose or are being applied and distributed in a manner that is directly contrary or without regard to the Purpose. **5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS (TPA)** **5.1 Acquisition.** If the Recipient acquires goods, services, or both with or by applying the proceeds of the Funds, it is expected to do so through a process that promotes the best value for money and to take reasonable steps to ensure that its Administrative Services Agents and Implementation Agents also follow a process that promotes the best value for money when acquiring goods and services with or by applying the proceeds of the Funds. **Both the TPA and the Trust Declaration include a PRINCIPLES ANNEX** The Trustee is expected to have regard to the Principles, but shall not be specifically bound by the principles in applying its discretion in relation to the administration of the Trust.	

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Appendix II

Extract from PS1300

TRUSTS UNDER ADMINISTRATION

.40 *Trusts administered by a government or government organization should be excluded from the government reporting entity.* [JUNE 1996]

.41 Trusts are defined as property that has been conveyed or assigned to a trustee to be administered as directed by agreement or statute. In a trust relationship, the trustee holds title to property for the benefit of, and stands in a fiduciary relationship to, the beneficiary.

.42 To meet the definition in paragraph PS 1300.41, the property conveyed or assigned to the government or government organization acting as a trustee, must be provided to fulfill a particular objective of the donor of the property conveyed or assigned. The government or government organization would merely administer the terms and conditions embodied in the agreement and has no unilateral authority to change the conditions set out in the trust indenture. For this reason, the assets and activities of the trust are excluded from the government's reporting entity.

.43 A government or government organization acts as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the government is accountable to third parties for the use and disposition of trust assets and for the funds derived from those trust activities. Trust assets are not owned by the Crown in right of Canada, a province or territory, or by a local government, and should not be included in the government reporting entity.

.44 *Government financial statements should disclose, in a note or schedule, a description of trusts under administration by a government or government organization, and a summary of trust balances.* [JUNE 1996]

.45 To acknowledge and report on the magnitude of trusts administered by a government or government organization, a note or schedule to government financial statements would describe the trust assets under administration and would set out a summary of trust balances.

.46 Often the term "trusts" is applied to assets earmarked as a result of a government policy decision when no trust liability exists. Such assets are special funds that comprise part of the government reporting entity and would be consolidated.

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Appendix III

ACCOUNTING CONSIDERATIONS FOR GOVERNMENT-FUNDED TRUSTS

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Purpose:

The purpose of this guidance is to explore accounting-related considerations related to government-funded trusts which are established by the government to fund a specific purpose or activity. This guidance deals specifically with the difference between controlled and non-controlled trusts, the introduction of accountability provisions which can now be reflected in trust agreements, and key timing considerations for trusts contemplated towards year-end. It is important that these factors be taken into account when establishing a trust, in order to achieve the intended fiscal impact and appropriate accountability over the use of public funds.

Introduction:

Trusts are usually established by way of trust declaration or trust agreement, and are one of several means by which the government can direct funding to support key policy initiatives. Simply stated, trustees hold title to property for the benefit of, and stand in a fiduciary relationship to the beneficiaries. Trustees are accountable to third parties (beneficiaries) for the use and disposition of trust assets and for the funds derived from those trust activities. The trust itself is not a separate legal entity. The trustees carry out the activities of the trust in the name of the trustees.

Generally, direct year-end transfers are the preferred alternative over trusts where the province wants to retain ultimate decision-making authority regarding amounts to be transferred to recipients. Direct transfers are more appropriate where the identity of eligible transfer payment recipients is known and the amounts to be transferred to each recipient can be or has been determined.

Year-end transfers to a trust might be considered where the province desires to delegate to third parties ultimate decision-making authority regarding allocation of amounts amongst eligible beneficiaries.

A trust must be valid for legal purposes in order to be recognized for accounting purposes. Key requirements for a trust to be valid include: an intention to create a trust ('certainty of intention'), certainty of subject-matter of the trust ("certainty of subject matter") and the objects of the trust must be certain ('certainty of objects"). There are generally two different types of trust, a trust in which the objects are the "beneficiaries" and trust in which the objects are a "purpose" (e.g. for charitable purposes). Where a trust is under serious consideration, it is imperative that ministries seek legal advice to ensure that the contemplated trust will be valid.

Trustees are obligated to follow the terms of the trust declaration or trust agreement which will usually detail the powers and duties of the trustees including the number of trustees and how decisions will be made by the trustees.

Controlled versus Non-Controlled Government-Funded Trusts

From an accounting perspective, it is important to distinguish whether the design and governance of a particular trust results in the trust being controlled by the Province for accounting purposes. Control stems from the nature of the relationship between the government and the trust. Financial and operating policies are principles that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control.

The means by which a trust is established, the government's representation among the trustees, the government's involvement in the trust's governance processes and ability to impact trustee discretion in decision-making are but some of the factors to be considered in assessing whether a trust is 'controlled' or 'not controlled' by the government.

In establishing a trust, it is important to achieve the intended relationship between the province and the trust in order to achieve the intended fiscal impact.

Non-Controlled Trusts:

Where trusts are not controlled by the Province, they are excluded from the government reporting entity. For non-controlled trusts, the following accounting would apply to trust funding:

- Where funds provided to the "trust" are unconditional, the Province would record a transfer payment expense for any transfers approved in the current period (and flowed by finalization of public accounts).

- Where funds provided to the "trust" are conditional (i.e. upon the trust completing some specific task or result), the Province would initially record funding to the trust as a prepaid expense until the conditions are met at which time the Province would record a transfer payment expense, with the corresponding credit to prepaid expense. This may occur over a number of fiscal years.

In determining whether a trust is controlled, there are a variety of ways that a government might be perceived to be governing the financial and operating policies of a trust. These include:
- Eliminating or significantly limiting the ability of the trustees to make future decisions
- Directing the financial and operating policies of the trust
- Overruling, modifying or vetoing the financial and operating policies established by the trust.

Specific factors that should be considered in establishing a non-controlled trust include:
- Government representation in the trustees (should be in a minority position), and non-government trustees should be nominated by non-government sources
- Government influence over day-to-day trust governance and trustee discretion to make decisions (e.g. selection of eligibility criteria, selection of recipients).
- degree of influence over how funds are disbursed (i.e. the Declaration of Trust can provide general guidelines but not be overly prescriptive)
- the government's power to unilaterally appoint or remove the majority of trustees
- the government's on-going access to the trust's assets, or right to direct decisions regarding the flow of those assets to specific beneficiaries
- the government's unilateral power to dissolve the trust, except under specified circumstances as stipulated by the trust agreement (i.e. corrective action)
- the government's ability to establish or amend the policies used by the trust to manage accounting, personnel, deployment of resources, etc.

In some cases, it may be advantageous for ministries to provide administrative support to trusts. In these cases it is important that the extent of such support is not so pervasive as to influence or direct the day-to-day financial or operating policies of the trust, otherwise the trust will be deemed controlled and will be subject to consolidation in the government reporting entity.

Controlled Trusts:

If the Province controls the trust (for example, through its power to appoint a majority of the trustees on the board of trustees), the Province would be deemed to have control of the trust, resulting in the trust being accounted for in the same manner as other organizations controlled by the province (i.e. on a consolidated basis). As a result, the Province's contribution to the trust would not be expensed when it is transferred, but rather over time as the funds are disbursed to trust beneficiaries.

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Accountability Related Considerations:

The Auditor General has confirmed that the new accountability provisions developed for one-time transfers can also be applied to trusts without impacting the expense treatment of any transfers to non-controlled trusts.

These new accountability provisions will enable the government and the Legislature to:

- obtain assurance that a trust is spending public funds prudently and for the purposes intended and to take corrective action if it is not;
- ensure ministerial accountability to the Legislative Assembly for the trust's activities; and
- ensure that the province is able to take corrective action where warranted and as stipulated under terms of the trust agreement.

It should also be noted that the Auditor General's Act now allows the Province's Legislative Auditor to conduct special audits of any person or organization receiving transfers from the government, including trusts.

To enhance accountability controls over government transfers to non-controlled trusts, Ministries can consider incorporating some or all of the following accountability provisions as part of their trust agreement/declaration without impacting the accounting treatment of the trust.

The inclusion of any of these provisions should not result in a trust being assessed as 'controlled'. Note that the key determinant in identifying appropriate provisions for any individual trust is a ministry's assessment of the **risk** associated with a particular trust, as per the Transfer Payment Directive.

1. **Description of intended use of trust funds**;
    - specific purpose(s) for which the funds are to be used;
    - description of intended recipients and related eligibility criteria*; and,
    - the nature of eligible expenditures relevant to the transfers.

    *Note: avoid *overly prescriptive* eligibility criteria which would effectively eliminate or significantly limit the trustees' discretion to make funding decisions.

2. **Requirement for information**
    - Information to be provided by the trust at a future date (e.g. requirement for trustees to advise the government of trustee-developed performance criteria, and provide annual assessments against those criteria)

3. **Report-back requirement for Public Accountability**
    - information to be provided by the trust at a future date with respect to the stewardship and payment of transfer funds (e.g. audited financial statements, audited list of recipients and amounts funded).

4. **Right to independent verification/audit**
    - The Province reserves the right to audit any transfer payment recipients. The trust agreement should make reference to this fact.

5. **Right to take corrective action**
    - Where stipulated under the trust agreement, the Province reserves the right to re-direct unused funds where results of a trust assessment (where required by the trust agreement) indicate original purpose of the trust is not being achieved, or if there remain unused funds at the end of the trust term.
    - Province may also reserve the right to extend the term of the trust agreement, where funds remain at the end of the trust period.

To qualify for in-year expense treatment, the non-controlled trusts must satisfy the following:

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- the decision to establish the trust must have been approved by Treasury Board/Management Board of Cabinet and ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- Trustees must have been identified and signed the trust declaration or agreement to establish a valid trust by March 31st ;
- the trust must be set up and ready to receive funds, and a nominal amount transferred to the trust by March 31s;t ; and,
- the government should have communicated publicly (e.g. in the Budget document) the pending or final establishment of the trust.

In addition, all remaining funds beyond those initially transferred at March 31st should be transferred to the trust by June 30th.

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Trusts
Questions and Answers on Trust Guidance

Question: *Where a trust is announced in the Budget document, must the trust be established by March 31st, or could such a trust be established shortly thereafter without impacting the expensing of transfers to the trust in 2007-08?*

Answer: *A trust would have to be established prior to the end of a fiscal period in order to satisfy the recognition criteria for government transfers. If the intended recipient for a government transfer does not exist at March 31st, the province cannot record a payable owing to it under existing accounting standards.*

Question*: Does the transfer of funds to a non-controlled trust need to occur by March 31st or before the date of Public Accounts finalization?*

Answer: *Consistent with the new requirements for one-time transfers, as long as the trust is established by March 31st, the transfer is authorized and a reasonable estimate of the amount can be made, cash payments can be made after year-end.*

Question: *Can beneficiaries of a non-controlled trust include consolidated entities provided that the ultimate selection of recipients is at the discretion of the Trustees?*

Answer: *Any amounts provided to a trust which are in turn be provided to an organization inside the government reporting entity should not be expensed at the time of the transfer to the trust. Any amount that is flowed to a trust with the intention of subsequently flowing the funds to a consolidated entity should not be recorded as an expense to the government.*

Question: *Can a Ministry provide administrative support to a trust without compromising the non-controlled status of the trust?*

Answer: *The government can provide administrative support as long as the extent of government administrative support is <u>not so pervasive</u> so that the government is in substance establishing and managing the trust's policies in the areas of accounting, personnel, compensation, collective bargaining or deployment of resources. Where such administrative support is assessed as pervasive, it could impair the trust's non-controlled trust and the trust will be consolidated onto the province's financial statements.*

Can the following clauses appear in a trust agreement for a non-controlled trust to ensure adequate accountability over public funds without impacting the expense treatment of such trusts?

Question*: Specific description of purpose of the trust (possibly including nominal allocation among various objectives)*
Answer: Yes.

Question: *Can the trust agreement include a specific description of the intended groups of beneficiaries and detailed eligibility criteria.*

Answer: *Specificity should be applied cautiously, so as not to limit the discretion of the trustees in their subsequent grant making processes. For the trust to be considered 'not controlled' it should not be seen as 'establishing the trust's fundamental purpose and eliminating or significantly limiting the ability of the trust to make future decisions by predetermining the financial and operating policies of the trust.*

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Question: *Can trustees stipulate that funding is to be provided to beneficiaries on a cost-sharing basis?*
Answer: *Yes.*

Question: *Can the trust agreement include a requirement for a trust to report back to the province on trustee-established performance criteria and results, audit of financial statements, audited recipients and amounts, confirmation that trustees communicated to beneficiaries the intended purpose of the funding, etc.*
Answer: *Yes.*

Question*: Requirement for Trust to publicly post communications on existence, availability of funds, eligibility criteria, recipients and amounts granted to each recipient.*
Answer: *Yes*

Question: *Inclusion of a 'suggested' drawdown schedule over a period of years, with discretion left to Trustees as to actual results.*
Answer: *The inclusion of a drawdown schedule is not suggested for one-time, up-front transfers.*

Question: *Trust agreement can suggest accountability provisions which might be attached by Trustees to beneficiary payments (e.g. specific purpose of funding, requirement for report-back, right to audit, corrective actions).*
Answer: *Yes*

Question: *Trust agreement to reserve the province's right to re-direct any unspent funds to specified parties (e.g. non-consolidated entities or another non-controlled trust) at the end of the trust term, or alternatively to extend the term of the trust where unspent funds remain.*
Answer: *Yes*

Question*: Can the trust agreement include the requirement for evaluations of the trust at certain times (e.g. years 3, 7, 10 of the trust agreement), with the right for the government to decide either to terminate the trust (corrective action) based on the results of the assessment, or extend the trust beyond the initial term as per the agreement.*
Answer: *Yes.*

Question: *Trust agreement can require Trustees to request as part of the funding process that beneficiaries acknowledge receipt of government funding in their public communications on specific projects.*
Answer: *Yes.*

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Appendix IV

ACCOUNTING TREATMENT FOR ONE-TIME TRANSFERS WITH ENHANCED ACCOUNTABILITY PROVISIONS

Purpose:

The purpose of this guidance is to identify the nature of the accountability provisions which may be associated with one-time transfer payments that qualify for immediate expense treatment in the current period.

Definition of One-time transfers:

One-time transfers are defined as lump-sum operating or capital transfers that

- are not advancing currently planned future transfer payments under an existing on-going program, or
- are not identified as being intended to be spent in specified future periods or over a specified period of time.

Background:

Transfer payments are a means by which the government works with third parties to deliver public services. Transfer payment recipients must be held responsible by the government to deliver the provincially-funded services and be accountable for the funds they receive. Consistent with the *Transfer Payment Accountability Directive, August, 2007*, a risk-based approach is to be followed in designing the appropriate accountability and reporting mechanisms for specific funding agreements.

The current *PSAB Handbook Section 3410, Government Transfers requires that a government transfer should be recognized by a transferring government as an expense in the period the transfer is authorized and all eligibility criteria have been met by the recipient.*

To recognize a liability and expense as at year-end:

- the government must create a valid expectation of the recipient by year-end, leaving the government little or no discretion to avoid but to settle its obligation;
- no significant, contingent actions should be outstanding which if unfulfilled by year end might cause the transfer not to occur.

It is understood that the intention of negotiating a transfer payment agreement following the government's commitment to the recipient is to work out the administrative details of the arrangement, not to change any key elements of the government's commitment. As such, any correspondence which indicates that funds will not be flowed until a TPA is signed should make clear that the nature of additional details to be negotiated is logistical and administrative in nature (bank account info, reporting requirements, etc.)

The government should not suggest or direct the recipients to use the funding for future periods.

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To enhance accountability controls over one-time transfers accountability provisions one through five below are required for one-time transfers.

1. **Description of intended use of one-time transfer funds**;
   - specific purpose(s) for which the funds are to be used; and,
   - the nature of eligible expenditures relevant to the transfers.

2. **Report-back requirement for Public Accountability**
   - Periodic reporting on the use of transfer funds, service deliverables, outputs or outcomes achieved.

3. **Right to independent verification/audit**
   - at the discretion of the Province to verify/audit information submitted by the recipient is complete and accurate, and that funds were used for purposes intended.

4. **Right to recover funds (corrective action)**
   - If the funds were not used, or will not be used, for the intended purpose(s), specified services were not delivered, or intended outputs were not achieved, the Province has the right at a future date to recover funds transferred.

5. **Requirement for information** (*this item optional*)
   - information to be provided by the recipient at a future date with respect to the use of transfer funds, service deliverables, outputs or outcomes achieved.

To qualify for in-year expense treatment, the transfers must satisfy the following:

- be approved by Treasury Board / Management Board of Cabinet and then ratified by Cabinet by March 31st;
- the ministry providing the transfer must have approved appropriations and spending authority by March 31st;
- the recipients must be eligible to receive the grant by March 31st (i.e. eligibility criteria have been met prior to March 31st), and the intent to make the transfer payment must be communicated to the recipients by March 31st;
- In addition, funding details including accountability provisions must be communicated to the recipients, and the transfer payments must be made to the recipients prior to the finalization of the Public Accounts (currently June 30th);
- Where funds are flowed to recipients by March 31st, all eligibility criteria are assumed met for accounting purposes[1], and all amounts flowed are recorded as an expense, even where conditions might exist which remain unmet at March 31st.

[1] PS 3410, Government Transfers, states that "no matter how a transfer term is identified in legislation, regulations, by-laws or a transfer agreement (i.e., as an eligibility criterion or a stipulation), the crucial characteristic that distinguishes the substance of these two types of transfer terms is when they are required to be or are met by a recipient. If a term is required to be and is met before the transfer is provided, it is an eligibility criterion for the purposes of this Section. If a transfer term is met after the transfer is provided, it is a stipulation for the purposes of this Section".

DRAFT

New thinking.rtf

From: Picard, Michel [mpicard@kpmg.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Imbrogno, Serge (ENERGY) [Serge.Imbrogno@ontario.ca]; Nelms, Scott (ENERGY) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]
CC: Ouellette, Lois A [louellette@kpmg.ca]; Betik, Matthew [mbetik@kpmg.ca]
Subject: New thinking
Date: Friday, February 24, 2017 23:50:53

All,

As you know by now, the OEB believes that they should not be involved with the approval process of the regulatory asset.

In the absence of regulatory accounting, PSAB requires that the energy purchased (the unrecognized regulatory asset) be expensed immediately.

If the sale contract would be set-up in a way that the unrecognized asset is sold to the OPG Trust on a daily basis, then an offsetting revenue would be recorded.

As IESO is an agent for the market participants, IESO is showing the market transactions in the income statement on a net basis.

Therefore, no impact on the income statement and the sale would be recorded as a receivable from the OPG Trust.

The accounting treatment in the IESO's books should not impact the nature of the asset purchased by the OPG Trust, as I believe it would still be considered an intangible asset.

The new accounting approach would:

- not require the approval of the OEB;
- not require IESO to adopt regulatory accounting under PSAB; and
- permit the legislation to be as tight as possible for the right to collect the intangible asset; and
- not require the consolidation of the market books.

I would appreciate your comments on the proposed approach above.

Ps: Is this the magic that Andrew was expecting!

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

OPA Accounting Treatment for Regulatory Based Assets and Liabilities.docx.pdf

From:	Petsche, Nadine (TBS)
To:	Kim Marshall (Kim.Marshall@ieso.ca)
Cc:	Susan Nicholson; Natalie Schaus (Natalie.Schaus@ieso.ca)
Bcc:	Picard, Michel (mpicard@kpmg.ca)
Subject:	OPA Accounting Treatment for Regulatory Based Assets and Liabilities.docx
Date:	May 17, 2017 8:43:00 AM
Attachments:	OPA Accounting Treatment for Regulatory Based Assets and Liabilities.docx

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Hi Kim.

The attached internal (OPA) memo is somewhat dated, but reflects the relevance of RRA to the entity's books prior to the merger. From my perspective, the memo reflects some important messages that could be useful references in relation to the IESO's activities and accounting choices that best reflect the substance of the entity's activities and meet user needs.

Nadine

OPA Accounting Treatment for Regulatory Based.pdf

Memorandum

To: File
Date: March 22, 2012
Re: Accounting Treatment for OPA Charges, Other Financial Assets and Other Financial Liabilities

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1. **Charges – Overview**

"Charges" are amounts incurred by the OPA to recover amounts paid or payable by the OPA to another person with respect to electricity.

The OPA has a legislated responsibility to record the transactions flowing through the global adjustment mechanism. The global adjustment and settlement accounts have been created for this purpose. The global adjustment and settlement accounts record charges that flow between the OPA and the IESO. The account flows include the amounts paid and received for: Demand Response 2 (DR2), Demand Response 3 (DR3), non-utility generation (NUG), regulated nuclear generation balancing amount (nuclear) and regulated hydro electric generation balancing amount (hydro). These accounts are settled simultaneously by the IESO. The account also records the amounts paid and received for OPA contracts (standard offer, generation and conservation/demand management, Feed-In Tariff and hydroelectric contract initiatives) which the OPA settles on a monthly basis with the IESO.

The DR3, NUG, nuclear, hydro, and OPA contract balances are offset in the global adjustment account eliminating the need for a flow of funds between the IESO and the OPA. The OPA records the effect of the transactions to meet its legislated responsibility. The OPA's generation contracts are estimated each month and settled on the actual amount owing in the following month. This gives rise to timing differences. The settlement dates can cross calendar months, creating a monthly balance in the account. Differences created from timing or settlement dates are reclassified into accounts receivable at month end.

The OPA is entitled under legislation to recover eligible charge amounts, as per section 25.2 (3) of the Electricity Act:
(3) For greater certainty, the OPA may, subject to the regulations, establish and impose charges to recover from consumers its costs and payments under procurement contracts.

1.1 Accounting Treatment for OPA Contract and Conservation Charges

Charges are currently recorded as accounts receivable from the IESO in the OPA's financial statements, as they represent current assets that are recoverable within 1 year. Specifically, charges represent financial assets, as per **PS.S.1000.40** below and are only recorded as receivable once they have been incurred by the OPA. Under legislation, the OPA has a contractual right to receive cash from another party (in this case the IESO via the Global

Adjustment Mechanism) with respect to amounts incurred for eligible charge amounts. This concept is consistent with criteria (c) of the definition below:

*.**40*** *A financial asset is any asset that is:*

(a) cash;
(b) a realizable asset that is convertible to cash;
(c) a contractual right to receive cash or another financial asset from another party;
(d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;
(e) an equity instrument of another entity;
(f) an investment in a government business enterprise or government business partnership;
(g) a financial claim on an outside organization or individual; or
(h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph **Error! Hyperlink reference not valid.***. [Former paragraph* **Error! Hyperlink reference not valid.** *retained in Archived Pronouncements]*

Amounts Payable

Amounts payable arise for OPA contract charges when the value of HOEP exceeds the value of the suppliers' contract price. In this case, the charges would become an OPA liability to the market in the form of charges payable to the IESO (which, in turn, must be returned to the market via the Global Adjustment). Such charges payable to the market meet the criteria for recognition as a liability, as outlined below:

PS.3200.03

Liabilities should be recognized in the financial statements when:

(a) there is an appropriate basis of measurement; and

(b) a reasonable estimate can be made of the amount involved. [SEPT. 2004]

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2. Other financial assets and liabilities

Other financial assets and liabilities are made up of retailer settlement amounts, government procurements and regulated price plan variance amounts.

2.1 Other Financial Assets - Retailer Settlements and Government Procurements - Overview

Legislative provisions ensure that electricity retailers are made whole by the OPA for contracts with low-volume and designated consumers that were entered into before prices were frozen by legislation effective November 11, 2002. The OPA and retailers settling any differences between the HOEP and the contract price for each contract meet these provisions. When HOEP is greater than the contract price, the OPA receives payments from the retailers and records a financial liability. When HOEP is less than the contract price, the OPA pays the retailer and records a financial asset. The OPA tracks these variances in the retailer contract settlement deferral accounts. The retailer contract discount settlement account captures the funds related to the retailer incentives existing at the creation of the RPP. The retailer incentives captured are

held in a separate deferral account for settlement concurrent with the retailer settlement deferral accounts.

The OPA began amortizing these costs over the period of 2009-2011 to reflect the recovery of these amounts through its annual usage rate approved by the OEB. As at December 31, 2011, the balances of the retailer settlements are nil and have been recovered in full.

The OPA reimburses the government for costs incurred for electricity procurement and records the costs as a financial asset. Any subsequent balances are included in future revenue requirement submissions. The OPA began amortizing the government procurement costs in 2009 on a straight-line basis, and as at December 31, 2011, the balance to recover for these costs is nil.

2.2 Accounting Treatment – Retailer Settlements and Government Procurements

Under PSAS, retailer settlements and government procurements are treated as other financial assets in the OPA's financial statements. As they are normally not recovered within one year, they are categorized as non-current assets. As per **PS.S.1000**, retailer settlement and government procurement balances qualify as financial assets as per criteria (c) below:

> ***.40*** *A financial asset is any asset that is:*
>
> *(i) cash;*
> *(j) a realizable asset that is convertible to cash;*
> *(k) a contractual right to receive cash or another financial asset from another party;*
> *(l) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
> *(m) an equity instrument of another entity;*
> *(n) an investment in a government business enterprise or government business partnership;*
> *(o) a financial claim on an outside organization or individual; or*
> *(p) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph* **Error! Hyperlink reference not valid.***. [Former paragraph* **Error! Hyperlink reference not valid.** *retained in Archived Pronouncements]*

The OPA is required to carry the balance related to retailer settlement variances between the HOEP and contract price, as per legislation. The OPA is also entitled to recover these balances through legislative provisions, which represent a contractual right to receive cash or another financial asset from another party, as per criteria (c) above. Where retailer settlements fall into a liability balance, they would be categorized as other financial liabilities, as they would meet the criteria for recognition of a liability, as outlined in section 3.1 below.

3. Other Financial Liabilities – Regulated Price Plan (RPP) Variance - Overview

While prices for RPP consumers are set every six months by the OEB based upon a forecast of the cost of power over the next year, it is likely that there will be a difference between the actual and forecast cost of supplying electricity to all RPP consumers. When the hourly Ontario

energy price (HOEP) is greater than the RPP, the OPA pays the excess amount and records a financial asset as the electricity market funds paid are receivable from the market. When the HOEP is less than the RPP, the OPA receives the difference and records a financial liability as the funds received will be returned to the market. The OPA tracks this variance in the RPP variance account.

3.1 Accounting Treatment – RPP

RPP variance amounts are recorded by the OPA as other financial liabilities in the financial statements, as they meet the liability criteria outlined below:

PS. S.1000

.45 *Liabilities have three essential characteristics:*

(a) they embody a duty or responsibility to others, leaving a government little or no discretion to avoid settlement of the obligation;

(b) the duty or responsibility to others entails settlement by future transfer or use of assets, provision of goods or services, or other form of economic settlement at a specified or determinable date, on occurrence of a specified event, or on demand; and

(c) the transactions or events obligating the government have already occurred.

Under legislation, the OPA is required to fund RPP variances where the HOEP is less than the RPP, which implies a duty or responsibility that the OPA has little to no discretion to avoid, as per criteria (a). For instances where the HOEP exceeds the RPP rate, the OPA would record a financial asset, as this circumstance would meet the criterion of **PS.S.1000.40** (financial asset), outlined in section 2.2 above.

External Auditor Approval of Accounting Treatment

The accounting treatment of OPA charges, retailer settlement, government procurement and RPP balances has been consistent since the OPA's inception and is approved by the OPA's external auditors on an annual basis. Based on governing legislation, the external auditors agree that these balances represent true assets and liabilities to the OPA. The signed auditors' report, along with the OPA's audited annual financial statements, can be found on the OPA website in the MD&A section of the OPA annual report.

Please confirm.pdf

From: Petsche, Nadine (TBS)
To: Kim Marshall (Kim.Marshall@ieso.ca)
Subject: Please confirm
Date: May 8, 2017 5:09:00 PM

Hi Kim.

Cindy has asked that I follow up regarding a comment made by the AG in a meeting last week. With regards to the IESO's recent decision to adopt rate regulated accounting, the AG said that a set of IESO f/s had presented to the IESO Board on March 21st which did not reflect rate regulated accounting even though IESO management and the external auditors would have known about the impending accounting and the anticipated adoption of rate regulated accounting to follow shortly thereafter.

Can you please confirm the accuracy of the AG's statement.

Thanks in advance.

Nadine

_____

Policy Summary - sale of Hydro One Brampton (3).docx.pdf

From:	Virani, Shyrose (TBS)
To:	Chinchon, Francisco (OFA); Scanlan, Darren (OFA); Petsche, Nadine (TBS); Patel, Bharat (TBS); Keates, James (TBS); LeeAnne.Probert@ca.ey.com; suzie.r.gignac@ca.ey.com
Cc:	Scanlan, Darren (OFA); Chinchon, Francisco (OFA)
Subject:	Policy Summary - sale of Hydro One Brampton (3).docx
Start:	February 7, 2017 2:00:00 PM
End:	February 7, 2017 2:30:00 PM
Location:	teleconference 416 212 8014 passcode 1474532#
Attachments:	Policy Summary - sale of Hydro One Brampton (3).docx

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From: Petsche, Nadine (TBS)

Sent: February 6, 2017 2:47 PM

To: Chinchon, Francisco (OFA); Scanlan, Darren (OFA)

Cc: Patel, Bharat (TBS); Jim Keates (<mailto:jimkeates@hotmail.com> jimkeates@hotmail.com); Virani, Shyrose (TBS)

Subject: Policy Summary - sale of Hydro One Brampton (3).docx

Attachments: Policy Summary - sale of Hydro One Brampton (3).docx

Francisco/Darren,

Please find attached our questions regarding the proposed BH transaction. We'd like a call tomorrow to discuss. Please advise what time would work best for you, and if you have details to respond to the attached questions, it would be great to receive them in advance of our call.

Thanks.

Nadine

Policy Summary - sale of Hydro One Brampton (.pdf

OPCD Accounting Summary – Accounting for the Sale of Hydro One Brampton by the Province (DRAFT)

Issue

The Province is selling Hydro One Brampton (H1 Brampton) to a merged entity consisting of three local distribution companies (PowerStream, Enersource and Horizon) effective February 28, 2017. The sale of H1 Brampton is to be through a sale of shares.

This paper addresses the accounting for the sale of H1 Brampton by the Province.

Background

Brampton Distribution Holdco Inc. is classified by the Province as a government business enterprise (GBE). The Province therefore accounts for H1 Brampton by the modified equity method in accordance with INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, Section PS 3070.

The carrying value of Brampton Distribution Holdco Inc. in the Province's financial statements at March 31, 2016 is $471 million. [Was any purchase premium or fair value increment recorded in accordance with paragraph .07 of 3070 on acquisition of H1 Brampton]

Section PS 3070 paragraph .40[1] addresses the sale of a GBE. Paragraph .07[2] addresses accounting for a GBE following the modified equity method.

Analysis

Commented [KJ(1]: Confirm date

Commented [KJ(2]: Confirm nature of deal

Commented [KJ(3]: Understand structure of Holdco and H1 Brampton and why structured as such

Commented [KJ(4]: Any – would result in adjustment to carrying value of GBE by the Province

[1] **SALE OF ALL OR PART OF AN INVESTMENT IN A GOVERNMENT BUSINESS ENTERPRISE**

.40 *When all or part of a government's investment in a government business enterprise is sold, for the purposes of calculating a gain or loss on the sale of an investment, the cost of the portion of the total investment sold should be calculated on the basis of the carrying value of the investment at the date of sale.* [APRIL 2000]

[2] **Investment in a government business enterprise**

.07 The investment in a government business enterprise, as reflected in government financial statements under the modified equity method, includes the cost of the government's investment in the government business enterprise, calculated in accordance with paragraphs PS 3070.10-.11, and, subsequent to the date when the use of the modified equity method first became appropriate, also includes adjustments for:

(a) the government's proportionate share of the earnings of the government business enterprise after discontinued operations and extraordinary items of the government business enterprise;

(b) the government's proportionate share of dividends paid or payable by the government business enterprise;

(c) the government's proportionate share of prior period adjustments (i.e., a change in an accounting policy or a correction of an error relating to prior period financial statements), capital transactions, accumulated other comprehensive income and cumulative foreign currency translation adjustments of the government business enterprise;

(d) the accumulated amortization of any purchase premium and/or fair value increments on depreciable assets related to an acquired government business enterprise;

(e) the elimination of any unrealized inter-organizational gains and losses on assets remaining within the government reporting entity at the financial statement date;

(f) any gains or losses arising on inter-organizational bond holdings; and

(g) any impairments in the value of the purchase price discrepancy component of a government's investment in an acquired government business enterprise recognized by the government since acquisition.

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In accordance with paragraph .40, the carrying value of H1 Brampton needs to be calculated at February 28, 2017 for purposes of recording the sale on the Province's financial statements.

Carrying value of H1 Brampton @ March 31, 2016	$471 million
Add: Province's share of the earnings of H1 Brampton for the period March 31, 2016 to February 28, 2017	$x
Less: Province's share of dividends paid by H1 Brampton for the period March 31, 2016 to February 28, 2017	($45 million)
Carrying value of H1 Brampton @ February 28, 2017	$xx

In the Share Purchase Agreement, the purchasers agreed on a total payment amount of $607M, subject to closing adjustments. The total payment amount of $607M also includes any payments-in-lieu of taxes (PILs) that result from the sale. The PILs have been estimated at $80M, but this was communicated as an illustrative estimate and remains subject to change.

As the sale of H1 Brampton is to parties outside the government reporting entity (for the Province), any gain/loss is therefore to be realized by the Province.

The gain on sale of H1 Brampton to be recorded in fiscal 2016/17 by the Province is as follows:

Proceeds from sale of H1 Brampton @ February 28, 2017	$607 million
Less: Carrying value of H1 Brampton @ February 28, 2017	$xx
Less: PILs	
Gain on sale of H1 Brampton by the Province	$x

Holdco will capitalize existing debt owed to Holdco
Exchange debt for equity
At March 31, 2017, will the Province have any balances or relation with H1 Brampton?

Commented [KJ(5]: Need earnings of H1 Brampton ytd

Commented [KJ(6]: Confirm amount

Commented [KJ(7]: Need explanation of nature

Commented [KJ(8]: Confirm amount

Commented [KJ(9]: Depending on its nature

Commented [KJ(10]: Explanation – impact on Province's accounting

Commented [KJ(11]: Explanation – impact on Province's accounting

Commented [KJ(12]: Confirm – is it an outward sale?

OPCD Accounting Summary – Accounting for the Sale of Hydro One Brampton by the Province (DRAFT)

Points of clarification regarding the sale of Hydro One Brampton

Structure

1) Please explain the structure of Brampton Distribution HoldCo Inc. (HoldCo) and Hydro One Brampton (H1 Brampton).
a) Why is H1 Brampton held by the Province through a holding company?
b) Holdco owns 100% of the shares of H1 Brampton?
c) Are there other holdings of Holdco?
d) What transactions occur between Holdco and H1 Brampton?

Pre-closing transactions

1) Please explain "The HoldCo will capitalize the existing debt amount owed to the HoldCo, such that Hydro One Brampton will be sold debt-free. HoldCo will receive the equivalent value in common shares of Hydro One Brampton."

Sale information

1) Please confirm the February 28, 2017 sale date
2) Please confirm the final selling price after the closing adjustments are known – how do we know the proceeds represent fair value for H1 Brampton?
3) Please confirm Holdco is selling 100% of the shares of H1 Brampton to Alectra, a nonrelated party to the Province
4) We will need the earnings of H1 Brampton and Holdco for the period April 1, 2016 to February 28, 2017 (the date of sale) to calculate the carrying value of Holdco for the Province at the time of sale
5) We will need to know the amount of dividends paid/payable to the Province by H1 Brampton for the period April 1, 2016 to February 28, 2017 (the date of sale) – is the $45.4 m estimate the special dividend?
6) It is indicated the $607 million proceeds include PILS that result from the sale in the amount of approximately $80 million. Please explain
7) Please confirm whether Holdco will retain any balances with/interest in H1 Brampton after the sale
8) What will exist in the Holdco after the sale of H1 Brampton?

Province’s CFS reporting for the FHP.pdf

From: Virani, Shyrose (TBS)
To: cmanno@kpmg.ca
Subject: Province"s CFS reporting for the FHP
Date: May 15, 2017 11:32:27 AM
Attachments: Financial Reporting by Rate-regulated Enterprises CICA Research Study.pdf

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From: Petsche, Nadine (TBS)
Sent: May 12, 2017 5:00 PM
To: Kim Marshall (Kim.Marshall@ieso.ca)
Subject: Your assistance please

Hi Kim.

I'm currently working on a paper on the Province's CFS reporting for the FHP. It would be helpful if you could help to complete/expand on the extract below as it relates to various activities of the IESO.

Thanks in advance. Have a wonderful weekend.

Nadine

p.s. I know how much you like to read on the weekend, so I thought I'd attach a copy of a CICA research study undertaken some years back. Although IESO isn't a GBE (i.e. not profit oriented), the fact that is does not receive transfers from the government (so is self-sustaining) and has reasonable expectations that it will recover its costs through future rates, might from a user's perspective lend itself to a reasonable conclusion that it should follow the same accounting treatment that the task force recommended for GBEs. Just my own opinion.

Details of IESO's Rate Regulated Activities:

1. IESO is rate regulated by the OEB in accordance with the Electricity Act, 1998 and the Ontario Energy Board ("OEB") Act, 1998 but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.

2. Various aspects of the IESO's business subject to rate regulation include:

1. In accordance with XXX, the OEB's function in IESO's operations is to approve a rate to meet IESO's projected revenue requirement to recover its operational costs incurred in association with their responsibility to maintain the reliability of the IESO-controlled grid and to provide settlement services for balances due/from generators, transmitters, and market participants.

2. Smart Meter database – per XXX, the IESO is able to recover costs for maintaining the reliability of the IESO-controlled grid and providing settlement services for balances due/from generators, transmitters, and market participants. (confirm that the OEB approves the deferral of the recovery of these expenses. i.e. confirm that the OEB rate order regarding Smart Meter Charges (effective from May 1, 2013 to Oct. 31, 2018) constitutes support for reporting a rate regulated asset under ASC 980.

3. Pensions - XXX

4. GA cost - in accordance with the Electricity Act, 1998 and the OEB Act, 1998, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates).

Note that the Market Accounts track the point in time balances of due to/due from generators, transmitters and market participants for market transactions. They are not rate regulated balances for the IESO, but are rather reported as they represent activities of the entity with 3rd parties to which the IESO is a counterparty and should therefore be reported on the entity's books to support transparency and accountability in reporting.

Financial Reporting by Rate-regulated Enterpri.pdf

FINANCIAL REPORTING BY RATE-REGULATED ENTERPRISES

FOREWORD

Rate-regulated industries are core sectors of the Canadian economy. They have a common characteristic in that they provide services that are considered essential to the public. Most rate-regulated enterprises are required to maintain their accounting records in accordance with uniform systems of accounts prescribed by regulatory agencies. This accounting has not always agreed with GAAP as applied to business enterprises in general.

Some maintain that exceptions for rate-regulated enterprises should be permitted. Otherwise, the orderly markets and trading of a rate-regulated enterprise's securities might be seriously disrupted, which could adversely affect the enterprise's ability to maintain and expand its service capability on an economically sound basis. It has also been argued that any refusal to permit rate-regulated enterprises to defer costs for accounting and reporting purposes that are deferred for rate-making purposes might jeopardize the opportunity to recover similar types of costs through revenues established in future rate proceedings. Others have maintained that permitting rate-regulated enterprises to depart from GAAP as applied to other business enterprises when preparing general purpose financial statements — other than in strictly limited circumstances — undermines the credibility of standard setting. They note that regulatory agencies are often inextricably involved in the political process and are subject to short-term pressures. There is the danger that accounting practices might be managed to hide from users of financial statements adverse impacts on an enterprise. The validity of the concerns expressed by both groups needed to be examined.

Exceptions for rate-regulated enterprises from the accounting followed by other types of business enterprises have been advocated for many years. A bulletin issued by the CICA's Accounting and Auditing Research Committee in September 1967 noted that "the general principles of income measurement should be the same in regulated industries as they are in other enterprises, and that the income tax allocation basis should have equal relevance. However, the Committee recognizes that there may be rare cases where compliance with the recommendations of this Bulletin would be inappropriate for the purpose of achieving a proper matching of costs and revenues." Since that time, Canadian accounting standards have permitted the occasional additional exception for rate-regulated enterprises.

It looked as if the tide might be turning when the Accounting Standards Board issued an Exposure Draft on "Income Taxes" in March 1996. The Exposure Draft proposed that rate-regulated enterprises should record future tax liabilities or assets the same way as other

business enterprises do. It stated that "a regulator ... cannot relieve an enterprise of a liability or asset that was not created by the regulator. ... It is appropriate to recognize an asset or liability for amounts that may be recovered or payable under the ... rate formula. That asset or liability is a temporary difference for which a future income tax liability or future income tax asset would be recognized."

Concerns expressed by rate-regulated enterprises persuaded the Accounting Standards Board to back off from this position, at least temporarily. The final standard, issued in December 1997, indicated that "pending further study of accounting for rate regulated enterprises as a whole, rate regulated enterprises are not required to record future income taxes for temporary differences that arise from assets and liabilities relating to their rate regulated activities to the extent that these future income taxes will be included in the rates charged to customers in the future and will be recoverable at that time ..."

In the late 1990s, accounting by public sector rate-regulated enterprises was also raising some concerns for the CICA Public Sector Accounting Board. One of the key issues related to the essential characteristics of a rate-regulated enterprise, in particular, the required degree of independence of the enterprise being regulated from the rate-setting body.

These concerns led to a proposal being presented, for consideration by both the CICA's Accounting Standards Board and its Public Sector Accounting Board, for a project on financial reporting by rate-regulated enterprises, culminating in the publication of a Research Report.

The objective of this project was to address accounting and reporting issues pertinent to rate-regulated enterprises and to propose what specific guidance the Accounting Standards Board (and possibly the Public Sector Accounting Board) should provide to meet the special needs of such enterprises and the users of their general purpose financial reports. Under its terms of reference, the Study Group set up to undertake this project was asked to consider:

1. What constitutes a rate-regulated enterprise for financial reporting purposes? Is the definition in *CICA Handbook – Accounting* paragraph 3465.09 sufficiently clear, or how should it be amended?
2. What criteria must an enterprise meet to be considered rate regulated?
3. What is the nature of rate regulation and to what degree must it be independent of the enterprises being regulated?
4. Should rate regulation over private sector enterprises be distinguished from rate regulation over public sector enterprises? If so, what are the distinguishing criteria?
5. Does rate regulation introduce an economic dimension in some circumstances that should affect what constitutes "generally accepted accounting principles" (GAAP) for the enterprises being regulated?

6. Can accounting prescribed by rate-regulating authorities be considered, in and of itself, GAAP for rate-regulated enterprises and, if so, to what extent?
7. In setting accounting standards, should the Accounting Standards Board focus on rate-regulated enterprises *per se*, or on rate-regulated activities?
8. Are there any differences among the various types of rate-regulated enterprises or regulatory frameworks that would have an impact on the extent to which GAAP, as set out in the *CICA Handbook – Accounting*, should apply?
9. Assuming that the Recommendations in the *CICA Handbook – Accounting* generally apply to rate-regulated enterprises, are any exemptions needed because of their "special circumstances"? What other changes, if any, need to be made?
10. What additional guidance is needed relating to specific accounting and reporting issues encountered by rate-regulated enterprises?
11. What other information specific to the nature of rate-regulated enterprises should be included in general purpose financial statements or elsewhere?

The CICA expresses its appreciation to John Browne, chair, and the members of the Study Group for undertaking this project, and to J. Paul-Émile Roy, Principal, Research Studies, for providing technical support to the Study Group and for drafting the report under the Study Group's direction. Thanks are also expressed to those who assisted the Study Group by providing comments on a draft of the Research Report.

Toronto
December 2001

David J. Moore, CA
Research Studies Director

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EXECUTIVE OVERVIEW

Rate-regulated enterprises are a significant part of the Canadian economy. They include, for example, multi-billion-dollar electric utilities and natural gas pipeline companies, and encompass both the private sector and the public sector. The form of regulation can vary from regulation that is based on the cost of providing services to regulation that is based on performance. For telecommunications companies, much of the industry has been deregulated and now operates in a competitive marketplace. For others, such as the electric utilities, the process of deregulation is just beginning.

In light of the changing regulatory environment, the continued relevance of "special" accounting for rate regulation is currently the subject of considerable debate. There are differing views on whether the impact of rate regulation should be reported. Some feel that it results in artificial income smoothing. Others, including the Study Group, are of the opinion that rate regulation can have a direct bearing on the enterprise's economic resources and that this should be reflected in the financial statements. There are also differing views on the appropriate accounting approach. What constitutes generally accepted accounting principles (GAAP) for rate-regulated enterprises and how the *CICA Handbook – Accounting* requirements should be applied to them need to be clearly established. To provide that guidance, the Accounting Standards Board and the Public Sector Accounting Board are jointly sponsoring this research project:

- to address accounting and reporting issues pertinent to rate-regulated enterprises; and
- to suggest the steps that the two boards should take to meet the special needs of such enterprises and the users of their general purpose financial statements.

To provide much-needed guidance to preparers, practitioners and users, this Report proposes that the Accounting Standards Board issue a new *Handbook* Section on accounting for the effects of rate regulation. The new Section would replace the current *Handbook* material. In addition, it would establish general principles for assessing, in a particular situation, whether, and, if so, the degree to which, rate regulation has an economic impact that should be recognized and how it should be reported in general purpose financial statements. In this regard, it is anticipated that the discussion of general principles and differential accounting treatments set out in this Report will provide a useful reference source.

Because the economic benefits and obligations created by rate regulation are similar for many private and public sector enterprises, the consensus of the Study Group is that the general purpose financial statements of rate-regulated enterprises in the public sector should be prepared on a basis consistent with that of rate-regulated enterprises in the private sector. Accordingly, the Public Sector Accounting Board should specifically recognize in *CICA Public Sector Accounting Handbook* that certain public sector entities should apply, where applicable, the accounting recommendations for rate-regulated enterprises contained in the *CICA Handbook – Accounting*. One of the ten members of the Study Group, however, strongly feels that different criteria are needed for a public sector enterprise to qualify as rate regulated for financial reporting purposes. In his opinion, there is usually no "independent third party regulator" because the government normally controls both the affected enterprise and the regulatory agency.

SUMMARY OF CONCLUSIONS

This Research Report addresses 12 primary issues and a multitude of secondary issues. The following outlines, on a chapter-by-chapter basis, the primary issues and the conclusions reached

by the Study Group that undertook this project. 1(1) Support for those conclusions is provided in the relevant chapters, along with an analysis of any alternative views on the issues.

CHAPTER 1

Issue 1 — Is accounting for the effects of rate regulation still a relevant issue?

Accounting for the effects of rate regulation in the general purpose financial statements of rate-regulated enterprises is an important issue and will remain so for the foreseeable future.

CHAPTER 2

Issue 2 — What is rate regulation?

Under rate regulation, an enterprise's rates are established by, or are subject to approval by, a regulator. There are a number of basic regulatory processes and methodologies and, within each, there can be different applications that vary with the regulator, the entity being regulated and the circumstances faced.

CHAPTER 3

Issue 3 — What is the appropriate accounting approach?

Different approaches have been suggested for accounting for rate regulation. The approach adopted should be based on a framework that recognizes the economic impacts of rate regulation, identifies the financial reporting concepts that should guide the recognition of those impacts to the extent that they exist, and considers existing practice in both Canada and the US.

CHAPTER 4

Issue 4 — What is the current financial reporting environment?

Accounting pronouncements and practices in Canada recognize that, in certain circumstances, rate regulation can affect what should be reported in the financial statements. In the United States, accounting pronouncements also recognize the effects of rate regulation. They establish a comprehensive framework for reporting the economic impact of rate regulation and provide detailed guidance to rate-regulated enterprises. In the United Kingdom, accounting pronouncements do not address the effects of rate regulation. Nonetheless, there is increasing interest in developing a conceptual framework for accounting by regulated industries. Accounting standards that were issued by the International Accounting Standards Committee (IASC) do not address the effects of rate regulation.

Issue 5 — What further guidance should be provided?

General guidance on accounting for the effects of rate regulation should be issued as a new Section in the *CICA Handbook – Accounting*. The new Section would replace the material currently contained in the *Handbook* relating to rate-regulated enterprises and would provide

any additional guidance that is considered necessary. It would set out general principles to provide a "framework" for applying GAAP to rate-regulated enterprises within the boundaries established by "Financial Statement Concepts," Section 1000. The general principles would provide the basis for assessing, in a particular situation, whether rate regulation has an economic impact that should be reported and, if so, how it should be reported in general purpose financial statements.

CHAPTER 5

Issue 6 — Can regulatory authorities establish GAAP?

Regulatory authorities cannot establish GAAP. The Recommendations in the *CICA Handbook – Accounting* constitute GAAP. Although the actions of regulators may affect rates and the resulting economic impact may affect what should be reported in accordance with GAAP, this does not give them the right to determine how that economic impact should be reported in general purpose financial statements.

Issue 7 — Can rate regulation have an economic impact?

Regardless of the rate-setting process or methodology used, from an economic perspective, rate regulation can have a direct bearing on the economic resources, obligations and performance of a rate-regulated enterprise. It can influence rates that, combined with market conditions, can have an economic impact on current and future revenues and cash flows, thereby affecting future economic benefits and obligations.

Issue 8 — Should the effects of rate regulation be reported in general purpose financial statements?

The economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in "Financial Statement Concepts," Section 1000 of the *CICA Handbook – Accounting*. Where they also meet the recognition criteria set out in Section 1000, those elements should be reported in the general purpose financial statements of a rate-regulated enterprise as assets, liabilities, revenues, expenses, gains and losses.

CHAPTER 6

Issue 9 — What is a rate-regulated enterprise?

The *CICA Handbook – Accounting* establishes the criteria that must be met if an enterprise is to be considered "rate regulated" for financial reporting purposes. The criteria for qualifying as a "rate-regulated enterprise" in Canada are essentially the same as those in the United States. To eliminate minor differences with US accounting standards, the *Handbook* definition should be amended to conform to the wording used in SFAS 71. For rate regulation to have an impact on what should be reported in accordance with GAAP, it is not a prerequisite for the entire

operations of the enterprise to be subject to rate regulation; it is only necessary that a subset of the enterprise's operations be subject to rate regulation. Consequently, where only some of an enterprise's operations are rate regulated, the financial statements would reflect the economic impact of rate regulation on only that portion of operations. This approach is consistent with current practice and with US GAAP.

CHAPTER 7

Issue 10 — What general principles should be used by rate-regulated enterprises?

Rate-regulated enterprises should use the following general principles when preparing general purpose financial statements in accordance with GAAP:

Application

1. The economic impact of rate regulation should be reflected in the general purpose financial statements of an enterprise that has regulated operations that meet all of the following criteria:
    - The enterprise's rates for regulated services or products provided to its customers are established by, or are subject to approval by, an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
    - The regulated rates are designed to recover the specific enterprise's costs of providing the regulated services or products, including a fair return on investment.
    - In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.
2. If some of an enterprise's operations are regulated and meet the above criteria, the financial statements should reflect the economic impact of rate regulation on only that portion of operations.
3. When an enterprise that has regulated operations no longer meets the criteria set out in Principle 1, it should discontinue reflecting the economic impact of rate regulation and reflect the effects of discontinuation in its general purpose financial statements.

Recognition of Regulatory Assets and Liabilities

4. Rate-regulated enterprises should recognize a regulatory asset in their financial statements, when all of the following conditions are met:
    - Rate regulation creates an economic benefit in the form of increased future

revenues as a result of a past transaction or event.

- It is probable that the enterprise's regulator will set future rates sufficient to provide the economic benefit.
- Future rates sufficient to provide additional revenue at least equal to the economic benefit will be chargeable and collectible from customers.
- There is an appropriate basis for measuring the asset and a reasonable estimate can be made of the amount involved.

5. A regulatory asset should be valued at the lower of the expected economic benefit and the cost incurred to acquire the economic benefit.
6. Where the economic benefit is increased and the increase meets all of the conditions in Principle 4, or a portion of the economic benefit that previously did not meet all of the conditions in Principle 4 now meets those conditions, the value of the regulatory asset should be increased by the related amount.
7. Where all or a portion of a regulatory asset no longer meets the conditions in Principle 4, the value of the regulatory asset should be reduced by the related amount.
8. Rate-regulated enterprises should recognize a regulatory liability in their financial statements when all of the following conditions are met:
   - Rate regulation creates an economic obligation in the form of decreased future revenues, or payments to customers, as a result of a past transaction or event.
   - It is probable that the enterprise's regulator will set rates sufficient to reduce revenues by the amount of the liability or require payments to customers equal to the liability.
   - There is an appropriate basis for measuring the liability and a reasonable estimate can be made of the amount involved.
9. Where the economic obligation is increased, or a portion of the economic obligation that previously did not meet all of the conditions in Principle 8 now meets the conditions, the value of the regulatory liability should be increased by the related amount.
10. Where all or a portion of a regulatory liability no longer meets the conditions in Principle 8, the value of the regulatory liability should be reduced by the related amount.

Recognition of Revenues, Expenses, Gains and Losses

11. The financial statements of rate-regulated enterprises should report the changes in

regulatory assets and liabilities as revenues, expenses, gains or losses.

Presentation and disclosure

12. Notes to the general purpose financial statements of rate-regulated enterprises should disclose:

    - that the enterprise (or certain of its operations) is rate regulated for financial reporting purposes or, alternatively, that the enterprise was rate regulated in the prior period, but no longer meets the established criteria for a rate-regulated enterprise;
    - the regulator(s) and the jurisdiction(s) covered (even if the enterprise no longer qualifies as rate regulated);
    - that the financial statements are prepared in accordance with Canadian GAAP.

13. Notes to the general purpose financial statements of rate-regulated enterprises should disclose how rate regulation affects the reported values of individual assets and liabilities on a going-forward basis.

CHAPTER 8

Issue 11 — Do the General Principles apply to the public sector?

With respect to the scope of public sector activities that may be considered "rate regulated" for financial reporting purposes, the consensus of the Study Group is that the application of General Principle 1 should be limited to government business enterprises (GBEs) that meet all the criteria for qualifying as a rate-regulated enterprise. In this regard, *CICA Public Sector Accounting Handbook* Recommendations should specifically recognize that only GBEs that qualify as rate-regulated enterprises for financial reporting purposes should apply the accounting recommendations for rate-regulated enterprises contained in the *CICA Handbook – Accounting*. One Study Group member, however, feels strongly that in order for a GBE to qualify as a rate-regulated enterprise for financial reporting purposes, the regulatory agency must be independent of both the GBE and government. The consensus of the Study Group is that the General Principles regarding application, recognition, presentation and disclosure apply equally to all GBEs that meet the criteria in General Principle 1, since the economic benefits and obligations created by rate regulation are similar for many private and public sector enterprises. Therefore, the general purpose financial statements of rate-regulated enterprises in both the public and private sectors should be prepared on a consistent basis. One member would support this position only in the unlikely event that the regulatory agency is independent of both the GBE and the government.

CHAPTER 9

Issue 12 — What additional guidance is needed for specific accounting and reporting

issues encountered by rate-regulated enterprises?

While detailed guidance for recognizing the economic impact of rate regulation on the financial reporting of rate-regulated enterprises is not essential, additional guidance would help avoid any misunderstanding and, at the same time, illustrate how the general principles should be applied in practice. Accordingly, this chapter addresses specific issues that are considered of interest to the regulatory community. Emphasis is given to areas that may have a material impact on general purpose financial statements. Consideration is also given to circumstances that may indicate the need to discontinue accounting for the effects of rate regulation.

Chapter 1

INTRODUCTION

"Rate regulation" is imposed by a government, which creates legislation setting up a regulatory authority and gives it jurisdiction to approve the rates of specific enterprises or categories of enterprises.

OUTLINE OF THE REPORT

The objective of this Research Report is to address accounting and reporting issues pertinent to rate-regulated enterprises and to propose what specific guidance should be provided to meet the special needs of such enterprises and the users of their general purpose financial statements. The terms of reference for this project are set out in the Foreword to this Report.

Chapter 1 provides an overview of the financial reporting environment in which rate-regulated enterprises operate. Chapter 2 examines the nature of rate regulation. Chapter 3 considers the differing viewpoints on accounting by rate-regulated enterprises that have been proposed and explains the approach the Study Group considers the most appropriate and the reasons for its decision. Chapter 4 then reviews accounting standards and financial reporting practices in Canada and elsewhere, and assesses what further accounting guidance should be provided.

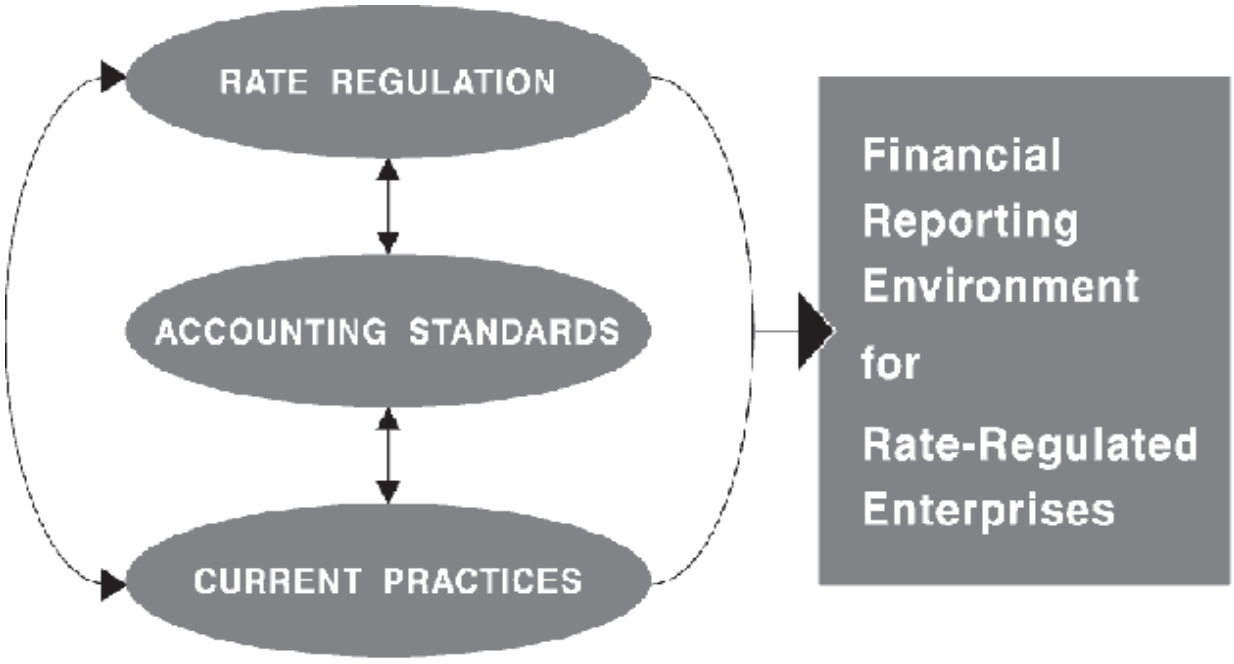
Using the financial reporting environment as the foundation, Chapter 5 discusses whether regulatory authorities can establish GAAP, the relationship of rate regulation to accounting, and the circumstances under which the effects of rate regulation should be reported in general purpose financial statements. Chapter 6 examines the criteria an enterprise must meet to qualify as rate-regulated for financial reporting purposes. Chapter 7 proposes general principles for financial reporting by rate-regulated enterprises in the private sector and Chapter 8 assesses whether those general principles should also be applied to rate-regulated enterprises in the public sector. Chapter 9 illustrates how the general principles can be applied to specific accounting and financial reporting issues.

Several appendices supplement the discussions contained in this Research Report. Appendix A compares the conceptual frameworks in Canada and the United States. Appendix B presents the results of a survey of current disclosure practices by industry and is supplemented by Appendix C, which presents selected illustrative financial statement disclosures. Appendix D reports on a survey of public sector practices. Appendix E provides an overview of rate regulation in the electric power industry. A glossary of terms and a selected bibliography are also included.

FINANCIAL REPORTING ENVIRONMENT

To address accounting and reporting issues pertinent to rate-regulated enterprises, it is important to understand the financial reporting environment in which they operate. Exhibit 1.1 depicts that environment as having three components: rate regulation, accounting standards and current reporting practices. Each of the components interacts significantly with the others. For example, rate regulation can impose requirements that affect accounting and financial reporting. In turn, this will be reflected in the reporting practices of rate-regulated enterprises. The following provides an overview of the three components (they are discussed further in Chapters 2, 3 and 4).

Exhibit 1.1



Rate Regulation

"Rate regulation" is the restriction in the setting of prices that can be charged to customers for services or products. From an economic perspective, rate regulation can have a direct bearing on

the economic resources, obligations and performance of a rate-regulated enterprise. Traditionally, rate regulation has been imposed on essential public services where competition was considered inadequate to protect customers; for example, electric utilities, gas distribution utilities, pipelines, telecommunication companies and transportation companies. In some of these industries, there has been a trend to increasing competition and the removal of rate regulation or movement from cost-based to performance-based rate regulation. This raises questions about whether accounting for the effects of rate regulation will continue to be a significant issue, whether separate accounting standards are warranted for rate-regulated enterprises, and whether such standards should apply equally to the private and pubic sectors. 1(2)

Accounting Standards

Accounting standards and current practices in Canada recognize that, in certain circumstances, rate regulation can affect the future economic benefits and obligations that should be reported in the financial statements. In fact, the *CICA Handbook – Accounting* establishes the criteria that an enterprise must meet to be considered "rate regulated" for financial reporting purposes. 2(3) Unlike the situation under US standards, however, there are relatively few situations where the guidance provided in the *CICA Handbook – Accounting* is specifically directed at rate-regulated enterprises. Consequently, the practice of looking to US standards for guidance has developed. 3(4)

Generally Accepted Accounting Principles

In July 2001, the Accounting Standards Board (AcSB) issued an exposure draft on "Generally Accepted Accounting Principles," a proposed new *Handbook* Section that will describe what constitutes GAAP and its sources. These sources are divided into three levels — Board pronouncements (Level 1), Board authorized pronouncements (Level 2) and other sources of GAAP (Level 3). This proposed new Section addresses the relative status and authority of *Handbook – Accounting* italicized Recommendations, non-italicized paragraphs and appendices, Accounting Guidelines (Level 1), Abstracts of Issues Discussed by the Emerging Issues Committee, board-authorized implementation guidance (Level 2), and other sources of GAAP, such as US (FASB) Financial Accounting Standards and International Accounting Standards, prevalent practice, generally or within a particular industry, and Canadian research reports and studies (Level 3). It includes explanatory paragraphs to help a reader understand where to look fr guidance, especially when the *Handbook* is silent.

The AcSB therefore proposes removing the existing coverage of generally accepted accounting principles in paragraphs .59 and .60 of "Financial Statement Concepts," *Handbook* Section 1000. In light of the clearer definition of GAAP, the AcSB also proposes removing paragraph 1000.61 and paragraph .06 of "General Standards of Financial Statement Presentation," *Handbook* Section 1500, which deal with a departure from *Handbook* Recommendations, and to revise *Handbook* Section 1500, primarily to update the requirements and clarify that anything

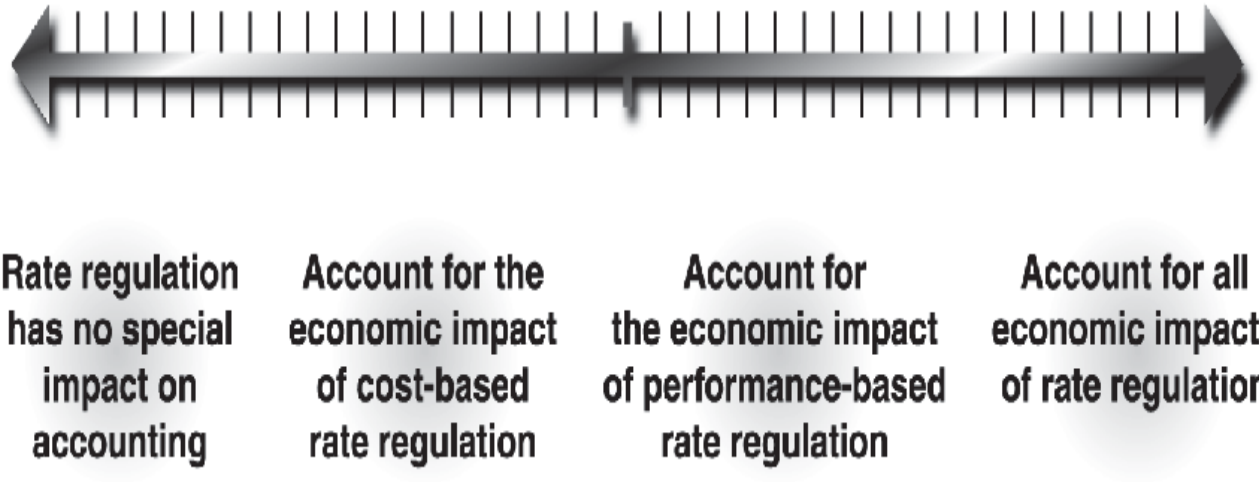
required by GAAP must be incorporated in the financial statements, which includes notes and supporting schedules.

WHY IS GUIDANCE NEEDED?

Widely diverging views have been expressed on the need for the differential treatment in the application of GAAP to rate-regulated enterprises. Exhibit 1.2 outlines the major views as a continuum, with the mileposts reflecting some common points. To keep pace with the new forms of rate regulation, practice is evolving. What is considered to be current practice is approximated by the mid point on the continuum.

Exhibit 1.2

VIEWS ON THE NEED FOR DIFFERENTIAL TREATMENT



There is no special impact of rate regulation for which to account

According to this view, rate regulation does not have an economic impact that should be reported in the financial statements. Those holding this view maintain that accounting for any perceived impact of rate regulation distorts the financial statements and may result in artificial income smoothing.

Account for the economic impact of cost-based regulation

According to this view, there are economic impacts of rate regulation that should be reported in financial statements, but only where rates are cost based. Those holding this view maintain that this is consistent with existing Canadian and US accounting standards that encompass the reporting of economic benefits (regulatory assets) and economic obligations (regulatory

liabilities) by rate-regulated enterprises. They would prefer to maintain the status quo. In other words, entities meeting the definition of "rate-regulated enterprise" in various sections of the Handbook would normally report regulatory assets and liabilities resulting from cost-based rate regulation.

Account for the economic impact of performance-based regulation

This view is similar to the one above, except that it would also encompass the impacts of performance-based regulation. Those holding this view maintain that, in many cases, performance-based regulation is essentially cost-based.

Account for all economic impacts of rate regulation

According to this view, if the actions of a regulator have an economic impact on an enterprise, that economic impact should be reflected in the general purpose financial statements, regardless of the method of regulation employed. Those holding this view maintain that the rate-setting process can affect future revenues and, thereby, create future economic benefits and obligations.

Survey of Canadian Rate-regulated Enterprises and Canadian Practice

Given the alternative views regarding the need for the differential treatment in the application of GAAP to rate-regulated enterprises and to investigate the extent to which rate-regulated enterprises are still prevalent, the following work was undertaken:

- a survey of 25 rate-regulated enterprises across Canada providing hydro-electric, natural gas transmission and distribution, and telecommunications services; 4(5)
- a discussion group meeting of 10 individuals (six from rate-regulated enterprises, one regulator, one consultant to rate-regulated enterprises, an academic and a legislative auditor).

The August 1999 survey posed the question: "Is accounting for rate-regulated enterprises still a relevant issue in light of deregulation or incentive-based regulation?" In the opinion of those responding to the survey (there was a 40% response rate, that is, 10 responses), **the issue of accounting for rate-regulated enterprises is still very relevant**. The lack of response from representatives in the telecommunications industry indicates, however, that it may no longer be a relevant issue in that particular industry because deregulation is occurring.

The discussion group, which met in October 1999, unanimously agreed that **accounting for rate-regulated enterprises is still a relevant issue**. When industry representatives were asked whether they would be concerned if the exceptions for rate-regulated enterprises were removed from the *Handbook*, they indicated that such removal would be a significant issue for their

enterprises.

As part of the above-noted survey, a second question was asked: "What are the significant accounting issues in your enterprise?" Survey respondents identified several significant issues: the definition of rate-regulated enterprises (or activities); the use of accrual versus cash basis of accounting; comparability and consistency of information reported by rate-regulated enterprises; and variations in the application of GAAP. With respect to the need for guidance, they identified a number of significant concerns about accounting for fixed / capital assets, income taxes, intercompany gains and losses, employee future benefits, foreign exchange and financial instruments.

At the above-noted discussion group meeting, all those present confirmed the significance of the accounting concerns raised in the survey. They felt that a research project would be extremely useful for anyone involved with accounting for rate-regulated enterprises, including the enterprises themselves, regulators, auditors, academics and those providing consulting services to such enterprises. Such a project would consider whether the differential treatment provided in the *Handbook* is still relevant and also provide guidance on how the accounting recommendations in the *Handbook* should be applied to rate-regulated enterprises.

While there is a move to allowing competition and relying on competitive forces to replace rate regulation, the prevailing view is that there will continue to be natural monopolies that require rate regulation, at least for the foreseeable future. Monopolies that will continue to be subject to rate regulation represent a significant portion of the Canadian economy. For example, electric transmission and distribution in Québec have an investment base in the range of $23 billion. It was noted that rate regulation has traditionally been, and will continue to be, a necessary instrument for governments to ensure "just and reasonable rates" where effective competition does not exist.

With respect to deregulation, it was observed that:

- Only specific business activities or services of a utility are being deregulated.
- Even with deregulation in some sectors, many monopolies still exist.
- The utilities industry in Canada is facing different forms of regulation as opposed to deregulation.

With respect to incentive-based regulation, it was observed that:

- Incentive-based regulation retains most elements of cost-based regulation and cost recovery from the customer.
- Incentive-based regulation is a variation of cost-of-service regulation, which allows an entity to earn more than its allowed rate of return if it is able to reduce its costs, but increases the risk that it will earn less than its allowed rate of return if it is unable to

manage its costs.

- Accounting issues that are relevant under regulation are still present in incentive-based regulation.

In summary, guidance is needed on accounting for rate-regulated enterprises because:

- Regulation has an impact on what a regulated enterprise reports in its financial statements because rate regulation can create assets and liabilities, and can affect an enterprise's cash flows and what should be reported in accordance with GAAP.
- There is no clear distinction between accounting principles used for rate-setting purposes (sometimes referred to as "regulatory accounting principles" or "RAP") and generally accepted accounting principles or "GAAP".
- There is little specific guidance in Canada on accounting by regulated enterprises, and what is available is somewhat dated.

Other Steps Taken by the Study Group in the Preparation of This Report

In addition to the survey of Canadian rate-regulated enterprises and practice referred to above, other steps taken during the preparation of this report were as follows:

- Reviewing Canadian and US accounting standards and other accounting literature on this subject.
- Monitoring any developments in the United Kingdom on this subject.
- Holding informal discussions with staff at the US Governmental Accounting Standards Board (GASB) regarding US standards and practice on this subject (particularly as they relate to US public sector rate-regulated enterprises).
- Having one of the Study Group members present its preliminary findings at the 2000 conference of legislative auditors.
- Distributing an "associates draft" to colleagues of Study Group members and other interested parties for their comment. The Study Group distributed 34 copies of the draft and received and analyzed 19 responses. Those who responded included rate-regulated enterprises' staff and their auditors, other representatives from public accounting firms, legislative auditors, provincial comptrollers, and consultants in the area of rate regulation.
- Undertaking a survey of federal, provincial and territorial comptrollers regarding current financial reporting practices of public sector rate-regulated enterprises within their jurisdiction. Excerpts from their responses are set out in Appendix D.

CONCLUSION

This chapter states the objective of this research project and sets out an outline of the report. It assesses whether accounting for the effects of rate regulation is still a relevant issue and whether there is a need for guidance.

In the Study Group's view, 5(6) accounting for the effects of rate regulation in the general purpose financial statements of rate-regulated enterprises is an important issue and will remain so for the foreseeable future.

Chapter 2

RATE REGULATION IN CANADA

Rate regulation can have a direct bearing on the economic resources and performance of a rate-regulated enterprise. There are a number of basic methodologies and applications that vary with the regulator, the entity being regulated and the circumstances faced.

INTRODUCTION

Chapter 1 of this Research Report concluded that accounting for the effects of rate regulation in the general purpose financial statements of rate-regulated enterprises is an important issue and will remain so for the foreseeable future. Furthermore, more specific guidance is needed on the application of GAAP to rate-regulated enterprises to meet the needs of both preparers and users of their general purpose financial statements.

Developing appropriate guidance requires a sound understanding of the financial reporting environment in which rate-regulated enterprises currently operate. As noted in Chapter 1 (Exhibit 1.1), that environment encompasses rate regulation, accounting standards and current reporting practices. In this chapter, the Study Group examines the first of these components. It defines "rate regulation" and explains the basic rate-setting processes and methodologies being used in Canada.

RATE REGULATION — WHAT IT IS AND HOW IT OPERATES

Rate regulation is the restriction in the setting of prices that can be charged to customers for services or products. Under rate regulation, an enterprise's rates are established by, or are subject to approval by, a regulator.

The goal of rate regulation is to set "just and reasonable rates." Generally, rate regulation is imposed where an enterprise has a monopoly or a dominant market position that gives it excessive market power. In such situations, there is a lack of effective competition to constrain

the prices that the enterprise can charge. To compensate, governments impose rate regulation.

In most cases, governments impose rate regulation by creating legislation setting up a regulatory authority and giving it jurisdiction to approve the rates of specific enterprises or categories of enterprises (for example, electric distribution utilities). Enterprises falling within the jurisdiction of the regulatory authority are not allowed to charge prices other than those approved by the regulatory authority.

In Canada, both the federal and provincial governments have created regulatory authorities. Whether an enterprise is subject to federal or provincial authority depends on whether its activities are deemed to fall under federal or provincial jurisdiction. For example, telecommunications fall under federal jurisdiction. Telecommunications enterprises that are subject to rate regulation are within the jurisdiction of the Canadian Radio-television Telecommunications Commission (CRTC), which was created under federal legislation. Electric power distribution falls under provincial legislation. Electric distribution utilities subject to rate regulation are within the jurisdiction of provincial regulators, such as the Alberta Energy and Utilities Board. 1(7)

The norm is for a government to create a separate regulatory authority. A government may regulate rates through other means, however, such as empowering the governing body of government-owned utilities to set rates in accordance with a statute. For example, prior to the restructuring of the Ontario electric power industry, the board of directors of Ontario Hydro was given statutory authority to set rates for the utility that would allow it to recover the costs of providing services to customers. 2(8)

In the past, rate regulation tended to be applied to an entire organization. With acquisitions, diversification and deregulation, rate regulation may be applied to only a portion of an organization's operations. In some cases, an organization may have both regulated and non-regulated operations, and the regulated operations may be subject to the authority of different regulators.

There is no universal method of rate regulation. The rate-setting process and the application of that process can vary from one jurisdiction to another. Within a jurisdiction, it can vary from one enterprise to another. In addition, rate regulation is constantly evolving.

Rate-setting Processes

Traditionally, regulatory authorities have convened public hearings to review the rate applications of large utilities. After the utility prepares a submission setting out its proposed rates, and the support for those rates, the regulatory authority may decide to hold a hearing. Usually, three to five members of the regulatory authority form a panel to preside over these proceedings. Prior to the public hearing, the regulatory authority and other interested parties, called "interveners," submit written questions, to which the regulated enterprise must respond.

The questions deal with clarification of the regulated enterprise's submission.

Interveners may also make a submission and, where they do so, they must also respond to written questions from the regulated enterprise, the regulatory authority and other interveners. At the public hearing, any individual who has made a submission on behalf of the regulated enterprise must submit to cross-examination under oath by lawyers representing interveners or, in the case of submissions on behalf of an intervener, lawyers representing the regulated enterprise or other interveners. In some cases, the witnesses may be cross-examined by the members of the regulatory panel. After the hearing is completed, the members of the panel make a decision based on the submissions, the response to the written questions and the testimony given at the public hearing.

As an alternative to a public hearing, a regulatory authority may have a "paper hearing." This is similar to the above process, except that there is no hearing. The regulated enterprise and interveners make written submissions, submit written questions and provide written responses. Based on this written documentation, the regulatory authority makes a decision.

There is currently a trend to negotiated settlements. The regulated enterprise and representatives of its customers negotiate allowed rates, or at least issues that affect the determination of allowed rates. Issues that cannot be settled by negotiation go to the regulator for resolution. Also, the regulator must approve any settlement.

The negotiation process is intended to be more informal and less adversarial than the normal regulatory process. It is expected to be less costly and offers the opportunity for better settlements. In the hearing process, the regulated enterprise and other interested parties put their position to the regulator, who then renders a decision based on the evidence presented. With a negotiated settlement, the regulated enterprise can negotiate rates with the other interested parties, which offers the opportunity for a settlement that is preferred by all parties.

Rate-setting Methodologies

The legislation empowering a regulatory authority usually provides little direction on how rates are to be established, except that the rates must be "just and reasonable" or a similar general statement. Usually, regulatory authorities have significant discretion in deciding the regulatory methodology that will be used in setting allowed rates and how that methodology will be applied.

There are a number of basic regulatory methodologies and, for each, there can be applications that vary with the regulator, the entity being regulated and the circumstances faced. In some cases, a specific rate must be charged; in other cases, a maximum limit is set on the rates.

In the past, the primary regulatory methodology for the major utilities was "cost-of-service" regulation, also referred to as "return-on-rate-base" regulation. Under this approach, rates are set to give the utility the opportunity to recover its costs of providing service plus a fair return.

In recent years, however, there has been a trend to performance-based regulatory methodologies, such as price-cap regulation. With price-cap regulation, initial rates often reflect the cost of service, but are allowed to increase, or are required to decrease, in accordance with a formula over time.

The following provides a brief description of the most common rate-setting methodologies:

- cost of service / return-on-rate base;
- price cap;
- revenue cap;
- hybrid price cap / cost of service;
- benchmarking.

Cost of Service / Return-on-Rate Base

Under cost-of-service regulation, the rates are set to provide a rate-regulated enterprise the opportunity to recover its costs and earn a return on its investment. The regulator establishes the revenues required to cover the expected cost of providing the regulated service, including a fair return on the investment in the regulated operations. This amount is called the "revenue requirement." The regulator then sets rates that will provide the enterprise with a reasonable opportunity to recover its revenue requirement. Exhibit 2.1 shows the equation that is frequently used to determine the revenue requirement.

Exhibit 2.1

DETERMINING THE REVENUE REQUIREMENT

Operating, Maintenance and Administrative Costs (OM&A Costs)

+

Allowed return on investment (rate base)

=

Revenue Requirement

OM&A costs include all office and field operating costs, various taxes, including income taxes, and depreciation. This component of the cost of service is merely a sum of the costs for the period, usually one year. The allowed return is intended to cover interest expense and provide a fair return on equity. It is equal to the allowed rate of return times the investment in

regulated operations, which is referred to as the "rate base." The allowed return reflects the cost of debt and a return on equity. The cost of debt is based on the actual debt outstanding plus the forecast cost of any proposed debt issues for the year. The return on equity is based on what investors require on non-regulated investments of similar risk. Exhibit 2.2 presents a simplified example of the allowed return calculation.

Rates may be set for a short period, such as a year, or may be set until changed. In the latter case, the enterprise seeks new rates when existing rates will not allow it to recover its costs and earn a fair return. Alternatively, the regulator may seek a rate review when allowed rates are considered excessive. As a result, a regulated enterprise's actual return is usually close to its allowed return.

Exhibit 2.2

ALLOWED RETURN CALCULATION

	Amount	Ratio		Cost Rate		Cost
Component	($ millions)					
Long-term debt		70%	X	10%	=	7.0%
Common equity			X	15%	=	4.5%
	200					**11.5%**
Rate Base	**200**					

In this example, the rate-regulated enterprise would have a deemed or actual common equity ratio of 30%, an allowed rate of return on common equity of 15%, and a rate of return on rate base of 11.5%.

Using the example above, if actual revenues and costs equal forecast costs (including a fair return), the following would be the financial statement results:

If the rate base is $200 million, then net income would be:
$200 million x 30% x 15% = $9 million

Interest expense would be:
$200 million x 70% x 10% = $14 million

If OM&A costs are $60 million, then revenues would be:
$60 million + $9 million + $14 million = $83 million

The return on rate base would be:
$200 million x 11.5% = $23 million (or $9 million + $14 million)

With cost-of-service regulation, there is a direct link between the costs that an enterprise is

expected to incur and its expected revenue — rates are set to allow the enterprise to recover its expected costs. Although regulators may follow GAAP in determining the amount of any specific cost to be included in the cost of service, it is not always the case. Regulatory authorities may decide that additional considerations are appropriate in setting "just and reasonable" rates, for example:

- *Cost deferral*
  Where certain specific costs are subject to material variation, are difficult to predict and are largely outside the control of management, a regulator may require a regulated enterprise to place the difference between the expected and actual amount of those costs in a deferral account. The amount in the deferral account may then be used to increase or decrease the future revenue requirement. This results in a portion of the costs (or cost savings) of one period being included in the revenue requirement of another. In some cases, deferral balances may be refunded or recovered in a lump sum and the revenue requirement is not adjusted.
- *Rate smoothing*
  To avoid rate fluctuations or to smooth out an increase in rates, a regulator may defer costs (or cost savings) with the deferred amount to be reflected in future rates.
- *Cost disallowance*
  Where a regulator decides that a cost was not prudently incurred, it may disallow all or part of the cost, thereby reducing (or eliminating) any future recovery of that cost.

In most cases, where a regulator decides to defer the recovery of a cost, it is assumed that the regulated enterprise will recover that cost. With rates set below what would be recoverable in an unregulated market, the enterprise can usually collect any increase in rates required to recover the deferred cost.

Price Cap

With price-cap regulation, prices are capped, with the capped rates changing each period in accordance with a formula. In its simplest form, rates are allowed to increase by a percentage amount equal to the rate of inflation less a productivity factor. Where the measure of productivity is greater than the rate of inflation, rates must be decreased.

Increase in allowed rates = Inflation – Productivity

The formula may include provision for what is sometimes referred to as a "Z" or exogenous factor. This is an adjustment for costs or cost savings not covered by the basic formula. Generally, amounts covered by the "Z" factor must be material and outside the control of

management. A common example is an unexpected change in income tax rates. If income tax rates increase, the rates of the rate-regulated enterprise are allowed to increase beyond what would be allowed by the formula to cover the increase in this cost. The "Z" factor recognizes the difficulty in developing a simple formula that will deal with all economic and other events.

The price-cap methodology may contain deferral accounts. As noted above under cost-of-service regulation, these accounts deal with specific costs that vary significantly, are difficult to predict or are largely outside the control of management. Differences between the expected and actual level of the costs are placed in a deferral account and recovered through an increase in future rates or used to reduce future rates.

With price-cap regulation, there are usually periodic reviews of the formula to ensure that the resulting rates are just and reasonable. These reviews are undertaken every three to six years. The reviews may result in an adjustment to the base rates and/or the formula for increasing (decreasing) rates. In some cases, the formula may have an "off ramp" that will allow for an early review under specific conditions. As with the "Z" factor, the "off ramp" recognizes that a simple formula cannot deal with all possible situations.

It has been argued that price-cap regulation breaks the link between rates and costs; rate increases are based on the price-cap formula and not on changes in the costs of the regulated enterprise. There is rarely a complete break, however, between rates and costs. For example:

- Initial rates will often reflect the cost of service.
- The price cap formula is usually intended to reflect reasonably expected changes in costs.
- In the periodic reviews, rates will often be evaluated against the cost of service.
- The "Z" factor allows for changes in rates to reflect costs, or cost savings, not covered by the price-cap formula.
- Deferral accounts result in an adjustment in rates to reflect differences between the expected and actual level of specific costs.

Revenue Cap

Revenue-cap regulation is essentially the same as price-cap regulation, except that revenues are capped rather than rates (that is, revenues are allowed to increase at a rate equal to inflation less productivity). With price-cap regulation, prices are regulated and total revenues will fluctuate with changes in demand. With revenue-cap regulation, total revenues are regulated and prices will fluctuate with changes in demand. For example, with price-cap regulation, an increase in demand will result in an increase in total revenues whereas, with revenue-cap regulation, rates would fall.

Revenue-cap regulation is applied where costs are essentially fixed. In some cases, the formula may require an adjustment factor to deal with the expected changes in variable costs in response to expected changes in demand. As with price-cap regulation, there is usually not a complete break between rates and costs.

Hybrid — Price Cap / Cost of Service

The hybrid methodology is a modification of the price-cap and cost-of-service methodologies. Rates are set in accordance with a price-cap formula. At the end of the year, the actual return on equity is compared to the allowed return on equity. A portion of earnings in excess of that allowed must be returned to customers through a reduction in future rates. In some cases, a portion of any earnings below those allowed is shared with customers through an increase in future rates. The hybrid methodology increases the link between allowed rates and costs, since a portion of cost savings (and in some cases, cost overages) are passed on to customers through adjustments to future rates.

Benchmarking

With benchmarking, rates are based on prices, or costs, of other organizations. They may be the prices of non-regulated enterprises or regulated enterprises. The use of benchmarking is limited by the difficulty in finding comparable enterprises and situations against which to benchmark rates. Also, the prices against which rates are benchmarked may not be just and reasonable.

The use of rates charged by other regulated enterprises poses additional problems. In effect, the regulator grants rate-setting authority over the enterprise to the regulator of the enterprises against which rates are benchmarked. With benchmarking there is a break between rates and costs, at least the costs of the regulated enterprise.

CONCLUSION

In this chapter, the Study Group defines what is meant by "rate regulation," and discusses the various processes and methodologies that may be used.

Under rate regulation, an enterprise's rates are established by, or are subject to approval by, a regulator. There are a number of basic regulatory processes and methodologies and, within each, there can be different applications that vary with the regulator, the entity being regulated and the circumstances faced.

Chapter 3

ACCOUNTING FOR RATE REGULATION

Views differ on whether, and, if so, the extent to which, differential accounting by rate-regulated enterprises should be permitted. This chapter considers those differing views and sets out the Study Group's view on the approach that should be taken.

INTRODUCTION

Chapter 1 noted that there were differing views on the need for differential treatment in the application of GAAP to rate-regulated enterprises. The major views were set out as a continuum in Exhibit 1.2. As a related issue, there are also differing views on the approaches that should be taken with respect to accounting by such enterprises. This chapter examines some of those approaches.

APPROACHES TO ACCOUNTING FOR RATE REGULATION

Approaches that could be taken with respect to accounting for rate-regulation include the following.

No Differential Treatment

Under this approach, rate-regulated enterprises would be required to follow GAAP as prescribed for other types of business enterprises. No differential treatment would be permitted.

Those supporting this viewpoint believe that the action of a regulator does not, in itself, provide compelling support for altering the timing of recognition of costs and revenues from that otherwise expected under GAAP. As far as they are concerned, no true economic difference exists between regulated and non-regulated enterprises, only a different source for how prices are determined.

In their opinion, it is questionable whether the financial statements, and in particular, the income statement, would truly reflect the operations for a particular period, since certain costs and revenues would not be recognized in the period in which they were incurred or earned. Any changes in rates made by the regulator to permit the recovery or return of such deferred amounts are, in their opinion, properly reflected in subsequent periods in which the revenues are actually received. It is noted that "the goal of accrual accounting for a business enterprise is to account in the periods in which they occur for the effects of transactions and other events and circumstances, to the extent that those financial effects are recognizable and measurable." 1(9) By permitting such transactions, events and circumstances to be reflected in a period in which they do not occur does not reflect the goal of accrual accounting.

Accounting for Rate Regulation Strictly Limited to Those Differences Specifically

Permitted

Under this approach, rate-regulated enterprises would follow GAAP tailored to their particular economic circumstances only where this is expressly permitted by the Accounting Standards Board (AcSB) or the CICA's Emerging Issues Committee (EIC).

Those who support this viewpoint maintain that the *Handbook* already provides comprehensive accounting standards for rate-regulated enterprises. The situations where differential accounting can be applied should be strictly limited to those where such a differential treatment is specifically permitted by an accounting standard in the *Handbook* or by an *Abstract* issued by the EIC. In their opinion, there are few fundamental differences between regulated business enterprises and non-regulated business enterprises. These differences can best be dealt with from a financial reporting point of view on a specific basis when determined necessary as part of the formal accounting standard-setting process.

Current industry practice goes beyond what would be permitted under this approach.

Canada-US GAAP Harmonization

Under this approach, the accounting standards followed by Canadian rate-regulated enterprises would be conformed to those issued by the US FASB.

The AcSB has, for the past few years, been working with major foreign standards-setting bodies toward the convergence of accounting standards. The goal of convergence is to develop a single set of internationally accepted accounting standards. Recognizing that international harmonization will take some years and that Canada's most important foreign market is the United States, the AcSB has also been working on a more accelerated basis to eliminate the major differences between Canadian and US GAAP.

In line with the AcSB's focus on harmonization, some maintain that US standards provide a useful basis for developing Canadian guidance on accounting for rate-regulated enterprises. They note that the US has already codified in standards (such as Statement of Financial Accounting Standards (SFAS) 71, 90 and 101) more principles related to accounting for regulated operations and, therefore, there is no need to re-invent the wheel — US standards should be adopted *verbatim*. Those holding this view maintain that the different business conditions and environment do not warrant a "made-in-Canada" solution.

It was also suggested that, in light of the AcSB's focus on harmonization, the project might review Canadian and US GAAP as it relates to rate-regulated enterprises. In this regard, an evaluation of similarities and differences could provide the basis for adopting US GAAP, except where the different economic environment dictated alternative accounting standards.

Codify Current Canadian Practice

Under this approach, GAAP for rate-regulated enterprises would be governed by current Canadian practice, which has evolved through application of existing *Handbook* sections, industry practice and US GAAP.

Those supporting this viewpoint have noted that a body of GAAP has already been established for rate-regulated enterprises through practices currently followed by such enterprises. In their opinion, these practices are compatible with the provisions of specific *Handbook* sections and reflect the economic impact of rate regulation. Appendix B to this Research Report presents the results of a survey of accounting and financial statement disclosure practices. It shows that almost all financial statements of rate-regulated enterprises recognize the impact of rate regulation and indicate that they are currently being prepared in accordance with GAAP. This suggests that the fundamental issue to be addressed in this Research Report is not **whether**, but **how** GAAP should apply to rate-regulated enterprises.

Current Canadian practice also recognizes the different economic environments in Canada and the US. For example, in the United States, income taxes are accounted for according to the liability method. When a rate-regulated enterprise recovers income taxes on a taxes payable basis, US GAAP permits a corresponding regulatory asset to be recorded, if appropriate. This results in an income statement that reflects the taxes payable charge and a balance sheet grossed up to record both the future taxes and the regulatory asset. This is of little consequence in the United States because balance sheet credits such as future taxes do not attract capital taxes. In Canada, however, future income taxes need not be recorded to the extent that they will be included in rates charged to customers in the future. If the US practice had been prescribed, rate-regulated enterprises would have been subjected to capital taxes.

It was suggested by those who support this approach that this Research Report project might review and codify existing Canadian practices, and then explain that the differential treatment in the application of GAAP merely reflect the economic consequences of the regulator's actions. Such consequences arise because the regulator may use a basis other than GAAP to measure the costs that are to be included in rates.

GAAP Followed by Rate-regulated Enterprises should be Governed by the Economic Impact of Rate Regulation

Under this approach, accounting standards would be included in the *Handbook* to explicitly recognize the economic impact of rate regulation.

Those who support this approach maintain that the consequences of the rate-setting process often create future economic benefits and obligations, which meet the criteria for the recording of assets and liabilities as set out in "Financial Statement Concepts," *Handbook* Section 1000. They maintain that any action of a rate regulator that has an economic impact on a rate-regulated enterprise should be reflected in the financial statements. In their opinion, an

approach that permits no differences from GAAP followed by other business enterprises clearly does not recognize that the actions of a rate regulator often have an economic impact on the enterprise. This is, in their opinion, contrary to the basic accounting concepts set out in Section 1000. They do not agree that this approach is contrary to the requirements of the *Handbook*. In their opinion, it is, in fact, the approach required by Section 1000. Further, the *Handbook* specifically acknowledges that "no rule of genera application can be phrased to suit all circumstances or combination of circumstances that may arise." 2(10) The fact that the application of GAAP, in some situations, may be different simply reflects that statement.

APPROACH TO THE PROJECT

After concluding that guidance is needed on accounting for rate-regulated enterprises and considering the different approaches referred to above, the Study Group decided that a comprehensive foundation is called for. Having considered how rate regulation works (see Chapter 2), it was considered important to look at what current standards require and how the issues are being addressed in current practice in both Canada and the US (see Chapter 4); and what further accounting guidance should be provided in accordance with the mandate set out in the terms of reference for this project (see Chapter 5).

The Study Group also decided that it was essential to review the basic financial statement concepts set out in *Handbook* Section 1000 and the related FASB Concepts Statements in the US to determine whether differential treatment by rate-regulated enterprises is conceptually sound (see Chapter 5 and Appendix A). After all, according to Section 1000, it is expected that the financial statement concepts will be used by preparers of financial statements and accounting practitioners in exercising their professional judgment as to the application of GAAP and in establishing accounting policies in areas in which accounting principles are developing.

With that foundation, general principles could be developed for application to specific accounting issues and appropriate accounting guidance provided to rate-regulated enterprises in both the private sector and the public sector (see Chapters 6 to 9). Without that foundation, it might be very difficult to determine (much less justify) whether and how the impact of rate regulation should be reported under GAAP.

CONCLUSION

This chapter sets out and analyzes some of the approaches that have been suggested for accounting by rate-regulated enterprises. It also sets out the Study Group's views on the approach that should be undertaken. This approach is based on a framework that recognizes the economic impacts of rate regulation, identifies the financial reporting concepts that should guide the recognition of those impacts to the extent that they exist, and considers existing practice in both Canada and the US.

Chapter 4

ACCOUNTING STANDARDS AND FINANCIAL REPORTING PRACTICES

Rate regulation imposes requirements that can have an impact on accounting and financial reporting. In turn, this can have a direct bearing on the current reporting practices of rate-regulated enterprises.

INTRODUCTION

As previously noted, developing appropriate guidance on accounting for the effects of rate regulation requires a sound understanding of the financial reporting environment in which rate-regulated enterprises currently operate. In Chapter 2, the Study Group examined the first component of that environment — rate regulation. In Chapter 3, various approaches that could be taken with regard to accounting by rate-regulated enterprises were considered.

This chapter examines the second and third component of the financial reporting environment depicted in Chapter 1 (Exhibit 1.1) — accounting standards and current financial reporting practices. The first component, "rate regulation" was considered in Chapter 2. The primary focus of this chapter is on standards and practices in Canada and the United States, but the current situation in the United Kingdom is also considered.

ACCOUNTING STANDARDS AND FINANCIAL REPORTING PRACTICES

Canadian accounting pronouncements and practices recognize that, in certain circumstances, rate regulation can affect what should be reported in the financial statements. Accounting standards and practices in the United States also recognize the effects of rate regulation and provide considerable guidance to rate-regulated enterprises. In the United Kingdom, although accounting pronouncements do not address the effects of rate regulation, there is considerable interest in developing a conceptual framework for accounting by regulated industries. Accounting standards that were issued by the International Accounting Standards Committee (IASC) do not address the effects of rate regulation.

Standards and Practices in Canada

In Canada, the *Handbook* establishes the criteria an enterprise must meet in order to be considered "rate regulated" for financial reporting purposes. When those criteria are met, the *Handbook* provides for differential treatment in the application of accounting standards to such

enterprises.

"Income Taxes," *Handbook* Section 3465, paragraph .09, defines a rate-regulated enterprise as:

> an enterprise which meets all of the following criteria:
>
> (i) the rates for regulated services or products provided to customers are established by or are subject to approval by a regulator or a governing body empowered by statute or contract to establish rates to be charged for services or products;
>
> (ii) the regulated rates are designed to recover the cost of providing the services or products; and
>
> (iii) it is reasonable to assume that rates set at levels that will recover the cost can be charged to and collected from customers in view of the demand for the services or products and the level of direct and indirect competition. This criterion requires consideration of expected changes in levels of demand or competition during the recovery period for amounts recorded as recoverable under the rate formula.

The definition of rate-regulated property, plant and equipment in "Property, Plant and Equipment," *Handbook* Section 3061, paragraph .10, is the same, with the exception that, in the last sentence, "for amounts recorded as recoverable under the rate formula" is replaced by "for any capitalized costs."

The following differential treatment in the application of accounting standards to rate regulated enterprises is currently permitted or required in the *Handbook*:

1. "Consolidated Financial Statements," *Handbook* Section 1600, "Intercompany Gains and Losses," states:

   > Where a parent or subsidiary manufactures or constructs facilities for a regulated public utility in the consolidated group, any intercompany gain or loss is deemed to have been realized to the extent that the transfer price on such facilities is recognized for rate-making purposes by a government regulatory body (paragraph 1600.29).

2. "Property, Plant and Equipment," *Handbook* Section 3061, states:

   > For an item of rate-regulated property, plant and equipment, the cost includes the directly attributable allowance for funds used during construction allowed by the regulator (paragraph 3061.23).
   >
   > In determining the net recoverable amount of an item of rate-regulated property, plant and equipment, the enterprise considers the extent to which rates will provide for the recovery of the cost of the asset (paragraph 3061.46).

> For rate-regulated operations, the regulator may require the difference between net carrying amount and the proceeds on disposal of an item of property, plant and equipment to be considered in the determination of future rates charged to customers. In such circumstances the difference is deferred, provided there is reasonable assurance that: (a) any excess of net carrying amount over proceeds on disposal will be recovered through future rates; or (b) any excess of proceeds on disposal over net carrying amount will serve to reduce future rates (paragraph 3061.53).

3. "Income Taxes," *Handbook* Section 3465, states:

> *A rate regulated enterprise need not recognize future income taxes in accordance with the Recommendations of this Section to the extent that future income taxes are expected to be included in the approved rate charged to customers in the future and are expected to be recovered from future customers. If future income taxes are not recognized in accordance with the Recommendations of this Section, the rate regulated enterprise should disclose the following, in addition to the information to be disclosed in accordance with paragraphs 3465.91 and 3465.92:*
>
> *(a) the reason why future income tax liabilities and future income tax assets have not been recognized; and*
>
> *(b) the amount of future income tax liabilities, future income tax assets and future income tax expense that have not been recognized. (paragraph 3465.102)*

Pending further study of accounting for rate regulated enterprises as a whole, rate regulated enterprises are not required to record future income taxes for temporary differences that arise from assets and liabilities relating to their rate regulated activities to the extent that these future income taxes will be included in the rates charged to customers in the future and will be recoverable at that time as set out in paragraph 3465.102. (paragraph 3465.103)

Future income taxes would be recognized in accordance with the remainder of this Section to the extent that future income taxes are not expected to be included in the rates charged to customers in the future. In addition, a rate regulated enterprise that chooses to recognize future income taxes despite the expectation that they will be included in the rates charged to customers in the future would recognize all future income tax liabilities and future income tax assets in accordance with the requirements of this Section. (paragraph 3465.104)

4. "Interest Capitalized," *Handbook* Section 3850, states:

> This Section does not apply to interest capitalized by rate regulated enterprises as part of an allowance for funds used during construction when such enterprises disclose the allowance for funds used during construction in the period. (paragraph 3850.02)

In addition to the above-noted definition and differential treatment, the *Handbook* makes reference to "public utilities" in one other instance — "Segment Disclosures," Section 1701.

Paragraph 1701.18 discusses the aggregation criteria for reportable segments and states:

> Operating segments often exhibit similar long-term financial performance if they have similar economic characteristics. ... Two or more operating segments may be aggregated into a single operating segment if aggregation is consistent with the objective and basic principles of this Section, if the segments have similar economic characteristics, and if the segments are similar in each of the following areas:
>
> - The nature of the products and services.
> - The nature of the production processes.
> - The type or class of customer for their products and services.
> - The methods used to distribute their products or provide their services.
> - If applicable, the nature of the regulatory environment (for example, banking, insurance, or **public utilities**). (emphasis added)

With regard to accounting and reporting practices in Canada, Chapter 1 noted that a 1999 cross-industry survey identified several accounting issues that were significant for rate-regulated enterprises. In view of the large number of issues identified, and to assess the current state of accounting and financial reporting by rate-regulated enterprises, the Study Group undertook a survey of current practices in corporate annual reports. The survey spanned the years 1999 and 2000 and covered 25 rate-regulated enterprises in four sectors: electric, natural gas distribution, natural gas transmission and telecommunications. Appendix B to this Research Report presents the findings. It shows that, for the most part, the survey companies disclosed in notes to the financial statements:

- the names of the regulatory authority or authorities;
- accounting requirements prescribed for regulatory purposes;
- pertinent information on specific issues related to the economic impact of rate-regulation, for example, on income taxes and capital assets; and

- that general purpose financial statements are prepared in accordance with GAAP.

Standards and Practices in the United States

Principles to recognize the economic impact of rate regulation have been applied to US rate-regulated enterprises since at least 1962, when they were authorized by an addendum to *Accounting for the "Investment Credit,"* AICPA Accounting Principles Board Opinion 2. In 1982, *Accounting for the Effects of Certain Types of Regulation*, Statement of Financial Accounting Standards (SFAS) 71, formalized many of those principles, and also modified some of them.

Since its issuance, SFAS 71 has been the principal authoritative source of guidance on accounting and financial reporting requirements for rate-regulated enterprises in the United States. In addition, several other Statements have been issued over the years to provide guidance on specific topics. 1(11) These and other "authoritative pronouncements" issued by the FASB, its Emerging Issues Task Force (EITF), the AICPA and the staff of the Securities and Exchange Commission (SEC) are listed in Exhibit 4.1. For SFAS 71 and some of the more significant Statements, a brief commentary on their application to rate-regulated enterprises is provided below.

SFAS 71 provides guidance on preparing general purpose financial statements for most public utilities. Certain other companies with regulated operations that meet specified criteria are also covered. Although the business activities of utility companies are essentially the same as those of other companies that manufacture products or provide services, their regulated status creates operational and accounting situations that are peculiar to regulated companies. In this regard, SFAS 71 refers to the "economic dimension" that regulation brings to utilities and the need for accounting to reflect that dimension. In general, the type of regulation covered by SFAS 71 requires allowed rates (prices) to be set at levels intended to recover the estimated costs of providing regulated products or services, including the cost of capital.

According to SFAS 71, recovery of certain costs may be provided either before or after the costs are incurred. If regulation provides assurance that incurred costs will be recovered in the future, companies are required to capitalize those costs. If current recovery is provided for costs expected to be incurred in the future, companies are required to recognize a liability equal to the amount received.

A significant conclusion reached in SFAS 71 is that rate regulators can determine the timing of recovery of costs through rates and, therefore, can affect the value of assets and liabilities recognized in accordance with GAAP. Specifically, rate actions of a regulator can provide reasonable assurance of the existence of an asset and can also reduce or eliminate the value of an asset. Furthermore, rate actions of a regulator can impose a liability on a regulated enterprise. A regulator, however, cannot eliminate a liability that it did not impose.

Exhibit 4.1

ACCOUNTING GUIDANCE IN THE UNITED STATES THAT SPECIFICALLY RELATES TO RATE-REGULATED ENTERPRISES

FASB — Statements of Financial Accounting Standards (SFAS)

- SFAS No. 71, Accounting for the Effects of Certain Types of Regulation
- SFAS No. 90, Regulated Enterprises — Accounting for Abandonments and Disallowances of Plant Costs
- SFAS No. 92, Regulated Enterprises — Accounting for Phase-in Plans
- SFAS No. 98, Accounting for Leases (Application, Specific Aspects, Sale-Leaseback Transactions by Regulated Enterprises, paragraphs 58 & 59)
- SFAS No. 101, Regulated Enterprises — Accounting for the Discontinuation of Application of FASB Statement No. 71
- SFAS No. 109, Accounting for Income Taxes, paragraphs 57 & 58 (also, Basis for Conclusions, paragraph 125 and Application, Specific Aspects, paragraphs 252-255)
- SFAS No. 142, Goodwill and Other Intangible Assets (Amendments to Existing Pronouncements, Appendix D, item D8)
- SFAS 143, Accounting for Asset Retirement Obligations, paragraphs 19-21 (also, Basis for Conclusions, paragraphs B67-B73)
- SFAS No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets (Basis for Conclusions, paragraphs B59-B61)
- FASB Technical Bulletin No. 87-2, Computation of a Loss on an Abandonment

Emerging Issues Task Force (EITF)

- EITF Issue 91-6, Revenue Recognition of Long-Term Power Sales Contracts
- EITF Issue 92-7, Accounting by Rate-Regulated Utilities for the Effects of Certain Alternative Revenue Programs
- EITF Issue 92-12, Accounting for OPEB Costs by Rate Regulated Enterprises
- EITF Issue 93-4, Accounting for Regulatory Assets
- EITF Issue 96-17, Revenue Recognition under Long-Term Power Sales Contracts That Contain Both Fixed and Variable Pricing Terms
- EITF Issue 97-4, Deregulation of the Pricing of Electricity — Issues Related to the

Application of FASB Statements No. 71 and 101

Securities and Exchange Commission, Staff Accounting Bulletins (SEC SAB)

SAB 92 Accounting and Disclosures Relating to Loss Contingencies

- Topic 10-A, Financing by Electric Utility Companies Through Use of Construction Intermediaries
- Topic 10-B, Estimated Future Costs Related to Spent Nuclear Fuel and Nuclear Electric Generating Plants
- Topic 10-C, Jointly Owned Electric Utility Plants
- Topic 10-D, Long-Term Contracts for Purchase of Electric Power
- Topic 10-E, Classification of Charges for Abandonments and Disallowances
- Topic 10-F, Presentation of Liabilities for Environmental Costs

SFAS 71, paragraph 5, establishes three criteria for determining whether an entity is covered by the Statement:

- An enterprise's rates for regulated services must be established by or subject to approval by an independent third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers. 2(12)
- The regulated rates must be designed to recover the specific enterprise's costs of providing the regulated services or products.
- In view of the demand for the regulated services or products and the level of competition, it must be reasonable to assume that rates set at levels that will recover the enterprise's costs can be charged to and collected from customers.

Regulated Enterprises — Accounting for the Discontinuation of Application of FASB Statement No. 71, SFAS 101, requires that an enterprise whose operations cease to meet the specified criteria should discontinue application of SFAS 71. Generally, that discontinuation would be reported by eliminating from the rate-regulated enterprise's financial statements the effects of rate regulation. The carrying amounts of plant, equipment and inventory measured and reported pursuant to SFAS 71 should not be adjusted, however, unless those assets are impaired, in which case the carrying amounts of those assets should be reduced to reflect that impairment. The net effect of the adjustments should be included in income for the period of discontinuance and classified as an extraordinary item.

Regulated Enterprises — Accounting for Abandonments and Disallowances of Plant Costs, SFAS 90, acknowledges that regulators may partially or totally disallow construction costs from rate base and/or cost of service recovery. SFAS 90 states that, when it becomes probable that

certain plant costs will be disallowed for rate-making purposes, and a reasonable estimate of the amount of the disallowance can be made, that amount should be recognized as a loss. Because of the increased cost of construction and lower demand than originally expected, US electric utilities abandoned plants under construction in the 1980s and, in many cases, regulators disallowed all or a portion of the costs. SFAS 90 requires that the cost of an asset should be removed from construction work in progress or utility plant in service when it becomes probable that the asset will be abandoned. To the extent that the cost of the asset will be recovered in future rates, a separate new asset is recorded. The value of the new asset is dependent upon the amount of return on investment, if any, that the regulator allows on the abandoned plant and the length of the recovery period. This amount is equivalent to the present value of the future revenues expected to be provided to recover the allowable cost of the abandoned plant. The recorded amount of the asset is adjusted as necessary if new information indicates that the estimates used to record the asset have changed and that adjustment is recognized in income as a loss or gain.

Regulated Enterprises — Accounting for Phase-in Plans, SFAS 92, noted that, at the time the Statement was issued in 1987, the cost of some plant construction had been significantly greater than in prior years. To moderate the initial rate increase when a newly completed plant went into service, some regulators had adopted phase-in plans. SFAS 92 applies to the construction of new plants. It defines a phase-in plan as any method of cost recovery for rate-making purposes that defers expense recognition beyond the period such costs would be charged to expense under GAAP applicable to enterprises in general. It essentially eliminated the recognition of phase-in plans for financial reporting purposes.

Some utilities enter into sale and leaseback transactions related to recently completed plants. SFAS 71 requires that the timing of expense recognition and the related amortization of a capital lease obligation and asset be modified to conform to the rate treatment of the lease payment. This generally results in a smaller amortization of the capital lease asset in the earlier years of a lease for a utility than would be recorded by a non-regulated enterprise. As a result, when a utility enters into a capital lease for a newly completed plant that is treated as an operating lease for rate-making purposes, the lease is considered a phase-in plan. For costs to be deferred under the plan, the SFAS 92 criteria must be met. Additionally, if the regulator has not allowed a return on the leased asset or the deferred amounts, this would be considered a disallowance and would be accounted for in accordance with the provisions of SFAS 90.

Accounting for Leases: Sale-Leaseback, Transactions Involving Real Estate, Sales-Type Leases of Real Estate, Definition of the Lease Term, and Initial Direct Costs of Direct Financing Leases, SFAS 98, effectively prohibits recognition of a sale in many sale-leaseback transactions. This is particularly true for nuclear power plants, in which the lessee / utility's continuing responsibility for nuclear decommissioning costs would prohibit sale recognition.

Accounting for Asset Retirement Obligations, SFAS 143, 3(13) applies to all entities and to

legal obligations associated with the retirement of a tangible long-lived asset. If a reasonable estimate can be made, an entity must recognize the fair value of a liability for an asset retirement obligation in the period in which the obligation is incurred. If a reasonable estimate of fair value cannot be made at that time, the liability is to be recognized as soon as a reasonable estimate of fair value can be made. An asset in the same amount will also be established and subsequently allocated to expense using a systematic and rational method over its useful life. SFAS 143 acknowledges that, for rate-regulated enterprises, there may be a difference in the timing of the recognition of period costs for financial reporting and for rate-making purposes, and that it may be necessary to recognize a regulatory asset or liability with respect to such timing difference.

Accounting for the Impairment or Disposal of Long-Lived Assets, SFAS 144, applies to all enterprises, including rate-regulated enterprises. In most cases, rate-regulated enterprises currently operating under traditional cost of service rate-making principles and, therefore, continuing to meet the applicability provisions of SFAS 71 would also comply with SFAS 144. Paragraph 7 of this Statement requires that "an impairment loss shall be recognized only if the carrying amount of a long-lived asset (asset group) is not recoverable [that is, it exceeds the sum of the undiscounted cash flows expected to result from its use and eventual disposition] and exceeds its fair value." Rate-regulated enterprises are therefore required to charge a regulatory asset to earnings when and if recovery is no longer probable.

In summary, a number of authoritative pronouncements issued by the FASB in the US provide detailed guidance to regulated enterprises. They recognize that the economic impact of rate regulation should be reported in the general purpose financial statements of such enterprises. To qualify as a rate-regulated enterprise in the US, such enterprises must meet the criteria set out in SFAS 71.

Standards and Practices in the United Kingdom

In the United Kingdom, there are no specific accounting standards or guidelines for reflecting the effects of rate regulation on financial reporting. In other words, rate-regulated enterprises are obliged to follow the same accounting principles as non-rate-regulated enterprises in preparing their general purpose financial statements. In addition, they must prepare regulatory statements according to the requirements of the relevant regulatory authority. Often, regulatory accounting requirements vary significantly from GAAP for preparing general purpose financial statements.

"How does the existence of industry regulators with price-setting powers affect accounting practices in the telecommunications, gas, airports, electricity and water industries in the United Kingdom?" "What is distinctive about accounting for regulated industries?" These and other pertinent questions were addressed in the 1994 UK report, *Accounting for Regulation in UK Utilities*. 4(14) The principal issues identified in the report included the impact of privatization, the relative lack of conventions and standards surrounding current cost accounting and the

special significance of accounts for price-setting purposes.

The report's principal research findings included the following:

- Regulatory accounting requirements vary significantly between the regulated industries.
- In addition to the regulatory or supplementary accounts prepared by the regulated companies, the regulators appear to keep their own sets of books which seem, at least in some instances, to unravel the effects of certain accounting choices made by the companies.
- Companies have used their discretion in accounting matters immediately before and after privatization to change some of their accounting policies and practices. In certain cases, particularly where there have been changes in asset lives and the basis for charging depreciation, the primary motivation was to bring policies more in line with those of other private sector companies.
- The difference in approach can be attributed to the different regulatory structures in the various industries, the different degree of media and public interest in them and the particular circumstances experienced by the industries during the period covered by the research.

The report recommended that:

- Regulatory standards should be issued by a body under the joint auspices of the Accounting Standards Board (ASB) and the industry regulators or by a body established by the regulators, in which case the standards should be approved by the ASB.
- There should be industry representation on the standard-setting body.
- Regulatory accounts should be brought within the aegis of the Financial Reporting Review Panel.

With regard to the lack of consistency in regulatory accounting, it has been observed that: 5(15)

- Although the regulator may be able to obtain consistent information from businesses by way of specific information requests, this source is not open to other stakeholders who must rely on published information. Informed comment on issues is difficult if regulated industries are not required to publish information in a consistent manner or if key values such as the regulatory asset base are not published at all.
- Accounting for regulation needs to be given a higher policy profile and be seen as an important part of the normal regulatory process, based on a comprehensive accounting framework. Accounting for regulation is important because regulation is designed to

achieve certain objectives. These regulatory objectives need to be clearly stated to, first, achieve a firm basis for public understanding and consent to the regulatory system as a whole and, second, to provide a framework for judging the performance of both regulators and regulated companies.

- Regulated entities in the UK support the preparation of Statements of Recommended Practice (SORPs) which may be developed for specialized industries, such as the regulated sector. The Accounting Standards Board (ASB) in the UK has recognized the requirement for accounting guidance for such specialized industries. For incidences where they have not developed such guidance, the SORP mechanism provides a means for an independent organization to develop specialized accounting guidance that carries a form of ASB endorsement. A SORP cannot override an accounting standard in the UK. The ASB has issued a policy for the development of SORPs, a fundamental feature being that the ASB will recognize bodies for the purpose of issuing SORPs. ASB-recognized bodies must, as a condition of recognition, agree to abide by the ASB's code of practice in producing SORPs. Furthermore, SORPs issued by ASB-recognized bodies will include a negative assurance statement from the ASB. As of January 2001, no SORPs had been issue for the various rate-regulated sectors in the UK.

In summary, there continues to be considerable interest and discussion in the UK about the need to develop a conceptual framework for accounting by regulated industries. It is viewed that, without a framework, the process of regulation will continue to be discretionary, rather than publicly accountable.

WHAT FURTHER GUIDANCE SHOULD BE PROVIDED?

By comparison to the United States, Canadian standards specifically address only a few issues. Consequently, the current reporting practices of Canadian rate-regulated enterprises may vary. Further, rate regulation is evolving rapidly (refer to the analysis in Chapter 2), and additional guidance is being sought on what constitutes GAAP for rate-regulated enterprises and how the *Handbook* requirements should be interpreted by them.

In this regard, the terms of reference for this project ask the Study Group to consider the following question: "Assuming that the Recommendations in the *Handbook* generally apply to rate-regulated enterprises, is differential treatment needed, due to their special circumstances?" The Study Group is of the opinion that rate regulation can influence rates that, combined with market conditions (demand and competition), can have an economic impact on current and future revenues and cash flows, thereby affecting assets (future economic benefits) and liabilities (future obligations). This is discussed further in Chapter 5. Accordingly, the potential economic impact of rate regulation warrants recognition in the general purpose financial statements of rate-regulated enterprises in accordance with GAAP.

In the Study Group's opinion, more guidance is needed, therefore, on the application of GAAP to the unique economic circumstances of rate-regulated enterprises. In this respect, the terms of reference call for the Study Group to suggest what type of guidance the CICA Accounting Standards Board should provide to meet the special needs of rate-regulated enterprises and the users of their general purpose financial statements.

In response to the terms of reference, the Study Group discussed various ways of providing such guidance, including:

- supplementary material to accompany applicable Sections of the *Handbook*;
- new accounting standard(s) with or without removing current differential treatment;
- one or more accounting guidelines; and/or
- making reference only to this CICA research report, when it is published.

The Study Group is of the opinion that general guidance on accounting for the effects of rate regulation should be issued as a new Section to the *Handbook*. The new Section would replace the material currently contained in the *Handbook*, including all of the differential treatments in the application of Accounting Recommendations that are identified in this chapter of the Research Report.

There are a number of reasons why a new *Handbook* Section is the preferred approach to proving guidance. First, accounting standards set out in a *Handbook* Section are at the top of the GAAP hierarchy and, therefore, are the most authoritative source for the exercise of professional judgment. Second, it is automatically subject to due process through exposure drafts for changes to accounting standards. Third, a conceptual framework is necessary to apply GAAP to rate-regulated activities. Fourth, such an approach is consistent with that taken in other situations, for example, insurance companies — a separate *Handbook* Section that deals only with the differential accounting treatments. Fifth, it would ensure that the AcSB considers consequential amendments whenever it is issuing or revising another standard.

In addition, following the traditional approach in developing accounting and reporting standards for rate-regulated enterprises could provide several benefits:

- It could help to minimize the possibility of Canada / US GAAP differences.
- It could facilitate comprehensive consideration, in one place, of issues facing rate-regulated enterprises.
- It could provide a means for disseminating detailed guidance, as needed, to financial statement preparers, auditors and users.

With respect to the nature of the guidance to be included in the new *Handbook* Section, the Study Group reviewed the financial statement concepts and general standards of financial

statement presentation that underlie the development of accounting standards in Canada. 6(16) It also compared the conceptual accounting frameworks of Canada and the United States (refer to Appendix A to this Research Report). Because of the similarities in the conceptual frameworks of Canada and the United States, accounting standards in the United States also provide a useful source of reference for developing Canadian guidance on financial reporting by rate-regulated enterprises.

CONCLUSION

In this chapter, the Study Group completes its review of the current financial reporting environment within which rate-regulated enterprises operate. In the Study Group's view, accounting pronouncements in Canada recognize that, in certain circumstances, rate regulation can affect what should be reported in the financial statements. In the United States, accounting pronouncements also recognize the effects of rate regulation. They establish a comprehensive framework for reporting the economic impact of rate regulation and provide detailed guidance to rate-regulated enterprises. In the United Kingdom, accounting pronouncements do not address the effects of rate regulation. Nonetheless, there is increasing interest in developing a conceptual framework for accounting by regulated industries. Accounting standards that were issued by the International Accounting Standards Committee (IASC) do not address the effects of rate regulation.

The Study Group is of the opinion that general guidance on accounting for the effects of rate regulation should be issued as a new Section in the *Handbook*. The new Section would replace the material currently contained in the *Handbook* relating to rate-regulated enterprises and would provide any additional guidance that is considered necessary.

With respect to the nature of the guidance to be included in the new *Handbook* Section, the Study Group is of the opinion that general principles should be established to provide a "framework" for applying GAAP to rate-regulated enterprises within the boundaries established by "Financial Statement Concepts," *Handbook* Section 1000. It is anticipated that the general principles will provide the basis for assessing, in a particular situation, whether rate regulation has an economic impact that should be reported and, if so, how it should be reported in general purpose financial statements.

Chapter 5

RATE REGULATION AND FINANCIAL REPORTING

The manner in which rate regulation is applied, not its mere existence, is the pervasive economic factor that supports any modification in the application of generally accepted

accounting principles.

INTRODUCTION

Chapter 2 of this Research Report reviewed the nature of rate regulation and how it operates in Canada. Chapter 4 noted that accounting pronouncements in Canada implicitly recognize that, in certain circumstances, rate regulation can affect what should be reported in the financial statements. In this regard, the Study Group proposed that a new Section be included in the *CICA Handbook – Accounting* to provide guidance on reporting the economic impact of rate regulation in financial statements.

The potential for rate regulation to create economic benefits and obligations raises two questions. Can regulatory authorities establish GAAP? Should the economic impact of rate regulation be reflected in the general purpose financial statements of rate-regulated enterprises and, if so, how? In this chapter, the Study Group addresses these and other interrelated matters.

RATE REGULATION AND ACCOUNTING PRINCIPLES

As previously noted in Chapter 1, the distinction between RAP (regulatory accounting principles used for rate-making purposes) and GAAP (generally accepted accounting principles set out in the *Handbook* for preparing general purpose financial statements) needs to be clarified. Accordingly, this chapter begins with brief explanations of RAP and GAAP and then considers whether regulatory authorities can establish GAAP.

Regulatory Accounting Principles

Regulatory authorities often prescribe the accounting principles and procedures that a regulated enterprise must follow for regulatory purposes. In some cases, they develop a detailed uniform system of accounts, while in other cases they make specific rulings dealing with specific costs as the need arises. These accounting principles and procedures are developed to support the calculation of allowed rates and to assist the regulatory authority in reviewing the periodic data submitted by the regulated enterprises. 1(17)

In most cases, the majority of the accounting principles and procedures prescribed by regulatory authorities are consistent with GAAP. The objective of regulatory reports differs, however, from the objective of general purpose financial statements. The key difference is that the regulatory reports are usually intended to support rate regulation.

For rate-making purposes, a regulatory agency may exclude certain of the regulated enterprise's costs. Excluded items typically arise from activities that are not subject to regulation or from projects or activities that the agency does not believe should be recoverable from customers through the rates they pay. On the other hand, a regulatory agency may include certain types of costs, but in different periods than they would be reflected in the general purpose financial

statements of non-regulated businesses. In addition, as discussed in Chapter 2, a regulatory agency may include "return on equity" as part of "costs" for rate-making purposes.

Generally Accepted Accounting Principles (GAAP) 2(18)

GAAP is the term used to describe the basis on which financial statements are normally prepared. GAAP encompasses the conventions, rules and procedures necessary to define accepted accounting practices at a particular time. Pronouncements of the Accounting Standards Board, as set out in the *Handbook*, are the primary source of GAAP. When a matter is not covered by a Board pronouncement, the most relevant "other source of GAAP" referred to in the *Handbook* would be consulted.

Unless the basis of accounting used to prepare general purpose financial statements falls within the range of acceptable choices set out in the *Handbook*, it is unlikely to constitute GAAP.

CAN REGULATORY AUTHORITIES ESTABLISH GAAP?

As noted in Chapter 1, this research project is concerned solely with the effects of rate making on the application of GAAP to general purpose financial statements. In this regard, a key issue raised in the terms of reference is: "Can accounting prescribed by rate-regulating authorities be considered, in and of itself, GAAP for rate-regulated enterprises and, if so, to what extent?" In other words, can regulatory accounting principles (RAP) be considered "generally accepted" for purposes of financial reporting by rate-regulated enterprises?

The Study Group acknowledges that, for regulatory reporting purposes, the regulators have the authority to prescribe accounting principles for the enterprises they regulate. As is clearly indicated in the *Handbook*, however, such principles do not constitute GAAP. They are intended to support the calculation of allowed rates and to assist the regulatory authority in reviewing the periodic data submitted by the regulated enterprises. They are not intended to meet the objectives of general purpose financial statements.

Accounting for the Effects of Certain Types of Regulation, SFAS 71, paragraph 52, indicates that respondents to a Discussion Memorandum on this subject expressed the view that, "unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the generally accepted accounting principles applicable to business enterprises in general. The mere issuance of an accounting order not tied to rate treatment does not change an enterprise's economic resources or obligations. In other words, the economic effect of regulatory decisions — not the mere existence of regulation — is the pervasive factor that determines the application of generally accepted accounting principles." Paragraph 54 of that SFAS indicates that "the Board concluded that regulatory-prescribed accounting should not be generally accepted *per se*, but rather that the Board should specify how generally accepted accounting principles apply in the regulatory

environment."

It has been argued that it would be onerous to require a regulated enterprise to maintain records necessary to prepare financial reports on two bases: one for the regulatory authority and another for the public. In the Study Group's experience, however, differences that exist currently between regulatory accounting principles and GAAP usually are not extensive in number, and adjustments to reconcile any differences should be simple to determine and apply.

In the Study Group's view, regulatory authorities cannot establish GAAP. Under statutory authority, the standards set out in the *Handbook* constitute GAAP. Although the actions of the regulator may affect rates, and the resulting economic impact may affect what should be reported in accordance with GAAP, this does not give regulatory authorities the authority to determine what should be considered in and of itself GAAP for financial reporting purposes by rate-regulated enterprises.

SHOULD THE IMPACT OF RATE REGULATION BE REPORTED?

There are differing viewpoints on whether the impact of rate regulation should be reported.

Impact of Rate Regulation should not be Reported

As noted in Chapter 3, there is a viewpoint that reporting the impact of rate regulation distorts the financial statements and may result in artificial income smoothing. There is also a concern that, in some situations, rate regulators are effectively transferring wealth to existing customers from future customers who are thereby required to absorb, through increased rates, costs incurred in a previous period. For example, rate regulators have, for rate-setting purposes, often prescribed that income taxes should be accounted for on the taxes payable basis. By failing to recognize a future liability for taxable temporary differences, as defined in "Income Taxes," *Handbook* Section 3465, paragraph .09, net income for the related periods is, in the opinion of those who express this concern, not properly reported. While rate regulators unquestionably have the authority to take such action for the purposes of setting rates, it should not be reflected in general purpose financial statements. Employee future benefits is another instance where, for rate-setting purposes, many regulators have required such benefits to be accounted for on a pay-as-you-go basis, whereas accounting standards require them to be accounted for in the period that gives rise to the benefit.

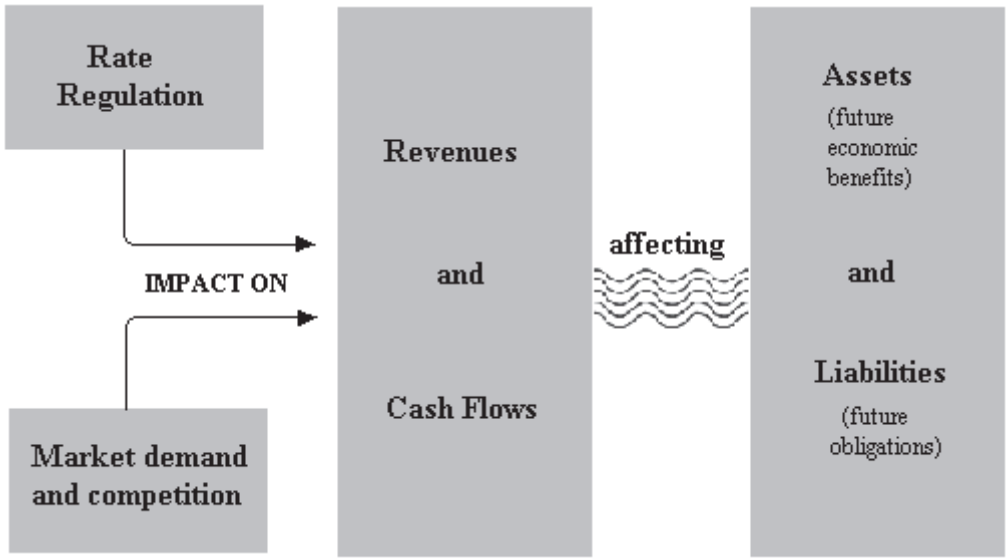
Impact of Rate Regulation should be Reported

The Study Group maintains, however, that, by restricting prices, rate regulation can affect the amount and timing of a rate-regulated enterprise's revenues. Within a period, the economic impact may be related to both current rates and future rates.

Exhibit 5.1 shows that rate regulation, when combined with market conditions (market demand

and competition), can have an economic impact on the revenues and cash flows of an enterprise, thereby affecting assets (future economic benefits) and liabilities (future obligations).

Exhibit 5.1



By changing future rates as a result of transactions or events in the current (or prior) period, rate regulation can create economic benefits and obligations. The benefits would be in the form of higher allowed rates and, therefore, higher revenues and cash flows. The obligations would be in the form of lower allowed rates and, therefore, lower revenues and cash flows. For example:

- A regulator employing cost-of-service regulation may decide that a cost that would normally be expensed in the current period will be deferred and included in the calculation of a future revenue requirement. Therefore, as a result of incurring the cost, the enterprise can expect to have an increase in future rates and an increase in future revenues and cash flows approximately equal to the amount of the deferred cost.
- A regulator may require that an enterprise share with its customers any earnings above a specified threshold. The sharing would be accomplished through a reduction in future rates. Therefore, as a result of having earnings above the threshold in the current period, the enterprise will be required to reduce rates and, therefore, cash flow, in a future period or periods.

A regulator cannot, however, eliminate a liability that it did not create, such as a liability to an enterprise's bondholders.

For rate regulation to have an economic impact, it must be effective, that is, it must restrict rates from what they would be in the absence of rate regulation.

- In the case of an economic benefit, future allowed rates sufficient to provide additional revenue equal to the benefit must be chargeable and collectible from customers. Otherwise, there is no economic benefit. Where market conditions or other factors restrict the rates that an enterprise can charge and collect from customers, the economic benefit would be limited to the additional revenues collectible from customers.
- In the case of an economic obligation, future allowed rates without the reduction to accommodate the obligation must be chargeable and collectible from customers. Where this condition is not met, a reduction in future allowed rates will not reduce revenues and, consequently, will have no economic impact. Therefore, from an economic perspective, where market conditions or other factors restrict the ability of an enterprise to charge and collect rates from customers, the economic obligation would be limited to the reduction in revenues collectible from customers.

Consequently, in the Study Group's opinion, there is no distortion or artificial smoothing where the economic benefits and obligations meet the definition of a financial statement element. On the contrary, a failure to report the economic benefits and obligations would distort the financial statements, at least in those cases where the recognition criteria are met.

Financial Statement Elements

"Financial Statement Concepts," *Handbook* Section 1000, paragraph .25, states that the "elements of financial statements are the basic categories of items portrayed therein in order to meet the objective of financial statements." 3(19) In defining the objective of financial statements, paragraph 1000.15, states that they provide information about:

- an entity's economic resources, obligations and equity / net assets;
- changes in an entity's economic resources, obligations and equity / net assets; and
- the economic performance of the entity.

Paragraph 1000.25 states that "there are two types of elements: those that describe the economic resources, obligations and equity / net assets at a point in time, and those that describe changes in economic resources, obligations and equity / net assets over a period of time. Notes to the financial statements ... are not considered to be an element." *Assets* and *liabilities*, *equity*, *income* and *revenues*, *expenses*, *gains* and *losses*, and *performance* (profit or *earnings*) are identified as the elements of financial statements.

Elements at a point in time — assets and liabilities

Paragraph 1000.29, defines *assets* as "economic resources controlled by an entity as a result of past transactions or events and from which future economic benefits may be obtained." In

situations where a regulator allows an amount to be recovered through an increase in future rates as a result of a past transaction or event, the expectation of receiving that amount will meet the definition of an asset. The increase in rates represents an economic benefit in the form of higher revenues and cash flows. For example, if a regulator permits a cost that would normally be expensed in the period to be recovered in future rates, the rate-regulated enterprise will have an asset once it has incurred the cost. This is based on the assumption that future rates will be increased to provide additional revenues in an amount equal to the asset and that those higher rates will be recoverable from customers.

Paragraph 1000.32 defines *liabilities* as "obligations of an entity arising from past transactions or events, the settlement of which may result in the transfer or use of assets, provision of services or other yielding of economic benefits in the future." In situations where a regulator requires a decrease in future rates as a result of a past transaction or event, the resulting amount will meet the definition of a liability. The reduction in revenue represents the yielding of an economic benefit. For example, if a regulator requires that a portion of excess income be returned to customers through a decrease in future rates, the rate-regulated enterprise would have a liability once the excess income is earned. This is based on the assumption that future rates will be decreased to reduce revenues by an amount equal to the liability and that the rates (without the reduction) would be recoverable from customers.

Elements over a period of time — revenues, expenses, gains and losses

Section 1000 defines revenues, expenses, gains and losses as follows:

> *Revenues* are increases in economic resources, either by way of inflows or enhancements of assets or reductions of liabilities, resulting from the ordinary activities of an entity. Revenues of entities normally arise from the sale of goods, the rendering of services or the use by others of entity resources yielding rent, interest, royalties or dividends. (paragraph 1000.37)
>
> *Expenses* are decreases in economic resources, either by way of outflows or reductions of assets or incurrences of liabilities, resulting from an entity's ordinary revenue generating or service delivery activities. (paragraph 1000.38)
>
> *Gains* are increases in equity / net assets from peripheral or incidental transactions and events affecting an entity and from all other transactions, events and circumstances affecting the entity except those that result from revenues or equity / net assets contributions. (paragraph 1000.39)
>
> *Losses* are decreases in equity / net assets from peripheral or incidental

> transactions and events affecting an entity and from all other transactions, events and circumstances affecting the entity except those that result from expenses or distributions of equity / net assets. (paragraph 1000.40)

The Study Group is of the opinion that, if an economic benefit or obligation resulting from rate regulation meets the definition of an asset or liability, the **change** in the economic benefit or obligation would meet the definition of one of the elements that describes changes in economic resources, obligations and equity / net assets over a period of time. In this regard, revenues, expenses, gains and losses reflect the changes in the assets and liabilities of a rate-regulated enterprise, other than those that result from equity or net asset contributions. Furthermore, if an economic resource or obligation meets the definition of a financial statement element, the economic impact should be reported to meet the above-noted objective of financial statements.

Recognition Criteria

Paragraph 1000.41 states that "recognition is the process of including an item in the financial statements of an entity. Recognition consists of the addition of the amount involved into statement totals together with a narrative description of the item ... in a statement." It does not mean disclosure in the notes to the financial statements.

According to paragraph 1000.44, two criteria must be met before a financial statement element is recognized:

(a) the item has an appropriate basis of measurement and a reasonable estimate can be made of the amount involved; and

(b) for items involving obtaining or giving up future economic benefits, it is probable that such benefits will be obtained or given up.

The economic benefits and obligations created by rate regulation will, in most cases, meet the first criterion. Regulatory authorities generally provide clear direction as to the amount of an economic benefit or obligation, or the formula for determining the amount. For example, where recovery of a cost is deferred to a future period, the regulator will often state the specific amount that is being deferred.

In most cases, the second criterion will also be met. Regulatory authorities are usually consistent in their treatment of a rate-regulated enterprise. Generally, the decisions and past actions of a regulatory authority are a good indicator of what it will allow in the future. For example, if a regulator states that a cost will be deferred, it is highly probable that it will allow an increase in future rates to provide sufficient additional revenues to cover that cost. In addition, where a regulator allows an increase in rates to provide additional revenues, it is likely that the enterprise will be able to charge and collect those rates from customers. Similarly, where a regulator

requires a decrease in rates to reduce revenues by a given amount, it is likely that the enterprise will have a reduction in revenues approximately equal to that amount. 4(20)

As explained in Chapter 2, what a rate-regulated enterprise is allowed to collect from customers (allowed revenues) is usually very close to what it actually collects (actual revenues). Because rate regulation is imposed to restrict rates where a rate-regulated enterprise has excessive market power, the enterprise can usually increase rates up to the amount allowed by the regulator. This assumption would not be valid where market conditions require rates below what the regulator allows. Where market conditions can effectively restrict rates, enterprises may be freed from rate regulation in those markets; if maintained, rate regulation would be ineffective.

In summary, the Study Group is of the opinion that the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element as set out in *Handbook* Section 1000. Where they also meet the recognition criteria set out in that Section, those elements should be reported in the general purpose financial statements of a rate-regulated enterprise as assets, liabilities, revenues, expenses, gains and losses.

As previously noted, the *Handbook* specifies two criteria that must be met before an element is recognized in the financial statements. Nevertheless, some would argue that economic benefits and obligations created by rate regulation should not be recognized in general purpose financial statements unless there is also a contractual commitment associated with them.

According to paragraph 1000.31, it is not essential that access to a benefit be legally enforceable for a resource to be an asset, provided an entity can control the benefit through other means. In the Study Group's view, an enterprise will have adequate control over the use of an economic benefit where it is probable that the regulatory authority will allow an increase in future rates sufficient to provide additional revenue at least equal to the benefit and it is probable that those rates will be recoverable from customers.

In discussing the characteristics of a liability, paragraph 1000.34 states that:

> Liabilities do not have to be legally enforceable provided that they otherwise meet the definition of liabilities; they can be based on equitable or constructive obligations. ... A constructive obligation is one that can be inferred from the facts in a particular situation as opposed to a contractually based obligation. 5(21)

The Study Group is of the opinion that a constructive obligation will exist where it is probable that a regulatory authority will require a reduction in future rates so as to reduce revenues by an amount equal to the obligation and it is probable that, without the reduction, rates would be recoverable from customers.

The Study Group also notes that contractual commitments are not required in recognizing other

assets and liabilities reported in the financial statements. For example:

- The *Handbook* states that the value of an item of property, plant and equipment should be written down by the amount that its carrying value exceeds its net recoverable amount (paragraph 3061.38). In most cases, the net recoverable amount will be represented by future revenues, yet there is no requirement that there be a contractual commitment associated with those future revenues, or even an identification of the customers who will provide those revenues.
- The *Handbook* requires recognition of a future tax liability ("Income Taxes" *Handbook* Section 3465, paragraph .22) even though there is no legal liability to pay the taxes at the time they are recognized. The liability is based on an expectation of what the tax legislation will be at some future date.

CONCLUSION

In this chapter, the Study Group examines the relationship between rate regulation and financial reporting. It considers whether regulatory authorities can establish GAAP for rate-regulated enterprises and whether the effects of rate regulation should be reported in the general purpose financial statements of rate-regulated enterprises.

The Study Group is of the opinion that regulatory authorities cannot establish GAAP. Although the actions of the regulator may affect rates, and the resulting economic impact may affect what should be reported in accordance with GAAP, this does not give them the right to determine how that economic impact should be reported in general purpose financial statements.

Regardless of the rate-setting process or methodology used, it is the opinion of the Study Group that, from an economic perspective, rate regulation can have a direct bearing on the economic resources, obligations and performance of a rate-regulated enterprise. It can influence rates that, combined with market conditions, can have an economic impact on current and future revenues and cash flows, thereby affecting future economic benefits and obligations.

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in *Handbook* Section 1000. Where they also meet the recognition criteria set out in that Section, those elements should be reported in the general purpose financial statements of a rate-regulated enterprise as assets, liabilities, revenues, expenses, gains and losses.

Chapter 6

DEFINING A RATE-REGULATED ENTERPRISE

FOR FINANCIAL REPORTING PURPOSES

To qualify as a "rate-regulated enterprise" for financial reporting purposes, an organization must be subject to a rate-setting authority, the rates must be based on the costs of service and the rates must be collectible from customers.

INTRODUCTION

In Chapter 5, the Study Group concluded that the effects of rate regulation should be reported in the financial statements of a rate-regulated enterprise. But what constitutes a "rate-regulated enterprise for financial reporting purposes" (hereafter referred to as just "rate-regulated enterprise")? As part of the terms of reference for this research project, the Study Group was asked to consider the following:

- Is the definition in the *CICA Handbook – Accounting* ("Income Taxes," *Handbook* Section 3465 paragraph .09) sufficiently clear, or how should it be amended?
- What criteria must be met for an enterprise to be considered rate regulated?
- In setting accounting standards, should the Accounting Standards Board focus on rate-regulated enterprises *per se*, or on rate-regulated activities? 1(22)

In addressing these questions, the Study Group started with the existing definition of a rate-regulated enterprise in the *Handbook*. Where this definition is met, the *Handbook* currently provides for limited differential treatment in the application of accounting standards. Because of the similarities in both the conceptual frameworks and the economic environments of Canada and the United States, the Study Group concluded that accounting standards in the US provide a useful source of reference for developing Canadian guidance on financial reporting by rate-regulated enterprises. 2(23) Therefore, the Study Group also took into consideration what constitutes a rate-regulated enterprise under US GAAP and whether the existing definitions in Canadian and US accounting standards should be considered as synonymous.

It is important to note that meeting the definition of a rate-regulated enterprise is just the first step in regarding whether an enterprise is entitled to apply differential treatment in the application of accounting standards for recognizing the economic effects of rate regulation. Under the approach proposed by the Study Group, a rate-regulated enterprise must still meet the conditions embodied in the General Principles set out in Chapter 7 of this Research Report for recognizing assets, liabilities and the change in assets and liabilities as a result of rate regulation.

WHAT IS A RATE-REGULATED ENTERPRISE?

The *Handbook* and *Accounting for the Effects of Certain Types of Regulation*, SFAS 71, provide guidance, in Canada and the US respectively, for the preparation of general purpose

financial statements by rate-regulated enterprises. As a first step in applying that guidance, an enterprise has to meet established criteria.

Meeting the criteria, however, does not necessarily mean that the rate-making process will have an economic impact that should be reported in the enterprise's financial statements. According to the *Handbook* (paragraph 3465.09), a rate-regulated enterprise is an enterprise that meets all of the following criteria [emphasis added]:

- The rates for regulated services or products provided to customers are established by or are **subject to approval by a regulator or a governing body** empowered by statute or contract to establish rates to be charged for services or products. (Criterion 1)
- The regulated rates are **designed to recover the cost** of providing the services or products. (Criterion 2)
- It is reasonable to assume that rates set at levels that will recover the cost **can be charged to and collected from customers** in view of the demand for the services or products and the level of direct and indirect competition. This criterion requires consideration of expected changes in levels of demand or competition during the recovery period for amounts recorded as recoverable under the rate formula. (Criterion 3)

Similarly, SFAS 71 states, in paragraph 5, that it applies to general purpose external financial statements of an enterprise that has regulated operations that meet all of the following criteria [emphasis added]:

- The enterprise's rates for regulated services or products provided to its customers are established by or are **subject to approval by an independent, third-party regulator or by its own governing board** empowered by statute or contract to establish rates that bind customers. (Criterion 1)
- The regulated rates are **designed to recover** the specific enterprise's **costs** of providing the regulated services or products. (Criterion 2)
- In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's costs **can be charged to and collected from customers**. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. (Criterion 3)

Under both definitions, an enterprise must meet all three criteria (and continue to meet them) to qualify as a rate-regulated enterprise for financial reporting purposes. The added emphasis highlights that an enterprise would qualify as a rate-regulated enterprise only if all three conditions are met, namely, it is subject to a rate-setting authority; the objective of rate

regulation is to recover the costs of providing services; **and** the rates are recoverable from customers. At any point in time, if an enterprise fails to meet all three criteria, it would no longer apply the accounting recommendations applicable to rate-regulated enterprises. 3(24)

The following analysis explains, compares and discusses the application of the above-noted criteria to private sector enterprises (Chapter 8 considers the application of the criteria to public sector enterprises). On the basis of that analysis, it is the opinion of the Study Group that the *Handbook* adequately sets out the criteria that an enterprise must meet to be considered rate regulated. Although the specific wording may differ somewhat, the definition in SFAS 71 should be accepted as synonymous with the definition in the *Handbook*. To eliminate any potential differences with US accounting standards, the Study Group concluded that, in its opinion, the *Handbook* definition should be amended to conform to the wording used in SFAS 71.

Rate-setting Authority

As noted in Chapter 2, rate regulation is the restriction in the setting of prices that can be charged to customers for services or products. It is possible, however, that an enterprise may decide to impose restrictions on its own rates. Such self-regulation would raise questions about whether the restrictions would remain in force and, therefore, whether the rate-making process will have an economic impact. Accordingly, the Study Group is of the opinion that the definition of a rate-regulated enterprise should be limited to enterprises where rate regulation is imposed on them by an outside party, or in those rare situations where a governing body is empowered by statute or contract to establish the enterprise's rates. An enterprise whose management unilaterally imposes restrictions on its own rates, without being required to do so by contract or statute, would, therefore, not qualify.

With respect to specific wording differences between Canada and the US, a question was raised about the need to include the words "independent" and "third-party" as qualifiers of the term "regulator." It was noted that independence increases the assurance that economic benefits and obligations created by rate regulation actually exist.

It is the opinion of the Study Group that, for the most part, private sector rate-regulated enterprises in Canada are subject to rate regulation by an independent regulatory authority. In other words, there is a distinct and separate relationship between the rate regulator and the owners of a rate-regulated enterprise. In the private sector, there are a few situations where the governing body of the rate-regulated enterprise has been given the authority by statute or contract to establish rates to be charged for services or products. 4(25)

It must be noted, however, that, to qualify as a rate-regulated enterprise, an enterprise would also have to meet the second and third criteria of the definitions. 5(26) Issues relating to these two criteria are considered in the following paragraphs.

Cost-based Rates

At first glance, the above-noted definitions of a rate-regulated enterprise would seem to cover various types of rate regulation. 6(27) This is, however, not the case. The type of regulation covered by the *Handbook* and SFAS 71 requires that rates be designed to recover the expected costs of providing regulated services or products. To meet this criterion, it would appear that rates *must* be cost based (in light of the changing regulatory environment, this issue is further examined in a later section of this chapter).

With cost-based rates, there is a direct link between cost and revenues (assuming rates are chargeable and collectible from customers). The allowed rates must be set so that, based on forecasted volumes and costs as determined in the regulatory process, revenues will equal costs, including a fair return on investment. 7(28)

An alternative view is that the cost-based requirement should be removed from the definition of a rate-regulated enterprise. According to this view, the impact of rate regulation should be reflected in general purpose financial statements if the conditions set out in *Handbook* Section 1000 are met. In particular, it should be sufficient that rate regulation produces economic benefits or obligations as a result of past transactions or events and that the related amounts meet the recognition criteria, regardless of the regulatory methodology employed. At present, there is nothing in Section 1000 that requires rates to be cost based. Of course, consistent with historical cost accounting, the recognition of any asset would be limited to the cost of acquiring the asset.

As an example, in a case where rates are not cost based, a regulatory authority may allow an increase in rates over a three-year period if the rate-regulated enterprise undertakes a customer education program in the current period. The expected increase in future revenues associated with the rate increase would represent an economic benefit resulting from a past transaction. The enterprise would, therefore, record an asset once it completes the education program and becomes entitled to the increase in future revenues. The asset would be recorded at the lesser of the expected increase in future revenues and the cost of the education program incurred by the rate-regulated enterprise to acquire the additional future revenues. The asset would be amortized over the period in which the associated additional revenues are earned.

Another example is where a rate-regulated enterprise fails to meet certain quality of service standards and the regulatory authority imposes a penalty in the form of a reduction in future rates. Regardless of the method of rate regulation (cost of service, benchmark or any other method), as long as it is reasonable that there will be a decrease in future revenues as a result of the failure to meet the standards in the current or past period, the regulated enterprise would record a liability. This is because the reduction in future rates would represent a yielding of future economic benefits that the regulated enterprise cannot avoid and that resulted from a past event; that is, failure to meet the quality of service standards. 8(29)

The Study Group is of the opinion that, to meet the definition of a rate-regulated enterprise,

rates should cover the costs of providing services, including a fair return. This requirement ensures a link between rates and costs. The link between rates and costs is important because it provides the basis for deferral accounting and differential treatment in the application of accounting standards. In addition:

- It establishes a point of reference, inherited from the cost-based regulation history of rate-regulated enterprises.
- It follows the economics of cost-of-service rate regulation whereby (1) revenues = costs + return and (2) to the extent certain actual costs differ from forecast costs, they are deferred if allowed by the regulator.
- Under the matching principle, there must be a direct cause and effect relationship between revenues and costs.
- Without this link, it may not be possible to establish that an economic benefit or obligation has been created as a result of a past transaction or event, or to measure the amount of that benefit or obligation.
- It is consistent with current practice and with US accounting standards.

After considerable debate, the Study Group decided to take a broad perspective on what constitutes cost-based rates because the traditional cost-of-service form of regulation is increasingly being replaced by performance-based methods of regulation. With cost-of-service regulation, rates are set on the basis of expected costs, but are reviewed on a frequent basis, so that actual revenues are usually very close to the expected cost of service on which the rates are based. With the new methods of regulation, the link between the regulated enterprise's allowed rates and its specific costs may not be as direct. Many of these new methods, however, are in several respects fundamentally cost based.

Price-cap regulation is one of the new forms of performance-based regulation (rate-setting methodologies are discussed in Chapter 2). Under this approach, rates are set for a period of three to six years and allowed to increase each year on the basis of a formula that is independent of the regulated enterprise's actual costs. In most cases, there is still an indirect link between costs and rates. For example, initial rates are often based on the cost of service (which includes a fair return). The price-cap formula is usually intended to provide the regulated enterprise with a reasonable opportunity to cover its cost of service. Every three to six years, there is a review of the pricing formula, which often includes an evaluation of rates against the cost of service. The formula may allow for the recovery of costs not covered by the basic formula. For example, where a regulated enterprise incurs unusual costs outside the control of management, it may seek approval from the regulatory authority to recover the costs in future rates.

The Study Group is of the opinion that the definition of a rate-regulated enterprise should encompass enterprises whose regulated rates are set to reflect the reasonably expected costs of

providing regulated service. It believes that most types of rate regulation would meet this criterion, including certain types of performance-based and incentive-based regulation. As a result, in its opinion, the definition should not be limited to any particular methodology for approval or fixing of rates. The only requirement should be that the methodology adopted by the regulator produces allowed rates so that, based on expected volumes and costs as recognized in the regulatory process, revenues will equal costs, including a fair return on investment.

Recoverability of Costs of Providing Service

The third criterion in the above-noted definitions states that it must be reasonable to assume that rates set to recover the costs of providing service can be charged to and collected from customers. This criterion requires consideration of expected changes in levels of demand or competition during the recovery period.

Where market conditions do not permit an enterprise to charge and collect the rates allowed under regulation, rate regulation will not be effective in restricting the setting of rates. The Study Group is of the opinion that, in such situations, rate regulation will not have an economic impact because it will not affect future revenues and cash flows. Whether an enterprise is subject to effective regulation may change over time because of changing levels of demand and competition. For example, in the case of long-distance telephone services, competition has resulted in prices that are lower than the rates allowed by regulatory authorities. As a result, regulated rates may no longer be collectible from customers. Accordingly, many telecommunications enterprises (such as Bell Canada) now fail to meet the definition of a rate-regulated enterprise and, for financial reporting purposes, they have discontinued accounting for the effects of rate regulation. Assessing the recoverability of rates requires judgment because many of the factors that determine whether regulation is effective change gradually over time as a result of deregulation initiatives, regulatory philosophy, competition and customer demand.

In the Study Group's view, to create an economic benefit, rate regulation must result in an increase in the future revenues that will be collected from customers; to create an economic obligation, rate regulation must result in a decrease in future revenues collected from customers. Therefore, if rate regulation is to affect what is reported in financial statements, it must be likely that rates designed to recover the cost of providing regulated services or products can be charged to and collected from customers.

SHOULD THE FOCUS BE ON ENTERPRISES OR OPERATIONS?

In applying the definition of a rate-regulated enterprise, questions may arise as to whether the three criteria must apply to the entire organization or to just a portion of its operations. The Study Group observed that the existing definitions of a rate-regulated enterprise have not required that the entire enterprise be subject to rate regulation; an explicit statement, however,

would be helpful. In the United States, for example, SFAS 71 specifically states, in paragraph 6, that: "If some of an enterprise's operations are regulated and meet the criteria of paragraph 5, this Statement shall be applied to only that portion of the enterprise's operations."

The Study Group also observed that, with mergers, acquisitions and industry restructuring, part of an enterprise's operations may be opened to competition and deregulated. As a result, it is becoming increasingly common for only parts of a business to be subject to rate regulation or for different parts of a business to be subject to different forms of rate regulation. Even where an entire business is subject to the same rate regulation, it may face different market conditions so that the third criterion in the above-noted definitions will be met for only a portion of its operation.

In the Study Group's view, for rate regulation to have an impact on what should be reported in accordance with GAAP, it is only necessary that a subset of the enterprise's operations be subject to rate regulation. If some of an enterprise's activities are rate regulated, the financial statements should reflect the economic impact on only that portion of operations.

FULL OR PARTIAL COST-BASED RATES?

In applying the second criterion of the definition of a rate-regulated enterprise, situations may arise where only a portion of an enterprise's rates are cost based, that is, a portion of allowed rates is based on certain specific costs of providing service, while the remainder is derived from some other basis.

This issue would become significant if a tight definition of cost-based regulation were employed that excluded performance-based regulation. For example, a gas distribution utility may be regulated under a price-cap formula that includes a deferral of gas price variances. Differences in the cost of gas from a predetermined level are deferred and collected, or rebated, to customers through an adjustment to future rates. Other than the deferral account, it may be deemed that rates are not cost based.

According to one view, to the extent that a portion of the rates is cost based, there could be an economic impact in that future rates could be affected by past transactions or events resulting in future economic benefits or obligations. Also, there would be a direct link between certain specific costs and future rates. Therefore, an enterprise would be deemed to have met the second criterion if a portion of its rates is cost based. Of course, it would recognize regulatory assets and liabilities only where they relate to the cost-based portion of the rates.

An alternative view is that the full amount of the rates must be cost based for an enterprise to meet the definition of a rate-regulated enterprise and recognize any impacts of rate regulation.

The Study Group did not reach a conclusion on this issue.

CONCLUSION

The *Handbook* establishes the criteria that an enterprise must meet to be considered rate regulated for financial reporting purposes. As part of the terms of reference for this research project, the Study Group was asked to reconsider what constitutes a rate-regulated enterprise and whether the definition in *Handbook* should be amended. In other words: "What criteria must be met for an enterprise to be considered rate regulated?" and "Should the focus be on rate-regulated enterprises, *per se*, or on rate-regulated activities?"

In addressing these questions, the Study Group took into consideration the guidance provided in US accounting standards. After considerable discussion and debate, the Study Group concluded that the criteria for qualifying as a rate-regulated enterprise in Canada are essentially the same as those in the US. To eliminate minor differences with US accounting standards, the Study Group concluded that the *Handbook* definition should be amended to conform to the wording used in SFAS 71.

The Study Group also concluded that, for rate regulation to have an impact on what should be reported in accordance with GAAP, it is not a prerequisite for the entire operations of the enterprise to be subject to rate regulation; it is only necessary that a subset of the enterprise's operations be subject to rate regulation. Consequently, where only some of an enterprise's operations are rate regulated, the financial statements would reflect the economic impact of rate regulation on only that portion of operations. This approach is consistent with current practice and with US GAAP.

Chapter 7

GENERAL PRINCIPLES FOR ACCOUNTING AND FINANCIAL REPORTING

General principles provide useful guidance for assessing, in a particular situation, whether rate regulation has an economic impact that should be reported and, if so, how it should be reported in general purpose financial statements.

INTRODUCTION

In Chapter 4, the Study Group proposed that a new Section should be included in the *CICA Handbook – Accounting* to provide guidance on reporting the economic impact of rate regulation in the financial statements. This chapter focuses on general principles that would apply to situations where an enterprise recognizes the impact of rate regulation, and provides the basis on which accounting standards on specific issues, such as those outlined in Chapter 9, should be developed. It is important to establish general principles because it is difficult to

envisage every situation where rate regulation can have an impact on what should be reported in accordance with GAAP or to prescribe the accounting for a specific issue that will be appropriate for all regulatory methodologies in all situations. Also, to cover every situation would require a large number of specific principles that would either be essentially the same or conceptually inconsistent.

In this chapter, the Study Group proposes general principles that specify which enterprises should report the economic impact of rate regulation in their general purpose financial statements, and when assets and liabilities that result from rate regulation, and any changes in them, should be recognized in those financial statements. These principles flow, for the most part, from the Study Group's conclusions in the previous chapters of this Research Report. A question arises, however, about what information should be disclosed in the notes to the financial statements. In response, the Study Group proposes general principles for presentation and disclosure, and provides guidance for applying those principles.

The following provides a four-step framework for applying GAAP to rate-regulated enterprises using the general principles proposed in this chapter:

1. Determine whether the enterprise is rate regulated for financial reporting purposes.
2. Determine the conditions under which assets and liabilities that result from rate regulation should be recognized in the financial statements.
3. Determine the conditions under which changes in the assets and liabilities that result from rate regulation should be recognized in the financial statements.
4. Determine what information should be disclosed in the notes to the financial statements.

IS THE ENTERPRISE RATE REGULATED?

In Chapter 6, the Study Group concluded that the criteria for qualifying as a rate-regulated enterprise for financial reporting purposes are essentially the same in Canada and the US. Accordingly, the *Handbook* definition should be amended to conform to the wording used in *Accounting for the Effects of Certain Types of Regulation*, SFAS 71.

The following general application principles emanate from the analysis in Chapter 6:

Application

1. The economic impact of rate regulation should be reflected in the general purpose financial statements of an enterprise that has regulated operations that meet all of the following criteria:
    - The enterprise's rates for regulated services or products provided to its customers are established by, or are subject to approval by, an independent, third-party

regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

- The regulated rates are designed to recover the specific enterprise's costs of providing the regulated services or products, including a fair return on investment.
- In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

2. If some of an enterprise's operations are regulated and meet the above criteria, the financial statements should reflect the economic impact of rate regulation on only that portion of operations.
3. When an enterprise that has regulated operations no longer meets the criteria set out in Principle 1, it should discontinue reflecting the economic impact of rate regulation and reflect the effects of discontinuation in its general purpose financial statements.

WHEN SHOULD REGULATORY ASSETS AND LIABILITIES BE RECOGNIZED?

In Chapter 5, the Study Group concluded that the economic benefits and obligations created by rate regulation should be reported in the financial statements as assets and liabilities provided that they meet the recognition criteria set out in "Financial Statement Concepts." *Handbook* Section 1000.

Recognition (as defined in Chapter 5) is the process of incorporating an item in the financial statements of an entity. As noted in the *Handbook*, it consists of the amount and a narrative description of the item, with the amount being included in a financial statement total. Recognition cannot be substituted with notes, disclosure or other similar types of information.

The general criteria for recognition are that there be a reliable and relevant basis of **measurement** and that a **reasonable estimate** can be made. Also, the item must meet the definition of an element of financial statements. Even so, recognition is subject to a cost-benefit constraint 1(30) and a materiality 2(31) threshold.

The following general recognition principles emanate from the analysis in Chapter 5. In the Study Group's view, these principles provide a solid foundation for determining when the economic impact of rate regulation should be recognized in the general purpose financial statements of a rate-regulated enterprise.

Recognition of Regulatory Assets and Liabilities

4. Rate-regulated enterprises should recognize a regulatory asset in their financial statements, when all of the following conditions are met:
    - Rate regulation creates an economic benefit in the form of increased future revenues as a result of a past transaction or event.
    - It is probable that the enterprise's regulator will set future rates sufficient to provide the economic benefit.
    - Future rates sufficient to provide additional revenue at least equal to the economic benefit will be chargeable and collectible from customers.
    - There is an appropriate basis for measuring the asset and a reasonable estimate can be made of the amount involved.
5. A regulatory asset should be valued at the lower of the expected economic benefit and the cost incurred to acquire the economic benefit.
6. Where the economic benefit is increased and the increase meets all of the conditions in Principle 4, or a portion of the economic benefit that previously did not meet all of the conditions in Principle 4 now meets those conditions, the value of the regulatory asset should be increased by the related amount.
7. Where all or a portion of a regulatory asset no longer meets the conditions in Principle 4, the value of the regulatory asset should be reduced by the related amount.
8. Rate-regulated enterprises should recognize a regulatory liability in their financial statements, when all of the following conditions are met:
    - Rate regulation creates an economic obligation in the form of decreased future revenues, or payments to customers, as a result of a past transaction or event.
    - It is probable that the enterprise's regulator will set rates sufficient to reduce revenues by the amount of the liability or require payments to customers equal to the liability.
    - There is an appropriate basis for measuring the liability and a reasonable estimate can be made of the amount involved.
9. Where the economic obligation is increased, or a portion of the economic obligation that previously did not meet all of the conditions in Principle 8 now meets the conditions, the value of the regulatory liability should be increased by the related amount.
10. Where all or a portion of a regulatory liability no longer meets the conditions in Principle 8, the value of the regulatory liability should be reduced by the related

amount.

WHEN SHOULD CHANGES IN REGULATORY ASSETS AND LIABILITIES BE RECOGNIZED?

In Chapter 5, the Study Group concluded that the changes in the economic benefits and obligations created by rate regulation should be reported in the financial statements as revenues, expenses, gains and losses provided that they meet the recognition criteria set out in the *Handbook* Section 1000.

The following general recognition principle emanates from the analysis in Chapter 5.

Recognition of Revenues, Expenses, Gains and Losses

11. The financial statements of rate-regulated enterprises should report the changes in regulatory assets and liabilities as revenues, expenses, gains or losses. 3(32)

WHAT INFORMATION SHOULD BE DISCLOSED IN NOTES TO FINANCIAL STATEMENTS?

In addition to reviewing the financial statement concepts set out in *Handbook* Section 1000, the Study Group also considered financial statement disclosure requirements. In this regard, the Study Group believes that rate-regulated enterprises should provide in their general purpose financial statements any information required for fair presentation of financial position, results of operations, or cash flows in accordance with GAAP. Furthermore, where the basis of valuation of assets is not self-evident, the basis should be explicitly stated.

With respect to disclosure in the notes and supporting schedules, the Study Group assessed the information needs of users of general purpose financial statements. 4(33) It also assessed the current reporting practices of rate-regulated enterprises. 5(34) Because rate regulation will usually limit the revenue-generating ability of an enterprise, and this can result in the creation of economic benefits and obligations, the Study Group is of the opinion that rate regulation is an important consideration for users in evaluating the economic performance of an enterprise.

Furthermore, the economic benefits and obligations created by rate regulation, and the consequential changes in assets and liabilities, can be material. Most enterprises are not subject to rate regulation, however, and even among rate-regulated enterprises the materiality of the economic impact can vary significantly. Therefore, the Study Group is of the opinion that financial statement users should be given information about the extent to which rate regulation has affected the financial position of an enterprise.

In the Study Group's view, the following general presentation and disclosure principles provide a solid foundation for determining what information about rate regulation and its economic effects

should be disclosed in the financial statements of a rate-regulated enterprise.

Presentation and Disclosure

12. Notes to the general purpose financial statements of rate-regulated enterprises should disclose:

    - that the enterprise (or certain of its operations) is rate regulated for financial reporting purposes or, alternatively, that the enterprise was rate regulated in the prior period, but no longer meets the established criteria for a rate-regulated enterprise;
    - the regulator(s) and the jurisdiction(s) covered (even if the enterprise no longer qualifies as rate regulated);
    - that the financial statements are prepared in accordance with Canadian GAAP.

13. Notes to the general purpose financial statements of rate-regulated enterprises should disclose how rate regulation affects the reported values of individual assets and liabilities on a going-forward basis.

Appendix C presents several examples drawn from current practice that illustrate the types of disclosure encompassed by Principle 12. With regard to Principle 13, Exhibit 7.1 provides an example that illustrates one way to disclose the effects of rate regulation on the reported values of assets and liabilities. Alternatively, for specific financial statement items, the impact of rate regulation may be disclosed in individual notes to the financial statements.

CONCLUSION

The objective of this Research Report is to address accounting and reporting issues pertinent to rate-regulated enterprises and to propose what specific guidance should be provided to meet the special needs of such enterprises and the users of their general purpose financial statements. In Chapter 4, the Study Group proposed that a new Section be included in the *Handbook* to provide guidance on reporting the economic impact of rate regulation in the financial statements. It is the opinion of the Study Group that guidance on accounting and reporting by rate-regulated enterprises should focus on general principles that would apply to the reporting of all economic effects of rate regulation rather than on specific principles that would apply to narrowly defined issues, such as income taxes and foreign currency translation.

In this chapter, the Study Group proposes 13 general principles for applying GAAP to rate-regulated enterprises. The principles provide a basis for determining whether an enterprise is rate regulated for financial reporting purposes, the conditions under which assets and liabilities that result from rate regulation should be recognized in the financial statements, the conditions under which changes in the assets and liabilities that result from rate regulation should be

recognized in the financial statements, and what information should be disclosed in the notes to the financial statements.

The general principles set out in this chapter cover three areas: application, recognition, and presentation and disclosure. They take into consideration the current requirements and guidance set out in the *CICA Handbook – Accounting*, the current practices of rate-regulated enterprises in Canada and the authoritative pronouncements issued in the United States.

Exhibit 7.1

DISCLOSING THE EFFECTS OF RATE REGULATION ON THE REPORTED VALUES OF ASSETS AND LIABILITIES

Note X — Regulatory Assets and Liabilities

The economic impact of rate regulation is reported in these financial statements. Regulatory assets represent future revenues associated with certain costs that will be recovered from customers in future periods through the rate-making process. Regulatory liabilities represent future reductions or limitations of increases in revenues associated with amounts that are to be refunded to customers through the rate-making process.

Regulatory assets and liabilities reflected in the financial statements as at December 31, 2001 relate to the following (in thousands):

	Reported	Disclosed In Notes
Future Income Taxes	$ xx,xxx	$ xx,xxx
Debt Financing Costs	x,xxx	
Environmental Costs	x,xxx	x,xxx
Postretirement Benefit Costs	x,xxx	x,xxx
Foreign Exchange	xxx	
Net Regulatory Asset (Liability)	**$ xx,xxx**	**$ xx,xxx**

At December 31, 2001, $xxx,xxx of reported regulatory assets and all regulatory liabilities are scheduled or expected to be recovered through rates charged or refunded to customers over periods ranging from 5 to 25 years. We intend to request recovery of the remaining regulatory assets in a general rate case filing expected in 2002. For additional information regarding future income taxes, debt financing costs, environmental costs, postretirement benefit costs, and related risks and uncertainties, refer to notes 3, 5, 7, 9 and 12 respectively.

Chapter 8

APPLYING GENERAL PRINCIPLES TO THE

PUBLIC SECTOR

Are the economic benefits and obligations created by rate regulation similar for both private and public sector rate-regulated enterprises? If so, are there any reasons why their general purpose financial statements should not be prepared on a consistent basis?

INTRODUCTION

In Chapter 7, the Study Group proposed General Principles for rate-regulated enterprises in the private sector to use when preparing their general purpose financial statements in accordance with GAAP. The General Principles cover three areas: application, recognition, and presentation and disclosure. In this chapter, the Study Group assesses the appropriateness of those principles for certain public sector enterprises.

At the outset, it must be acknowledged that the public sector environment is distinctly different from the private sector environment. Recognizing these differences, the CICA Public Sector Accounting Board (PSAB) was created to develop accounting standards for the public sector. Therefore, in assessing whether the General Principles should apply to the public sector, the Study Group discussed the characteristics of various types of government organizations and looked to the *CICA Public Sector Accounting Handbook* to identify whether certain government organizations are required to follow the private sector accounting standards set out in the *CICA Handbook – Accounting*. For additional guidance, it also considered public sector accounting standards established by the Governmental Accounting Standards Board (GASB) in the US.

After identifying which government organizations are required to follow the *Handbook – Accounting*, the Study Group debated at length whether, and to what extent, the criteria set out in General Principle 1 should apply. In other words, should the criteria for qualifying as a rate-regulated enterprise be the same for public sector enterprises as for private sector enterprises? Because governments own public sector enterprises and also establish the basis of rate regulation, the need for an "independent" rate-setting authority was given particular scrutiny. It also considered whether the other General Principles regarding application, recognition, presentation and disclosure should apply equally to all enterprises that meet General Principle 1. In other words, is rate regulation sufficiently similar in the public and private sectors to apply rate-regulated accounting rules in a consistent manner for both sectors? 1(35)

AUTHORITATIVE PRONOUNCEMENTS IN CANADA AND THE UNITED STATES

For purposes of applying PSAB's Recommendations, "public sector" refers to federal, provincial, territorial and local governments, government organizations, government partnerships, and school boards. "Government organizations" are organizations that are accountable for the administration of their financial affairs and resources either to a minister of

the government or directly to the legislature or local government council, and are owned or controlled by the government. Government organizations are included in the reporting entity. 2(36)

The *Public Sector Accounting Handbook* notes that government organizations include government business enterprises (GBEs) 3(37) and government business-type organizations. 4(38) For purposes of their financial reporting, such organizations should adhere to the Recommendations in *Handbook – Accounting* unless otherwise directed to specific Accounting Recommendations of PSAB. 5(39)

In the United States, the Governmental Accounting Standards Board (GASB) establishes financial reporting standards for state and local governments, including states, cities, towns, villages and special-purpose governments, such as school districts and public utilities. Governmental accounting systems in the US are organized and operated on a fund basis. 6(40) Fund financial statements are used to report detailed information about governmental, fiduciary and proprietary funds.

Accounting and Financial Reporting for Proprietary Funds and Other Governmental Entities That Use Proprietary Fund Accounting, GASB Statement 20, paragraph 2, states that "business-type accounting and financial reporting for state and local governmental entities has generally been defined by pronouncements of the Financial Accounting Standards Board (FASB), Accounting Principles Board (APB) Opinions and Accounting Research Bulletins (ARBs) of the Committee on Accounting Procedure." Statement 20 notes (in paragraphs 6 and 7) that proprietary activities **should** apply the pronouncements of the FASB, APB and ARB issued on or before November 30, 1989. They may also apply **all** FASB Statements and Interpretations issued after November 30, 1989, **except** for those that conflict with GASB pronouncements.

It is noteworthy that GASB Statement No. 20 indicates (in paragraph 9) that "*Accounting for the Effects of Certain Types of Regulation*, SFAS 71, does not specifically exclude state and local governmental entities from its scope, nor does it preclude its application to governmental entities." GASB Statement 20 notes that the FASB modified paragraph 5(a) of SFAS 71 to permit application by governmental utilities with rates set subject to a statute or contract. SFAS 71 and related pronouncements may be applied to proprietary activities that meet the criteria of those pronouncements for reporting as regulated enterprises.

GASB Statement 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments*, notes that GAAP for enterprise funds are those applicable to similar businesses in the private sector. Statement 34 takes a further step, however, by emphasizing (in footnote 12) that "The provisions of FASB Statement No. 71, *Accounting for the Effects of Certain Types of Regulation*, only apply to governments that have *qualifying* enterprise funds." 7(41)

RATE REGULATION AND THE PUBLIC SECTOR

In the "Introduction" to this chapter, the question was raised as to whether rate regulation is sufficiently similar in the public and private sectors to warrant consistent accounting rules for both sectors. There are differing views on this matter, centring on the following two key issues: independence of the rate regulator from the enterprise being regulated; and the types of government organizations that would qualify as rate-regulated enterprises under the definitions set out in Chapter 6 of this Research Report. These differing views are discussed in the remaining sections of this chapter.

NEED FOR AN INDEPENDENT REGULATOR

Required Criteria

General Principle 1 states that the economic impact of rate regulation should be reported in the general purpose financial statements of an enterprise that has regulated operations that meet all of the following criteria:

- The enterprise's rates for regulated services or products provided to its customers are established by, or are subject to approval by, an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
- The regulated rates are designed to recover the specific enterprise's costs of providing the regulated services or products.
- In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

All three criteria must be met for either a private sector enterprise or a public sector enterprise to be considered a "rate-regulated enterprise" for financial reporting purposes and, therefore, to be able to account for the economic effects of rate regulation. Meeting the criteria, however, does not automatically mean that the rate-making process will have an economic impact that should be reported in the enterprise's financial statements through the recognition of a regulatory asset or a regulatory liability. Before that can happen, the fact that the rate-making decision will have an economic impact must be clearly demonstrated.

Independence is a Prerequisite 8(42)

There is a view that, with respect to rate regulation in the public sector, there is usually no

"independent, third-party regulator" because the government controls both the enterprise and the regulatory agency. Those who hold this view argue that, unless the regulator is independent, the enterprise cannot be considered as rate regulated for financial reporting purposes. As a result, different criteria are needed if a public sector enterprise is to qualify as rate regulated for financial reporting purposes.

In considering whether different criteria are needed for the public sector, the proponents of this view observed that, as noted in the section on "Scope of Application," set out below, most government enterprises have governing boards and almost all are given the legislative power to set the rates they charge for their services and products. 9(43) They maintain that, in the public sector environment, the uncertainty arising from regular elections, different political party ideologies and occasional minority governments makes it difficult to recognize the economic impact of rate decisions that are other than short term. Further, regular elections and balanced budget legislation may mean that governments face additional pressures to "manage" financial results. In addition, because the decisions of regulators are not necessarily consistent from jurisdiction to jurisdiction, it is, in their opinion, more difficult for legislators and the public to compare the financial results of rate-regulated enterprises in the public sector. A government may also have an incentive to use the regulatory process to create assets and liabilities. For example, it may wish to contain the rates charged by a public sector utility without affecting its financial results. If the government uses the modified equity method of accounting for the utility, any reduction in profitability would flow through to the owning government, possibly turning a surplus into a deficit.

Those who support this view acknowledge that although, other things being equal, it would be highly desirable for accounting for rate regulation in the public sector to be consistent with accounting for rate regulation in the private sector, this is an issue of such significance that such a result is highly unlikely. Whereas, in the vast majority of cases, there is independent third-party rate regulation in the private sector, in that the regulators are independent of both the regulated enterprise and its owners, such is usually not the case for rate-regulated enterprises in the public sector. If the accounting by public sector rate-regulated enterprises is to be consistent with that in the private sector, this same standard or benchmark must apply equally to the public sector. In most cases, however, this is simply not possible.

Proponents of this view also maintain that, in the private sector, the regulator is not accountable for the financial performance of the regulated enterprise. This independence ensures that the regulator can balance and protect the interests of both the investors in the regulated enterprise and the consumer. It allows the regulator to make rate decisions that require the benefits and obligations arising from those decisions to flow through to both the regulated enterprise and the consumer. It is this authority and independence that provide the rigour to allow differential accounting for rate decisions. Without this authority and independence, there is a potential for the differential treatment for rate-regulated enterprises to be used to "manage" financial results. Further, there is insufficient assurance that the economic benefits or obligations of rate decisions

will occur. Furthermore, allowing a self-governing board to "manage" its performance by creating, amending or deleting regulatory assets and liabilities may place that board in a conflict of interest position.

Finally, the proponents of this view note that many private sector rate-regulated enterprises have market mechanisms to provide additional checks and balances that do not exist in the public sector. For example, the shares and or debt of many private sector utilities are publicly traded, bringing the discipline of securities commission accounting and disclosure requirements into play, requirements that may be more onerous than Canadian GAAP. These types of external influences do not usually exist for public rate-regulated enterprises. 10(44) The best way to protect the public interest is to require a regulator to be independent.

Independence *per se* is Not the Key Factor 11(45)

Others are of the opinion that the key issue is not the independence of the regulator *per se*, but the credibility of the regulatory process, in particular, whether it is likely that the regulator will allow or require the future changes in regulated rates necessary to justify the recognition of regulatory assets and liabilities. For example, without independence, it is possible that a regulator may indicate that a cost will be deferred so that a regulatory asset can be recognized, even though there is no intention to allow for a future recovery of the deferred cost. At some future date, the regulator might then reverse that decision, with the result that the deferred cost will have to be written off and income reduced in that future period. In such a situation, there is a trade-off between two risks:

- the risk that an enterprise may recognize regulatory assets and liabilities that do not exist; and
- the risk that an enterprise may fail to recognize regulatory assets and liabilities that do exist.

It is noted that it is not uncommon in other areas of financial accounting for professional judgment to be exercised in determining whether assets or liabilities exist and the values at which they should be reported.

Those who support this view recognize that, in the public sector, it is rare to have a totally independent regulator because the same government that owns the regulated enterprise has legislative responsibility for the regulator. Occasionally, the governing board of the enterprise is empowered by statute or contract to set rates and is, in effect, the regulator. Consequently, if total independence were required, virtually all public sector enterprises would be precluded from qualifying as rate-regulated enterprises for financial reporting purposes.

The possibility that a government may unduly influence the rate-setting process for social or political reasons is acknowledged. 12(46) Nonetheless, this should not be a financial reporting issue as long as real economic benefits and obligations are created by rate regulation. For

example, in the case of a deferred cost, a regulatory asset should be recognized when there are additional future revenues sufficient to recover the amount deferred, regardless of the reason for deferring the cost.

The role of financial reporting is to report on the economic resources and obligations of an enterprise, not to second-guess the motivation that led to the creation of those economic resources and obligations. Furthermore, a government's decisions should not be confused with rate-setting interference. For example, a government, as owner, could instruct the enterprise not to recover a certain cost, thereby creating a loss. Such a loss would be a loss under GAAP because it is created by reducing anticipated future cash flows, not by rate regulation.

With regards to differences in regulatory decisions between jurisdictions, this also happens with private sector rate-regulated enterprises. More important, failing to report the economic impact of differences in regulatory decisions will not enhance comparability, but make it more difficult.

Alternative Scenarios

In addressing the issue of independence, the Study Group debated three alternative scenarios. First, the regulator is an independent third party. Second, the regulator is not an independent third party but operates at arm's length from the management of the enterprise. Third, the governing body of an enterprise is empowered by statute or contract to establish rates.

The regulator is an independent third party

In Chapter 6, the Study Group noted that, for the most part, private sector rate-regulated enterprises in Canada are subject to rate regulation by independent regulatory authorities. This distinct and separate relationship between the rate regulator and the owners of a rate-regulated enterprise establishes the credibility of the regulatory process and justifies the recognition of regulatory assets and liabilities as long as it is likely that the regulator will allow or require the future changes in regulated rates. The same applies to a GBE that is subject to rate regulation by an independent regulatory authority. 13. For example, the Saskatchewan Telecommunications Holding Corporation (SaskTel), a provincial Crown corporation, has an independent third-party regulator, the CRTC, which has been established under federal legislation.13

The regulator is not an independent third party but operates at arm's length from the management of the enterprise

Although independent regulators are the norm in the private sector, this is generally not the case in the public sector. Usually, the same government that owns a rate-regulated enterprise also establishes the regulatory authority for that enterprise and is responsible for the legislation under which the regulator operates. Partly to assist in dealing with this issue, the Study Group undertook a survey of federal provincial and territorial comptrollers. Survey

participants were asked whether their rate-regulated enterprises would continue to meet the first criterion if rates had to be established by an independent, third-party regulator. Most respondents said that, in their jurisdiction, rates were independently established because the regulator was operating at arm's length from the management of the enterprise (survey excerpts are provided in Appendix D to this Research Report). 14(47)

After considerable debate, the consensus of the Study Group 15(48) was that, as long as the regulator is operating at arm's length from the management of the regulated enterprise, the regulator need not be a completely independent third party. In such situations, there is sufficient assurance that the regulatory process is credible and there would be a significant reduction in the risk that the regulator would make decisions so as to "manage" the reported performance of the regulated enterprise. As a result, the risk of recognizing regulatory assets and liabilities that do not exist is outweighed by the risk of failing to recognize regulatory assets and liabilities that do exist. As noted below under "Required Disclosures," the Study Group believes that there should be disclosure of any actual or perceived lack of independence.

When there is no independent third-party regulator, professional judgment would be required to assess the credibility of the regulatory process. In this respect, the following conditions and circumstances merit consideration, either individually or in combination, when assessing whether the regulator is operating at arm's length from the management of the rate-regulated enterprise:

- Is the regulator a separate organization from the regulated enterprise?
- Is the regulator staffed by personnel who are neither employees nor directors of the regulated enterprise?
- Is there a public hearing process with opportunity for interested parties to participate?
- Does the regulator provide justification for its decisions?
- Are the decisions of the regulator public documents?
- Is there a well-defined plan in place for the deferral of costs and/or a history of recovering the related revenues?

If it is evident that the regulator is not operating at arm's length, the regulated enterprise would not meet the required criteria, and could not, therefore, apply the differential treatment for accounting for rate regulation.

A governing body is empowered by statute or contract to establish rates

In some cases, the governing boards of GBEs have been empowered by statute or contract to set rates for the enterprise. For example, in Nova Scotia, two rate-regulated entities are

reported in the Province's summary financial statements, Halifax-Dartmouth Bridge Commission and Highway 104 Western Alignment Corporation. The toll rates of the Halifax-Dartmouth Bridge Commission are subject to approval of the Nova Scotia Utility and Review Board. The toll rates of Highway 104 are set in the agreement with the bondholders and agreed to by the corporation and the Province, but are not regulated by an independent third party, such as the Nova Scotia Utility and Review Board (survey excerpts are provided in Appendix D to this Research Report).

In such circumstances, the regulatory requirements for the setting of rates comes from the statute or contract, and this is in line with the first criterion. It must be emphasized, however, that to meet the definition of a rate-regulated enterprise, the enterprise would still have to meet the other two criteria: rates must be designed to cover the costs of providing service and rates necessary to cover the costs of service will be chargeable and collectible from customers.

Also, meeting the definition of a rate-regulated enterprise does not necessarily mean that rate regulation would have an economic impact that should be recognized in the financial statements. What it does mean is that the rate-regulated enterprise would then apply the General Principles set out in Chapter 7. For example, consistent with General Principle 4, it would recognize a regulatory asset where the following conditions are met, but only if all four conditions are met:

- Rate regulation (in the form of the board setting rates under its statute) creates an economic benefit in the form of increased future revenues as a result of a past transaction or event.
- It is probable that the enterprise's regulator (that is, the board) will set future rates sufficient to provide the economic benefit.
- Future rates sufficient to provide additional revenue at least equal to the economic benefit will be chargeable and collectible from customers.
- There is an appropriate basis for measuring the asset and a reasonable estimate can be made of the amount involved.

Concern regarding the credibility of the regulatory process

One member of the Study Group has expressed concern about the credibility of the regulatory process in the second and third scenarios. In his opinion, if the regulator is not operating at arm's length from the owner of the rate-regulated enterprise, it is irrelevant whether or not the regulator is operating at arm's length from the management of the enterprise. For each jurisdiction, there is only one government and rate-regulated enterprises are part of that government. The government chooses when to carry out its activities through departments, agencies, rate-regulated enterprises or other government business enterprises,

but it controls all of them. Further, recommendations allowing a self-governing board to "manage" its performance by inappropriately creating rate-regulated assets and liabilities may place that board in a conflict-of interest-position. He also indicated that, in his opinion, the majority of statutes provide little guidance on how the rates are to be determined.

The Study Group discussed these issues at length and has addressed them above.

Required Disclosures

In Chapter 7, the Study Group concluded that the notes to the general purpose financial statements of private sector rate-regulated enterprises should disclose the regulator(s) and the jurisdiction(s) covered, even if the enterprise no longer qualifies as rate regulated (see General Principle 12 regarding presentation and disclosure). If a GBE's rates are governed by a statute or contract, this should also be disclosed in the notes.

Furthermore, if there is a perception that the regulator is not independent, the enterprise should provide note disclosure of its relationship with the regulator in accordance with *CICA Handbook – Accounting* Section 3840, "Related Party Transactions." Section 3840 establishes measurement and disclosure standards for related party transactions in the financial statements of profit-oriented enterprises.

In the Study Group's view, information about the related parties of a public sector rate-regulated enterprise is of significance to financial statement users. Related parties exist when one party has the ability to exercise, directly or indirectly, control, joint control or significant influence over the other. Two or more parties are related when they are subject to common control, joint control or common significant influence. The degree of influence that one party may exert on another is a major factor in determining whether they are related. In some cases, the degree of influence may be so remote that they need not be considered related. An explanation of how significant influence, joint control or control is exercised between the reporting enterprise and a related party clarifies the nature of their relationship.

SCOPE OF APPLICATION

With respect to the scope of application, some feel that the criteria set out in Section 3465 of the *Handbook – Accounting* for qualifying as a rate-regulated enterprise are too broad because they could apply to many government organizations. For financial reporting purposes, any government organization that is required to follow the *Handbook – Accounting*, or that chooses to do so, could, in their opinion, potentially qualify for such treatment, if it meets the *Handbook – Accounting* criteria. In addressing this concern, the Study Group compared authoritative pronouncements promulgated by the Public Sector Accounting Board (PSAB) 16(49) and the US Governmental Accounting Standards Board (GASB).

Government Business Enterprises (GBEs)

A GBE is different from other types of government organizations. As its principal activity, a GBE sells goods and services to individuals and organizations outside the government reporting entity 17(50) Public Sector Accounting Handbook, "Financial Reporting Entity," paragraph PS1300.07) and its revenues are to a large degree received from outside sources. In the case of government business-type organizations, 18(51) the goods and services are not sold primarily to individual and organizations outside the government and/or it cannot, in the normal course of its business, maintain its operations and meet its liabilities from revenues received from sources outside the government reporting entity. Since revenues adequate to maintain the organization are not derived from third parties, rate regulation does not apply to these government business-type organizations.

By inference, although it is not specifically stated in the *Public Sector Accounting Handbook*, except for GBEs, rate regulation does not apply to the public sector. To determine whether a government organization is a GBE, several factors should be considered:

- the enterprise's history of maintaining its operations and meeting its liabilities;
- whether the enterprise would continue to maintain its operations and meet its liabilities without relying on sales to, or subsidies from, the government reporting entity;
- past, present and future economic conditions within which the enterprise operates; and
- whether the enterprise has realistic and specific plans that show how it expects to maintain its operations and meet its liabilities in the future.

The *Public Sector Accounting Handbook* makes no specific reference to the types of GBEs that should apply the accounting standards set out in the *Handbook – Accounting*. Nonetheless, "Financial Reporting Entity," Section PS1300, paragraph .27, emphasizes that, because a GBE carries on a business, its financial statements should be prepared on the same basis as those of a private sector business. This basis is most appropriate for measuring the government's investment in the organization and the impact it has on the government's financial position and results. This would seem to imply that there should be consistency in application between public and private rate-regulated enterprises unless there are some good reasons for the contrary.

One Study Group member has noted that there are many GBEs in Canada, and that their business covers a broad range of activities, including casino gaming, lotteries, liquor boards, banking, insurance, housing, etc., as well as publicly owned utilities. In common with most public sector boards, most GBE boards are given the legislative authority to set the rates they charge for their products or services. Also, by definition, GBEs are self-sustaining. Therefore, they fully recover their costs. Accordingly, in his opinion, many GBEs would meet the definition of a rate-regulated enterprise and would be entitled to apply the differential treatment for accounting for rate regulation. In his opinion, the public will therefore have great difficulty in

understanding why such GBEs are considered rate regulated and why they are allowed to use this differential treatment.

The other nine members of the Study Group question the validity of this argument. In their opinion, there are relatively few GBEs in the public sector that meet the criteria set out in the definition of a rate-regulated enterprise.

The preceding discussion and analysis of public sector pronouncements suggests that General Principle 1 should apply only to GBEs. To assess the feasibility of this approach, in the survey of federal, provincial and territorial comptrollers referred to above, participants were asked the following questions:

- In your jurisdiction, what entities that are included in the federal or provincial government's summary financial statements currently follow GAAP for rate-regulated enterprises as set out in the *Handbook – Accounting*?
- The Study Group is proposing to limit application of the above-noted definition of a "rate-regulated enterprise" to "government business enterprises." In your jurisdiction, would this eliminate any of the entities currently following GAAP for rate-regulated enterprises?
- Is it important that the general purpose financial statements of rate-regulated enterprises in the public sector be prepared on a basis consistent with that in the private sector?

In response, survey participants reported that relatively few rate-regulated enterprises form part of the government reporting entity. Most of these enterprises are electric power utilities and all are GBEs. 19(52) They also felt that it is important that the general purpose financial statements of GBEs be prepared on a basis consistent with that of rate-regulated enterprises in the private sector (survey excerpts are provided in Appendix D of this Research Report).

In the Study Group's view, the application of General Principle 1 should be limited to GBEs that meet the criteria for qualifying as a rate-regulated enterprise. This would include having rates designed to cover the enterprise's cost of providing service, that is, rates set so that, based on expected demand and costs as recognized in the regulatory process, revenues will equal the costs of providing service. In line with existing practice, the Study Group is of the opinion that the *Public Sector Accounting Handbook* Recommendations should specifically recognize that only GBEs may qualify for the differential treatment afforded to rate-regulated enterprises by the *Handbook – Accounting*.

CONCLUSION

In this chapter, the Study Group assessed whether the General Principles set out in Chapter 7 are appropriate for the public sector. After examining the public sector environment in both

Canada and the United States, it considered the need for an independent rate-setting authority and the criteria in General Principle 1, as they relate to the scope of public sector activities that may be considered rate regulated for financial reporting purposes. As part of its assessment, the Study Group considered whether the other General Principles regarding application, recognition, presentation and disclosure should apply equally to all enterprises that meet General Principle 1.

With respect to the scope of public sector activities that may be considered "rate regulated" for financial reporting purposes, the consensus of the Study Group is that the application of General Principle 1 should be limited to government business enterprises that meet the criteria for qualifying as a rate-regulated enterprise. This is consistent with the authoritative pronouncements and current practices in both Canada and the United States. In this regard, *Public Sector Accounting Handbook* Recommendations should specifically recognize that, in the public sector, only GBEs are entitled to qualify as rate-regulated enterprises for financial reporting purposes. For GBEs that do qualify, the accounting recommendations for rate-regulated enterprises contained in the *Handbook – Accounting* should be applied. One Study Group member, however, feels strongly that, for a GBE to qualify as a rate-regulated enterprise for financial reporting purposes, the regulatory agency must be independent of both the GBE and government.

Regarding the need for an independent rate-setting authority, nine of the ten Study Group members are of the view that the first criterion in the definition of a rate-regulated enterprise should remain unchanged: the enterprise's rates for regulated services or products provided to its customers should be established by, or subject to approval by, an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers. Also, complete independence of the regulator from a public sector enterprise is not required as long as the regulator operates at arm's length from the enterprise. In this respect, guidance is provided on assessing whether the regulator is operating at arm's length and the credibility of the regulatory process.

Should the other General Principles regarding application, recognition, presentation and disclosure apply equally to all enterprises that meet the criteria in General Principle 1? The Study Group consensus is that the economic benefits and obligations created by rate regulation are similar for many private and public sector enterprises. Therefore, the general purpose financial statements of rate-regulated enterprises in both the public and private sectors should be prepared on a consistent basis. One member, however, would support this position only if the regulatory agency is independent of both the GBE and the government.

Chapter 9

APPLYING GENERAL PRINCIPLES TO SPECIFIC

ISSUES

Detailed guidance is not essential to recognize the economic impact of rate regulation on the financial reporting of rate-regulated enterprises, but it would help avoid any misunderstanding and, at the same time, illustrate how general principles should be applied in practice.

INTRODUCTION

As noted in Chapter 1, the Study Group determined that it would be prudent to review the financial statement concepts set out in "Financial Statement Concepts," *CICA Handbook – Accounting* Section 1000. In this regard, it has concluded that the current accounting and financial reporting practices of rate-regulated enterprises fall well within that conceptual framework. Furthermore, a differential treatment based on the General Principles presented in Chapter 7 is considered appropriate for rate-regulated enterprises. To supplement those principles, the project terms of reference call for the Study Group to consider, "What additional guidance is needed relating to specific accounting and reporting issues encountered by rate-regulated enterprises?"

In this chapter, the Study Group elaborates on the General Principles and provides guidance on their application to specific issues. The specific issues covered in this chapter are capital assets (including interest capitalized), income taxes and inter-company gains and losses. Also included are other areas significant to rate-regulated enterprises, such as the accounting treatment of employee future benefits. For each of these matters, consideration is given as to when assets or liabilities (and changes in them) that result from rate regulation should be recognized in the financial statements (refer to General Principles 4 to 11) and what information should be disclosed in the notes to the financial statements (refer to General Principles 12 and 13).

Several broad issues of particular relevance to rate-regulated enterprises are also addressed in this chapter: (1) application of general principles; (2) recoverability of assets created by rate regulation; and (3) discontinuation of accounting for the economic impact of rate regulation (refer to General Principle 3).

APPLICATION OF GENERAL PRINCIPLES

GAAP in both Canada and the US encompasses reflecting economic benefits (assets) and economic obligations (liabilities) in the balance sheet, and including changes in such benefits and obligations in the income statement. Although applying GAAP to the general purpose financial statements of rate-regulated enterprises works the same way, in the Study Group's opinion, there is an additional consideration — recognizing regulatory assets and liabilities that result from rate-regulation.

Application of the General Principles would result in a rate-regulated enterprise following all of

the standards in the *Handbook*, the same as a non-regulated enterprise would. In addition, a rate-regulated enterprise would recognize the economic impact of rate regulation where that recognition is consistent with the General Principles. This is consistent with the approach usually taken by rate-regulated enterprises in the US.

In applying the General Principles to specific issues, the economic impact of rate regulation is identified; that is, the economic benefit that exceeds the amount that would otherwise be recognized as an asset, or the economic obligation that exceeds the amount that would otherwise be recognized as a liability. This impact is then recognized as a regulatory asset or a regulatory liability to the extent that the General Principles are met. For example, if a regulator allows for the future recovery of costs that would normally be expensed in the current period, the costs would be capitalized if General Principle 4 were met.

In some cases, a regulator may use the cash method (pay-as-you-go) to determine the amount of expenses that are to be recoverable through allowed rates. For example, with regard to accounting for income taxes, many rate-regulated enterprises follow the taxes payable or flow through method, where that method is prescribed by the regulator, and do not follow the method normally required by GAAP, the liability method. Pending further study, the Accounting Standards Board specifically permits the use of the taxes payable or flow-through method in Canada. If this were not the case, and a Canadian rate-regulated enterprise had to record its full tax liability, and also recorded a regulatory asset equal to the expected amount of future income taxes that would be recoverable in future rates, there would be a significant increase in capital taxes and large corporation taxes payable.

In the US, rate-regulated enterprises always use the liability method in preparing their financial statements, even when the regulator prescribes the taxes payable or flow-through method. They record future income tax assets or liabilities on the balance sheet and they also set up a corresponding regulatory asset or liability. The net effect is that income is presented on a taxes payable basis.

Some maintain that there should be an exception to the strict application of the General Principles where a regulator applies the cash method (or some other prescribed method) for determining certain costs to be included in the cost of service. Either the regulatory asset should be netted against the associated liability (or the regulatory liability should be netted against the associated asset) or the rate-regulated enterprise should continue to apply the cash method (or some other prescribed method) of accounting to these specific costs. With either alternative, the end result is that reported income would be the same as if the General Principles were applied.

Although both assets and liabilities would be lower, this impact could be disclosed in the notes to the financial statements, consistent with current practice. More importantly, the base against which capital taxes and large corporation taxes are applied would be reduced, resulting in significant tax savings for the ratepayers or the shareholders of the rate-regulated enterprise. Of the two approaches, those favouring such exceptions prefer the cash method (or some other

prescribed method), as opposed to the netting method, with appropriate note disclosure on the netting of assets and liabilities.

Those who argue for strict application of the General Principles believe that tax regulations should not govern the accounting treatment for rate-regulated enterprises. They also note that, unless specifically sanctioned by the *Handbook*, disclosure in the notes to the financial statements *per se* is not a substitute for proper accounting. Likewise, the netting (or offsetting) of GAAP assets / liabilities with regulatory assets / liabilities does not meet GAAP requirements. Under the General Principles set out in Chapter 7, GAAP methods should be applied to all assets and liabilities reported on the balance sheet, and separate regulatory assets and liabilities should be reported, as appropriate, to reflect the economic impact of rate regulation. 1(53)

Those who argue for exceptions maintain that financial reporting must not only strive for conceptual purity, but must also deal with practical realities. With disclosure in the notes to the financial statements, consistent with current practice, strict adherence to the General Principles, in their opinion, would not significantly improve the quality or transparency of financial reporting by rate-regulated enterprises. It would, however, needlessly increase the tax burden, and that burden would be passed on to customers as part of the cost of service. Or, if the regulator did not allow that cost to be recovered in future rates, that burden would be passed on to shareholders.

There is a difference of opinion in the Study Group on this issue. Some believe that there should be a strict adherence to the General Principles set out in Chapter 7, whereas others are of the view that the differential treatment currently permitted in "Income Taxes," *Handbook* Section 3465, which is also current practice among Canadian rate-regulated enterprises, should continue.

For each issue addressed in this chapter, the accounting treatment that would result from strict application of the General Principles is presented. In light of the above-noted differing views, the practical accounting treatment is also described for the issues where regulators use the cash method to determine the amount of expenses to be included in rates.

RECOVERABILITY OF ASSETS CREATED BY RATE REGULATION

General Principle 4 sets out the conditions for recognizing a regulatory asset in the financial statements. To recognize a regulatory asset, it must be likely that the regulator will change future rates by an amount sufficient to provide an economic benefit. This requires an ongoing assessment of the likelihood of recovery of regulatory assets subsequent to their initial recognition.

With respect to the ongoing recognition of regulatory assets, the following hierarchy of evidence may be helpful in establishing the likelihood of future recovery:

- The enterprise has an order from its regulator that addresses and allows the recovery

of the specific incurred cost.

- The regulator has treated the specific incurred cost as an allowable cost-of-service item in prior regulatory filings of the enterprise.
- The same regulator has treated the specific incurred cost as an allowable cost in connection with another enterprise's filing. Also, it is the regulator's general policy to allow recovery of this incurred cost.
- The regulator has included a similar incurred cost as an allowable cost in prior regulatory filings of the enterprise.
- The same regulator has treated a similar incurred cost as an allowable cost in connection with another enterprise's filing. Also, it is the regulator's general policy to allow the recovery of this incurred cost.
- The enterprise has obtained an "accounting order" or comparable form of communication from the regulator agreeing with the enterprise's proposed accounting for the specific incurred cost, even though such orders often include a qualifier that the letter guidance is not authoritative for rate-making purposes. In a few jurisdictions, such accounting orders may provide the same degree of assurance as a specific rate order. The level of assurance provided by accounting orders must be assessed on a commission-by- commission basis, with particular focus on legal authority, who signs the accounting order, and historical regulatory practices.
- A significant majority of other regulatory authorities has treated a specific incurred cost (or similar incurred cost) as an allowable cost and the enterprise's regulator has not disallowed that cost.
- Representation letters stating that it is likely that the cost will be allowable in future rates are obtained from outside legal counsel with substantive involvement, informed in-house legal counsel and management.

Furthermore, it must be anticipated that the enterprise will request the future recovery no later than that enterprise's next rate case. As well, a determination must be made that the rates, established at levels that would recover the costs, including a fair return on investment, can be charged to and collected from customers.

SPECIFIC ISSUES ADDRESSED IN THE *CICA HANDBOOK – ACCOUNTING*

The following analyses provide guidance for applying the General Principles for rate-regulated enterprises to specific matters covered in the *Handbook*, including the differential treatment for property, plant and equipment, income taxes, and inter-company gains and losses. Guidance is

also provided on employee future benefits, foreign currency translation and financial instruments, although differential treatment is not specifically provided in the *Handbook*.

Property, Plant and Equipment

As noted in Chapter 1, accounting for fixed / capital assets (property, plant and equipment) is a significant issue for the natural gas sector and the hydro-electric industry. In a rate-regulated environment, pertinent considerations include: cost and amortization; allowance for funds used during construction (AFUDC); disallowances; future removal and site restoration costs; and disposal of items of property, plant and equipment. The following analyses cover each of these considerations.

Cost and amortization

Accounting Issue

Current accounting standards for profit-oriented enterprises require that property, plant and equipment be recorded at cost and that amortization be recognized in a rational and systematic manner appropriate to the nature of the item of property, plant and equipment with a limited life and its use by the enterprise. The accounting issue is whether a rate-regulated enterprise should record a regulatory asset or liability for the amount by which depreciation for regulatory purposes is different from the amount acceptable under normal GAAP methods.

Accounting Requirements in Canada

"Property, plant and equipment," *Handbook* Section 3061, paragraph .10, states that:

> Rate-regulated property, plant and equipment are items of property, plant and equipment held for use in operations meeting all of the following criteria: 2(54)
>
> (a) the rates for regulated services or products provided to customers are established by or are subject to approval by a regulator or a governing body empowered by statute or contract to establish rates to be charged for services or products;
>
> (b) the regulated rates are designed to recover the cost of providing the services or products; and
>
> (c) it is reasonable to assume that rates set at levels that will recover the cost can be charged to and collected from customers in view of the demand for the services or products and the level of direct and indirect competition. This criterion requires consideration of expected changes in levels of demand or competition during the recovery period for any capitalized costs.

Where the amount by which depreciation for regulatory purposes differs from the amount acceptable under normal GAAP methods, a regulatory asset or liability should be recognized if the related asset meets the *Handbook* definition of rate-regulated property, plant and equipment and the pertinent recognition criteria (General Principles 4 to 7). In assessing the amount of depreciation acceptable under GAAP, professional judgment should be used in choosing the method that allows amortization to be recognized in a rational and systematic manner appropriate to the nature of the item of property, plant and equipment. The amortization method and estimates of the life and useful life of an item of property, plant and equipment should be reviewed on a regular basis (see *Handbook* paragraph 3061.33).

In addition, rate-regulated enterprises should determine the extent to which their regulatory depreciation methods differ from normal GAAP methods and lives and, if the differences are significant, disclose them in the notes to the financial statements (General Principle 13). 3(55)

Allowance for funds used during construction (AFUDC)

Accounting Issue

Current accounting standards for profit-oriented enterprises allow for the capitalization of certain carrying costs, such as interest costs, that are directly attributable to an acquisition, construction or development activity. Often, regulators set the allowance for funds used during construction on the basis of the regulated enterprise's weighted average cost of capital, which would normally exceed the amount otherwise allowed under GAAP because it includes a cost-of-equity component. The accounting issue is whether a rate-regulated enterprise should be allowed to capitalize an allowance for funds used during construction which exceeds the amount otherwise allowed under GAAP, if that is the method used for rate-making purposes.

Accounting Requirements in Canada and the US

Handbook Section 3061, paragraph .23, states that:

> The cost of an item of property, plant and equipment that is acquired, constructed, or developed over time includes carrying costs directly attributable to the acquisition, construction, or development activity such as interest costs when the enterprise's accounting policy is to capitalize interest costs. For an item of rate-regulated property, plant and equipment, the cost includes the directly attributable allowance for funds used during construction allowed by the regulator.

In the United States, *Accounting for the Effects of Certain Types of Regulation*, SFAS 71, paragraph 15, notes that:

> In some cases, a regulator requires an enterprise subject to its authority to capitalize, as part of the cost of plant and equipment, the cost of financing construction as financed partially by borrowings and partially by equity. A computed interest cost and a designated cost of equity funds are capitalized, and net income for the current period is increased by a corresponding amount. After the construction is completed, the resulting capitalized cost is the basis for depreciation and unrecovered investment for rate-making purposes. In such cases, the amounts capitalized for rate-making purposes as part of the cost of acquiring the assets shall be capitalized for financial reporting purposes instead of the amount of interest that would be capitalized in accordance with FASB Statement No. 34, *Capitalization of Interest Cost*. The income statement shall include an item of other income, a reduction of interest expense, or both, in a manner that indicates the basis for the amount capitalized. 4(56)

Application of General Principles

For regulatory purposes, a regulator may require a rate-regulated enterprise to capitalize an allowance for the funds used during construction (AFUDC) at a rate that assumes the project is financed by debt and shareholders' equity. After the construction is completed, the resulting capitalized cost is the basis for depreciation and unrecovered investment for rate-making purposes. As a result, the rate-regulated enterprise recovers the total cost of the plant, including the AFUDC, through depreciation charges that are part of the cost of service to be recovered from customers over the estimated life of the plant.

The full amount of the AFUDC should be capitalized as a regulatory asset if its subsequent depreciation / amortization is likely to be included in allowable costs for rate-making purposes (General Principle 4). The AFUDC is normally divided into two components: the interest component, or the allowance for borrowed funds, and the equity component, or the allowance for equity funds. In addition, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, how rate regulation affects the reported values of property, plant and equipment on a going-forward basis. They should also provide pertinent information on the AFUDC, as appropriate (General Principle 13). 5(57)

Disallowances

Accounting Issue

The accounting issue is whether a disallowance should be deducted from the reported cost of the plant, and a loss reported, when it becomes likely that part of the cost will be disallowed

for rate-making purposes.

Accounting Requirements in Canada and the US

In Canada, there are no specific accounting pronouncements that address the issue of disallowances of plant costs of rate-regulated enterprises. It is encompassed, however, by "write downs" in *Handbook* Section 3061, which states that:

> *When the net carrying amount of an item of property, plant and equipment, less related accumulated provision for future removal and site restoration costs and future income taxes, exceeds the net recoverable amount, the excess should be charged to income.* (paragraph .38)
>
> In determining the net recoverable amount of an item of rate-regulated property, plant and equipment, the enterprise considers the extent to which rates will provide for the recovery of the cost of the asset. (paragraph .46)

In the United States, *Regulated Enterprises — Accounting for Abandonments and Disallowances of Plant Costs*, SFAS 90, paragraph 7, states that:

> When it becomes probable that part of the cost of a recently completed plant will be disallowed for rate-making purposes and a reasonable estimate of the amount of the disallowance can be made, the estimated amount of the probable disallowance should be deducted from the reported cost of the plant and recognized as a loss.

According to SFAS 90, if the probable disallowance results from a cap on the plant's cost for rate-making purposes, the loss should be recognized as soon as it becomes probable that the cap will be exceeded. This calculation should be based on the expected total cost of the plant, including all AFUDC and other overheads that would normally be applied. The excess of this amount over the cap should be discounted to present value using the AFUDC rate. (In other words, the future AFUDC is removed from the expected total plant cost.) This discounted amount should be written off as a loss. If part of the cost is explicitly, but indirectly, disallowed (for example, by an explicit disallowance of return on investment on a portion of the plant), an equivalent amount of cost shall be deducted from the reported cost of the plant and recognized as a loss. Calculation of this amount requires use of the best available information. For instance, if the regulator specifies the equivalent amount of the plants cost that is being disallowed, then that amount should probably be used as the loss. Otherwise, it may be necessary to estimate and use the present value of future cash flows that have been disallowed.

Application of General Principles

When it becomes likely that part of the cost of a plant will be disallowed for rate-making purposes, and a reasonable estimate of the amount of the disallowance can be made, the estimated amount of the disallowance should be deducted from the reported cost of the plant and reported as a loss. When the regulator allows the cost, but reduces or eliminates the return, the recovery of the cost should be discounted and the difference between the discounted amount and the cost of the asset should be written down to that discounted amount. This annual cost must be subtracted from the cash flows to establish the amount available to cover the capital cost, which is what discounting does.

In addition, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, pertinent information on disallowances, as appropriate (General Principle 13). 6(58)

Future removal and site restoration costs

Accounting Issue

Current accounting standards for profit-oriented enterprises require that a provision be made for future removal and site restoration costs in a rational and systematic manner by charges to income. The accounting issue is whether a rate-regulated enterprise should recognize a regulatory asset or liability when the regulator requires that a different method be followed. For example, the regulator may specify that future rates will provide for the recovery of costs when they are paid.

Accounting Requirements in Canada and the US

Handbook Section 3061 states that:

> *When reasonably determinable, provisions should be made for future removal and site restoration costs, net of expected recoveries, in a rational and systematic manner by charges to income.* (paragraph .35)
>
> Future removal and site restoration costs include costs, net of expected recoveries, for dismantling and abandoning a property. Provisions are needed to accrue the liability for future removal and site restoration costs, when the likelihood of their incurrence is established as a result of environmental law, contract, or because the enterprise has established a policy to restore a site, and when such costs can be reasonably determined. Provisions are recorded as liabilities and are not classified with accumulated amortization. (paragraph .36)
>
> When future removal and site restoration costs cannot be reasonably

determined, a contingent liability may exist. (paragraph .37)

In the US, *Environmental Remediation Liabilities*, AICPA Statement of Position (SOP) 96-1, requires an accrual for environmental clean-up or remediation liabilities. That is, a loss must be accrued by a charge to income if it is both probable and can be reasonably estimated. If the loss is a range, the "reasonably estimated" criterion is met. If no value in the range is more likely than any other, the minimum amount should be accrued. SOP 96-1 also includes benchmarks to aid in the determination of when environmental remediation liabilities should be recognized in accordance with *Accounting for Contingencies*, SFAS 5. *Loss Contingencies Assumed in a Business Combination*, Staff Accounting Bulletin (SAB) 92, sets out the SEC staff position that environmental costs meeting the criteria of SFAS 71, paragraph 9, should be recognized on the balance sheet as a regulatory asset and should not be offset against the liability. *Accounting for Asset Retirement Obligations*, SFAS143, requires the recognition (at fair value) of a liability where there is a legal obligation associated with future removal and site restoration costs. An asset in the same amount will also be established and subsequently allocated to expense using a systematic and rational method over its useful life. SFAS 143 also acknowledges that, for rate-regulated enterprises, there may be a difference in timing for financial reporting and rate-making purposes, and that a regulatory asset or liability may have to be recognized. 7(59)

Application of General Principles

When reasonably determinable, provisions should be made for future removal and site restoration costs in a rational and systematic manner by charges to income. In addition, a regulatory asset would be recorded (General Principles 4 to 7) in those cases where the regulator decides that future rates will provide for the recovery of such costs. When future removal and site restoration costs cannot be reasonably determined, a contingent liability may exist and this should be disclosed in the notes to financial statements (General Principle 13). 8(60)

As discussed earlier in the chapter, it must be acknowledged that some are opposed to the strict application of the General Principles because it would result in an increase in large corporations taxes and capital taxes payable by rate-regulated enterprises, an amount that would generally be passed on to shareholders or customers, depending on whether or not the regulator allows the increased cost to be included in the cost of service. They maintain that, where regulators use the cash method (or some other prescribed method) to determine the amount of expenses to be included in rates, future removal and site restoration costs would be recognized in the period when they are recovered through the regulatory process.

Disposal of capital assets

Accounting Issue

Current accounting standards for profit-oriented enterprises require that the difference between the net proceeds on disposal and the net carrying amount be charged to income in the period when the net carrying amount of an item of property, plant and equipment exceeds the net recoverable amount. The accounting issue is whether a rate-regulated enterprise should be allowed to record a regulatory asset equivalent to the deferral of such differences, if that is the method used for rate-making purposes.

Accounting Requirements in Canada and the US

Handbook Section 3061 states that:

> On disposal of an item of property, plant and equipment, whether by sale, destruction, loss, abandonment or expropriation, the difference between the net proceeds on disposal and the net carrying amount is recognized in income in the period unless there are other aspects of the transaction that would prevent recognition. For example, a sale-leaseback transaction accounted for in accordance with LEASES, Section 3065; and certain transactions more appropriately accounted for as financing arrangements or as cost recoveries. (paragraph .52)
>
> For rate-regulated operations, the regulator may require the difference between net carrying amount and the proceeds on disposal of an item of property, plant and equipment to be considered in the determination of future rates charged to customers. In such circumstances the difference is deferred, provided there is reasonable assurance that:
>
> (a) any excess of net carrying amount over proceeds on disposal will be recovered through future rates; or
>
> (b) any excess of proceeds on disposal over net carrying amount will serve to reduce future rates. (paragraph .53)

In the US, when it becomes probable that a rate-regulated enterprise will abandon an operating asset or an asset under construction, SFAS 90 requires that the cost of the asset be removed from work in progress or plant-in-service. The enterprise would determine the likely recovery of the total costs to be provided from future rates, as permitted by the rate regulator. Only the amounts probable of recovery may be deferred; the remainder is recognized as a loss. *Reasonable Estimation of the Amount of a Loss*, FASB Interpretation 14, provides guidance on estimating the amount of a loss, and *Computation of a Loss on an Abandonment*, Technical Bulletin 87-2, provides guidance on computing the loss.

If the rate regulator permits the enterprise to recover the costs of an abandoned plant over a period of time, the enterprise must consider whether it will be allowed to earn a return on the investment. If it is likely that recovery of cost plus a full return will be granted, SFAS 90

requires that the costs be reported as a separate new asset and amortized in the same manner as used for rate-making purposes. Often the rate regulator does not allow the enterprise to earn a return on its investment in abandoned plant. If no return or a partial return is allowed, only the present value of the future revenues expected to be provided is reported as a separate new asset. Any excess of the total cost of the abandonment over the present value of the estimated future revenues is recorded as a loss.

In the US, *Estimated Future Costs Related to Spent Nuclear Fuel and Nuclear Electric Generating Plants*, SAB Topic 10-B, provides guidance on what disclosures should be made concerning the estimated future costs to decommission nuclear generating plants. The SEC requires that the financial statement notes disclose the estimated costs of dismantling or decontaminating nuclear generating plants and whether provision for these costs is being made in current operations and recognized in rates. If such expected costs are not being provided for currently, utilities should disclose any difference between current and expected future costs and the potential impact on the financial statements or future operations.

Application of General Principles

Losses would generally be reported by rate-regulated enterprises in the period when it becomes probable that they would not be recovered from customers (General Principle 11). Nonetheless, a regulatory asset should be recorded for losses on disposals and write-downs of rate-regulated assets if the regulator permits these losses to be recovered from future rates (General Principles 4 to 7). 9(61) In addition, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, pertinent information on disposal of items of property, plant and equipment, as appropriate (General Principle 13). 10(62)

Income Taxes

Accounting Issue

Current accounting standards require that profit-oriented enterprises report the expected income tax liability associated with the income that they have recognized, whether or not those taxes are currently payable. The taxes paid in the period, plus the change in the tax liability, are reported as income tax expense. This results in future income taxes being recognized in the period that the associated income is recognized. In many cases, however, the rates of regulated enterprises are based on the flow-through method, whereby the taxes recovered in rates equal the taxes currently payable as a result of the income earned in the period. Generally, it is expected that the future income taxes will become recoverable through allowed rates once they become payable. The accounting issue is whether a rate-regulated enterprise should recognize the economic benefit associated with the expectation that it will collect future income taxes through future allowed rates.

Accounting Requirements in Canada and the US

"Income Taxes," *Handbook* Section 3465, establishes standards for the recognition, measurement, presentation and disclosure of income and refundable taxes in an enterprise's financial statements, with limited application for certain rate-regulated enterprises. Section 3465 replaced the concept of **timing differences** with the concept of **temporary differences**. In addition, it replaced deferred tax debits and credits with future income tax assets and future income tax liabilities. 11(63)

Handbook Section 3465 states that:

> *A rate regulated enterprise need not recognize future income taxes in accordance with the Recommendations of this Section to the extent that future income taxes are expected to be included in the approved rate charged to customers in the future and are expected to be recovered from future customers. If future income taxes are not recognized in accordance with the Recommendations of this Section, the rate regulated enterprise should disclose the following, in addition to the information to be disclosed in accordance with paragraphs 3465.91 and 3465.92:*
>
> *(a) the reason why future income tax liabilities and future income tax assets have not been recognized; and*
>
> *(b) the amount of future income tax liabilities, future income tax assets and future income tax expense that have not been recognized. (paragraph .102)*

Pending further study of accounting for rate regulated enterprises as a whole, rate regulated enterprises are not required to record future income taxes for temporary differences that arise from assets and liabilities relating to their rate regulated activities to the extent that these future income taxes will be included in the rates charged to customers in the future and will be recoverable at that time as set out in paragraph 3465.102. (paragraph .103)

Future income taxes would be recognized in accordance with the remainder of this Section to the extent that future income taxes are not expected to be included in the rates charged to customers in the future. In addition, a rate regulated enterprise that chooses to recognize future income taxes despite the expectation that they will be included in the rates charged to customers in the future would recognize all future income tax liabilities and future income tax assets in accordance with the requirements of this Section. (paragraph .104)

In the US, when it was originally issued, SFAS 71, paragraph 18, noted that:

> Items of revenue and expense are sometimes taxable or deductible in periods other than the periods in which those items are recognized for

> financial reporting purposes. In some cases, a regulator does not include the income tax effect of certain transactions in allowable costs in the period in which the transactions are reported but includes income taxes related to those transactions in allowable costs in the period in which the taxes become payable. In such cases, if it is probable that income taxes payable in future years because of net reversal of timing differences will be recovered through rates based on taxes payable at that time, the enterprise shall record neither the deferred income taxes that result from those timing differences nor the related asset (the probable future benefits that will result from payment of the taxes). However, the enterprise shall disclose the cumulative net amount of income tax timing differences for which deferred income taxes have not been provided. That disclosure supplements the requirements of paragraph 63 of Opinion 11 for disclosure of operating loss carryforwards, significant amounts of other unused deductions or credits, and reasons for significant variations in the customary relationships between income tax expense and pretax accounting income. Except as provided in this paragraph, regulated enterprises shall apply the requirements of Opinion 11.

This, however, was replaced by the following when *Accounting for Income Taxes*, SFAS 109 was issued:

> A deferred tax liability or asset shall be recognized for the deferred tax consequences of temporary differences in accordance with FASB Statement No. 109, Accounting For Income Taxes (SFAS 109 paragraph 288 (v))

Historically, most public utilities used the flow-through method of accounting for certain temporary differences. Under this method, income tax expense was recognized on the basis of taxes paid or payable. A small number of differences were accorded deferred tax treatment (commonly called normalization, from a regulatory standpoint), primarily because of tax regulations. Normalization generally results in higher operating expenses for utilities and, therefore, higher revenue requirements. SFAS 71 allowed flow-through accounting to be used for financial reporting if certain criteria were met.

With the required adoption of SFAS 109, utilities changed the way deferred taxes are calculated and use the liability method to record deferred taxes on temporary differences, regardless of their regulatory treatment. In addition, the definition of temporary differences encompasses the equity component of the AFUDC, which utilities historically recorded on a net-of-tax basis. SFAS 109 prohibits recording of net-of-tax amounts and requires that those amounts be grossed up. Many regulators may continue to require flow-through accounting

for income taxes for rate-making purposes. If flow-through accounting is prescribed by the regulator and deferred taxes not currently provided under that method meet the recovery criteria set forth in SFAS 71, the differences between the flow-through method and the liability method would be recorded as regulatory assets or liabilities on the balance sheet. In determining the amount of deferred taxes to be established, SFAS 109 focuses on the probable future revenue to be recovered through rates. SFAS 109 recognizes that the future revenues will include recovery of the tax expense generated on the revenues as well as the deferred tax liability. The tax-on-tax item is recorded as a regulatory asset on the balance sheet, with the offset to the deferred tax liability.

Application of General Principles

Profit-oriented enterprises are required to report the expected income tax liability associated with the income that they have recognized, whether or not those taxes are currently payable. The taxes paid in the period plus the change in the tax liability are reported as income tax expense. This results in future income taxes being recognized in the period that the associated income is recognized. In many cases, however, the rates of regulated enterprises are based on the flow-through method, whereby the taxes recovered in rates are set equal to the taxes currently payable as a result of the income earned in the period. Generally, it is expected that the future income taxes will become recoverable through allowed rates once they become payable.

Application of the General Principles set out in Chapter 7 would result in financial reporting similar to what is required in the US. A rate-regulated enterprise should follow the Recommendations in *Handbook* Section 3465, whether or not rates are based on the flow-through method. That means that the enterprise would report a liability equal to the expected income taxes payable on the income recognized in the current period. Where it is likely that any amount of future income taxes (not necessarily the full amount of future income taxes) would be included in the calculation of future allowed rates, and those rates would be chargeable and collectible from customers, such amounts would be recognized as a regulatory asset. The income tax expense recognized in the period would then be reduced or increased by the change in this regulatory asset (General Principles 4 to 7).

As discussed earlier in this chapter, some are opposed to the strict application of the General Principles because it would result in an increase in large corporations taxes and capital taxes payable by rate-regulated enterprises, an amount that would generally be passed on to shareholders or customers, depending on whether or not the regulator allows the increased cost to be included in the cost of service. They maintain that the current approach used in practice and permitted by the *Handbook* should continue to be used; that is, where rates are based on the flow-through method, this method should also be allowed for financial reporting purposes, with appropriate disclosure in the notes to the financial statements.

In addition, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, the economic impact of rate-regulation on income taxes on a going-forward basis (General Principle 13). Such disclosures, as required by *Handbook* Section 3465, paragraphs .91, .92 and .102, would be cross-referenced to pertinent information provided in other notes. 12(64)

Intercompany Gains and Losses

Accounting Issue

Current accounting standards for profit-oriented enterprises require that intercompany gains or losses be eliminated in preparing a consolidated income statement. The accounting issue is whether a rate-regulated enterprise should be allowed to realize intercompany gains and losses to the extent that the transfer price is recognized for rate-making purposes.

Accounting Requirements in Canada and the US

"Consolidated Financial Statements," *Handbook* Section 1600, deals with the preparation of consolidated financial statements. To the extent that transactions between the parent and its subsidiaries (intercompany transactions) result in intercompany gains or losses, such gains or losses normally would be eliminated in preparing a consolidated income statement. With regard to rate-regulated enterprises, however, *Handbook* Section 1600, paragraph .29, states that:

> Where a parent or subsidiary manufactures or constructs facilities for a regulated public utility in the consolidated group, any intercompany gain or loss is deemed to have been realized to the extent that the transfer price on such facilities is recognized for rate-making purposes by a government regulatory body.

In the United States, SFAS 71, paragraphs 16 and 17, note that:

> Profit on sales to regulated affiliates shall not be eliminated in general-purpose financial statements if both of the following criteria are met:
>
> (a) the sales price is reasonable.
>
> (b) it is probable that, through the rate-making process, future revenue approximately equal to the sales price will result from the regulated affiliate's use of the products.
>
> The sales price usually shall be considered reasonable if the price is accepted or not challenged by the regulator that governs the regulated affiliate. Otherwise, reasonableness shall be considered in light of the circumstances. For example, reasonableness might be judged by the

return on investment earned by the manufacturing or construction operations or by a comparison of the transfer prices with prices available from other sources.

Application of General Principles

It is important for rate-regulated enterprises to consider whether regulatory agencies will permit any intercompany gains or losses to be included in future rates. Applying the General Principles set out in Chapter 7 (in particular General Principle 11), such enterprises would not eliminate intercompany profits on sales to regulated affiliates if it is likely that, through the rate-making process, future revenues in amounts approximately equal to the intercompany transfer price will be provided. That revenue would result from inclusion of the intercompany profits in the amount used by the regulator as allowable costs for purposes of depreciation and return on investment.

In such cases, a regulated enterprise should recognize profits on sales to a regulated affiliate to the extent that the profits are included in allowable costs in the rate-making process because the profits are validated by the rate actions of the regulator. The regulator's acceptance of the transfer price provides evidence of recoverability. For rate-making purposes, the intercompany profits would be included in the depreciation used as an allowable cost, and the undepreciated amount would be included in the investment on which a return is provided as an allowable cost.

Employee Future Benefits

In an August 1999 survey of rate-regulated enterprises (discussed in Chapter 1), respondents stated that there should be some consideration given to ensuring that accounting requirements — such as "Employee Future Benefits," *Handbook* Section 3461 — do not negatively affect customer rates or investor return.

Accounting Issue

Current accounting standards for profit-oriented enterprises require that an entity recognize the cost of retirement benefits and certain post-employment benefits over the periods in which employees render services to the entity in return for the benefits. The accounting issue is whether a rate-regulated enterprise should recognize a regulatory asset or liability when the regulator requires that the pay-as-you-go (cash method) or some other prescribed method be used to determine rates. For example, the regulator may specify that future rates will provide for the recovery of costs when they are paid or the regulator may specify that costs will be recovered prior to the period in which they would normally be expensed.

Accounting Requirements in Canada and the US

Canadian Accounting and Assurance Reference Service (CAARS)

Handbook Section 3461 establishes standards for the recognition, measurement and disclosure of the cost of employee future benefits, including pension and other retirement benefits, post-employment benefits, compensated absences and termination benefits. Generally, an entity must recognize the cost of retirement benefits and certain post-employment benefits over the periods in which employees render services to the entity in return for the benefits. Other post-employment benefits are recognized when the event that obligates the entity occurs. The standard is in harmonization with the US standard on this subject.

In the US, SFAS 71, paragraph 48, notes that *Accounting for Compensated Absences*, SFAS 43, "specifies criteria for accrual of a liability for employees' compensation for future absences. For rate-making purposes, compensation for employees' absences may be included in allowable costs when the compensation is paid." According to SFAS 71, paragraph 49:

> the liability, if any, would be accrued in accordance with SFAS 43 because rate actions of the regulator cannot eliminate obligations that were not imposed by the regulator. ... By including the accrued compensation in future allowable costs on an as-paid basis, the regulator provides reasonable assurance of the existence of an asset. The asset is the probable future benefit (increased revenue) that will result from the regulatory treatment of the subsequent payment of the liability ... . Accordingly, the enterprise also would record the asset that results from the regulator's actions.

In *Accounting for OPEB Costs by Rate Regulated Enterprises*, EITF Issue 92-12, the task force reached consensus on several issues. For plans providing postretirement benefits other than pensions (OPEB plans), the task force ched a consensus that a regulatory asset related to costs covered by *Employers' Accounting for Postretirement Benefits Other Than Pensions*, SFAS 106:

> should not be recorded if the regulator continues to include OPEB costs in rates on a pay-as-you-go basis. ... For a continuing plan a rate-regulated enterprise should recognize a regulatory asset for the difference between SFAS 106 costs and OPEB costs included in the enterprise's rates if the enterprise (1) determines that it is probable that future revenue in an amount at least equal to the deferred cost (regulatory asset) will be recovered in rates, and (2) meets *all* of the [specified] criteria.

The task force also reached a consensus that:

> a rate-regulated enterprise should disclose in its financial statements a description of the regulatory treatment of OPEB costs, the status of any

> pending regulatory action, the amount of any SFAS 106 costs deferred as a regulatory asset at the balance sheet date, and the period over which the deferred amounts are expected to be recovered in rates.

In addition, the task force concluded in *Accounting for Regulatory Assets*, EITF Issue 93-4, that if a rate-regulated entity initially fails to meet the regulatory asset recognition requirements of the consensus developed in EITF Issue 92-12, but meets those requirements in a subsequent period, a regulatory asset for the cumulative difference between SFAS 106 costs and OPEB costs included in rates since the date of adoption of SFAS 106 should be recognized in the period the requirements are met.

Application of General Principles

Following a strict application of the General Principles, a rate-regulated enterprise should recognize the cost of retirement benefits and certain post-employment benefits over the periods in which employees render services to the entity in return for the benefits in accordance with *Handbook* Section 3461. In addition, the difference between the net periodic pension cost, as recognized in accordance with GAAP, and the amounts of pension cost considered for rate-making purposes would be recognized as a regulatory asset or a regulatory liability (General Principles 4 to 10). The actions of the regulator do not affect the recognition of pension liabilities or assets; what they do is create a regulatory asset or liability in addition to the pension liability or asset. The same applies to the recognition of other postemployment benefits costs and liabilities. In addition, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, the economic impact o rate-regulation on employee future benefits on a going-forward basis (General Principle 13). Such disclosures, as required by *Handbook* Section 3461, paragraphs .150 to .163 should be cross-referenced to pertinent information provided in other notes. 13(65)

As discussed earlier in this chapter, some are opposed to the strict application of the General Principles because it would result in an increase in large corporations taxes and capital taxes payable by rate-regulated enterprises, an amount that would generally be passed on to shareholders or customers, depending on whether or not the regulator allows the increased cost to be included in the cost of service. They maintain that, where regulators use the pay-as-you-go (cash method) or some other prescribed method to determine the amount of expenses to be included in rates, the costs of employee future benefits would be recognized in the period when they are recovered through the regulatory process. In addition, the notes to the financial statements would disclose the liability relating to the employee future benefits and the expectation of recovery thereof.

Foreign Currency Translation

According to the August 1999 survey of rate-regulated enterprises (discussed in Chapter 1),

respondents stated that there should be some consideration given to ensuring that accounting requirements in "Foreign Currency Translation," *Handbook* Section 1650, and proposed changes in those requirements do not negatively affect customer rates or investor return.

Accounting Issue

Current accounting standards for profit-oriented enterprises require that exchange gains and losses on long-term monetary items be included immediately in income. The accounting issue is whether a rate-regulated enterprise should recognize a regulatory asset for exchange gains and losses on long-term monetary items that are deferred and amortized or recovered in rates when realized for rate-making purposes.

Accounting Requirements in Canada and the US

According to *Handbook* Section 1650, exchange gains and losses arising on translation or settlement of a foreign currency transaction (except those that are (1) related to certain intercompany transactions or (2) transactions designated as, and effective as, economic hedges of net investments and foreign currency commitments) should be included in the determination of net income for the current period. The Canadian standard is in harmonization with the US standard on this subject. 14(66)

In the US, foreign currency transaction gains and losses should be included in the determination of income for the period in which the exchange rate changes except those that are (1) related to certain intercompany transactions, (2) certain amounts related to a derivative instrument that is a cash flow hedge of a forecasted foreign-currency-denominated transaction or a forecasted intercompany foreign-currency-denominated transaction, and (3) an intercompany balance for which settlement is not planned or anticipated in the foreseeable future and that is considered to be part of the net investment in a foreign operation (refer to *Foreign Currency Translation*, SFAS 52, *Accounting for Derivative Instruments and Hedging Activities*, SFAS 133, and *Accounting for Certain Derivative Instruments and Certain Hedging Activities: an amendment of FASB Statement No. 133*, SFAS 138).

Application of General Principles

A rate-regulated enterprise should include exchange gains and losses on long-term monetary items in the determination of net income in accordance with the requirements of *Handbook* Section 1650. A regulatory asset or a regulatory liability, however, would be recognized if such gains and losses are deferred and amortized or recovered when realized for rate-making purposes (General Principles 4 to 10). In addition, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, the economic impact of rate-regulation on exchange gains and losses on a going-forward basis (General Principle 13).

As discussed earlier in this chapter, some are opposed to the strict application of the General

Principles because it would result in an increase in large corporations taxes and capital taxes payable by rate-regulated enterprises, an amount that would generally be passed on to shareholders or customers, depending on whether or not the regulator allows the increased cost to be included in the cost of service. They maintain that, where regulators use the cash method, or some other prescribed method, to determine the amount of gains and losses to be included in rates, foreign exchange gains and losses would be recognized in the period when they are included in rates, and appropriate disclosure would be provided in the notes to the financial statements.

Financial Instruments

According to the August 1999 survey of rate-regulated enterprises (discussed in Chapter 1), respondents stated that there should be some consideration given to ensuring that accounting requirements in "Financial Instruments," *Handbook* Section 3860, and proposed changes in those requirements, do not negatively affect customer rates or investor return.

Proposal for a comprehensive fair value model

In January 2001, the Canadian Accounting Standards Board and accounting standard setters in nine other international jurisdictions, including the US and IASC, issued an "Invitation to Comment" on proposals for a comprehensive fair value model to account for financial instruments and similar items. The proposals differ from *Accounting for Derivative Instruments and Hedging Activities*, SFAS 133, and *Financial Instruments: Recognition and Measurement*, IAS 39 (the principal two existing accounting standards on the subject), but they build on the same general principles, while avoiding much of the complexity of the interim steps in those standards. The Accounting Standards Board believes that existing Canadian accounting standards for recognition and measurement of financial instruments are inadequate and that the *status quo* cannot continue.

Application of General Principles

If accounting standards were to be issued by the Accounting Standards Board with regard to applying a "fair value" model to financial instruments, such standards would apply to rate-regulated enterprises. In their case, however, a regulatory asset or a regulatory liability would be recognized when the increase or decrease in "fair value" is deferred and amortized for rate-making purposes (General Principles 4 to 10). In addition, rate-regulated enterprises would disclose, in the notes to the general purpose financial statements, the economic impact of rate-regulation on financial instruments on a going-forward basis (General Principle 13).

As discussed earlier in this chapter, some are opposed to the strict application of the General Principles because it would result in an increase in large corporations taxes and capital taxes payable by rate-regulated enterprises, an amount that would generally be passed on to

shareholders or customers, depending on whether or not the regulator allows the increased cost to be included in the cost of service. They maintain that, where regulators use the cash method to determine the gains and losses to be included in rates, the increase or decrease in the "fair value" of financial instruments would be recognized in the period when they are included in rates, and appropriate disclosure would be provided in the notes to the financial statements.

SPECIFIC ISSUES ADDRESSED IN THE UNITED STATES

A brief commentary on the following specific issues covered in SFAS 71 is set out below with a view to providing useful guidance and to serve as the basis for eliminating significant differences in GAAP between Canada and the United States:

- intangible assets;
- accounting changes;
- recovery of costs without return on investment;
- early extinguishment of debt;
- contingencies;
- leases;
- revenue collected subject to refund;
- refunds to customers;
- alternative revenue programs.

Intangible Assets

In Canada, accounting by rate-regulated enterprises for intangible assets is governed by "Goodwill and Other Intangible Assets," *Handbook* Section 3062, which states that an intangible asset should be initially recognized and measured at cost, and amortized over its useful life, unless that life is determined to be indefinite, in which case it will not be amortized until its life is determined to be finite. Intangible assets should be reviewed or tested periodically for impairment. 15(67)

The United States, in *Goodwill and Other Intangible Assets*, SFAS 142, has similar requirements. SFAS 71, paragraph 29, has been amended to note that SFAS 142 states that goodwill shall not be amortized and shall be tested for impairment in accordance with that Statement. Paragraph 29 also notes that, for rate-making purposes, a regulator may permit an enterprise to amortize purchased goodwill over a specified period. In other cases, a regulator may direct an enterprise not to amortize goodwill or to write off that goodwill.

According to SFAS 71, paragraph 30 (as amended):

> if the regulator permits all or a portion of goodwill to be amortized over a specific time period as an allowable cost for rate-making purposes, the regulator's action provides reasonable assurance of the existence of a regulatory asset. ... That regulatory asset would then be amortized for financial reporting purposes over the period during which it will be allowed for rate-making purposes. Otherwise, goodwill shall not be amortized and shall be accounted for in accordance with SFAS 142.

Rate-regulated enterprises should recognize a regulatory asset in their financial statements in accordance with General Principles 4 to 7, to the extent that the amount to be recovered in future rates (ignoring return on the intangible asset) exceeds the amount that would be capitalized by a non-regulated enterprise. Professional judgment should be used in choosing the method that allows amortization to be recognized in a rational and systematic manner appropriate to the nature of the intangible asset. The amortization method should be reviewed on a regular basis. Furthermore, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, how rate regulation affects the reported values of intangible assets on a going-forward basis (General Principle 13). Rate-regulated enterprises should determine the extent to which their regulatory amortization methods differ from normal GAAP methods and lives and, if the differences are significant, consider disclosing them in the financial statements.

Accounting Changes

"Accounting Changes," *Handbook* Section 1506, establishes standards for the accounting treatment of a change in accounting policy as well as a change in an accounting estimate and a correction of an error relating to prior period financial statements and prior period adjustments.

It is important to note that the appropriate treatment of accounting changes depends not only on the nature of the change, but also on its treatment as prescribed by the regulator. In interpreting GAAP requirements for rate-regulated enterprises, reference is often made to SFAS 71 for guidance. SFAS 71, paragraph 32, offers the following clarification regarding the treatment of accounting changes by a regulated enterprise:

> If a regulated enterprise changes accounting methods and the change does not affect costs that are allowable for rate-making purposes, the regulated enterprise would apply the change in the same manner as would an unregulated enterprise. ... If a regulated enterprise changes accounting methods and the change affects allowable costs for rate-making purposes, the change generally would be implemented in the way that it is implemented for regulatory purposes.

As a result, if a change in accounting policy does not affect costs allowable for rate-making purposes, the rate-regulated enterprise should account for the change in accordance with the Recommendations in *Handbook* Section 1506 (that is, using retroactive restatement, except in specific circumstances). Capitalization of leases with no income statement effect is an example of that type of change.

If a change in accounting policy affects allowable costs for rate-making purposes, however, the change generally would be implemented in the way that it is implemented for regulatory purposes. 16(68) A change in the method of accounting for research and development costs, either from a policy of capitalization and amortization to one of charging those costs to expense as incurred or *vice versa*, is an example of that type of change.

Recovery of Costs without Return on Investment

In Canada, no specific accounting pronouncements address the issue of accounting by rate-regulated enterprises for the recovery of costs without return on investment. In the United States, however, SFAS 71, paragraph 33, states that, "in some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period." According to SFAS 71, paragraph 34, "the regulator's action provides reasonable assurance of the existence of an asset. ... Accordingly, the regulated enterprise would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value."

If material, appropriate disclosures as specified in SFAS 71, paragraph 20, would be provided, as follows:

> In some cases, a regulator may permit an enterprise to include a cost that would be charged to expense by an unregulated enterprise as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the enterprise should disclose the remaining amounts of such assets and the remaining recovery period applicable to them.

An expenditure should be recognized as an asset if it meets the *Handbook* definition of a rate-regulated capital asset and the pertinent recognition criteria (General Principles 4 to 7). The regulated enterprise would capitalize an incurred cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value because it will be recovered without a return on investment. Furthermore, rate-regulated enterprises should disclose, in the notes to the general purpose

financial statements, how rate regulation affects the reported values of capital assets on a going-forward basis (General Principle 13).

Early Extinguishment of Debt

In Canada, no specific accounting pronouncements address the issue of accounting for the early extinguishment of debt. In the United States, however, SFAS 71, paragraphs 35-37, note that *Early Extinguishment of Debt*, AICPA Accounting Principles Board Opinion 26, "requires recognition in income of a gain or loss on an early extinguishment of debt in the period in which the debt is extinguished. For rate-making purposes, the difference between the enterprise's net carrying amount of the extinguished debt and the reacquisition price may be amortized as an adjustment of interest expense over some future period."

According to SFAS 71, paragraphs 36 and 37:

> If the debt is reacquired for an amount in excess of the enterprise's net carrying amount, the regulator's decision to increase future rates by amortizing the difference for rate-making purposes provides reasonable assurance of the existence of an asset. ... Accordingly, the regulated enterprise would capitalize the excess cost and amortize it over the period during which it will be allowed for rate-making purposes.
>
> If the debt is reacquired for an amount that is less than the enterprise's net carrying amount, the regulator's decision to reduce future rates by amortizing the difference for rate-making purposes imposes a liability on the regulated enterprise. ... Accordingly, the enterprise would record the difference as a liability and amortize it over the period during which permitted rates will be reduced.

With regard to accounting for the early extinguishment of debt, the difference between the rate-regulated enterprise's net carrying amount of the extinguished debt and the reacquisition price should be recognized as a regulatory asset or liability (depending on the nature of that difference) in accordance with General Principles 4 and 8, respectively, provided it is treated as such for rate-making purposes. 17(69) Furthermore, rate-regulated enterprises should disclose in the notes to the general purpose financial statements, how rate regulation affects the reported values of debt on a going-forward basis (General Principle 13).

Contingencies

In Canada, accounting for contingencies is governed by "Contingencies," *Handbook* Section 3290.

In the United States, SFAS 71, states that:

> [*Accounting for Contingencies*, SFAS 5] specifies criteria for recording estimated losses from loss contingencies. A regulator may direct a regulated enterprise to include an amount for a contingency in allowable costs for rate-making purposes even though the amount does not meet the criteria of SFAS 5 for recording. For example, a regulator may direct a regulated enterprise to include an amount for repairs of expected future uninsured storm damage. (paragraph 38)
>
> If the regulator requires the enterprise to remain accountable for any amounts charged pursuant to such rates and not yet expended for the intended purpose, the resulting increased charges to customers create a liability ... . If a cost to repair storm damage is not subsequently incurred, the increased charges will have to be refunded to customers through future rate reductions. Accordingly, the regulated enterprise would recognize the amounts charged pursuant to such rates as liabilities rather than as revenues. If a cost to repair storm damage is subsequently incurred, the enterprise would charge that cost to expense and reduce the liabilities at that time by recognizing income in amounts equal to the cost. (paragraph 39)

With regard to accounting for estimated losses from loss contingencies, the increased charges to customers create a liability if the conditions set out in General Principle 8 are met. Furthermore, rate-regulated enterprises should disclose in the notes to the general purpose financial statements how rate regulation affects the reported contingencies on a going-forward basis (General Principle 13).

Leases

In Canada, accounting for leases is governed by "Leases," *Handbook* Section 3065. The survey of current practices referred to in Chapter 3 and reported in Appendix B, indicates that five of 25 survey companies provided information on leases in the notes to the financial statements.

In the United States, SFAS 71, paragraph 40, notes that:

> [*Accounting for Leases*, SFAS 13] ... specifies criteria for classification of leases and the method of accounting for each type of lease. For rate-making purposes, a lease may be treated as an operating lease even though the lease would be classified as a capital lease under the criteria of Statement 13. In effect, the amount of the lease payment is included in allowable costs as rental expense in the period it covers. (paragraph 40)
>
> For financial reporting purposes, the classification of the lease is not

> affected by the regulator's actions. The regulator cannot eliminate an obligation that was not imposed by the regulator ... . Also, by including the lease payments as allowable costs, the regulator sets rates that will provide revenue approximately equal to the combined amount of the capitalized leased asset and interest on the lease obligation over the term of the lease and, thus, provides reasonable assurance of the existence of an asset ... . Accordingly, regulated enterprises would classify leases in accordance with Statement 13 ... . (paragraph 41)
>
> The nature of the expense elements related to a capitalized lease (amortization of the leased asset and interest on the lease obligation) is not changed by the regulator's action; however, the timing of expense recognition related to the lease would be modified to conform to the rate treatment. Thus, amortization of the leased asset would be modified so that the total of interest on the lease obligation and amortization of the leased asset would equal the rental expense that was allowed for rate-making purposes. (paragraph 42)
>
> The Board notes that generally accepted accounting principles do not require interest expense or amortization of leased assets to be classified as separate items in an income statement. For example, the amounts of amortization of capitalized leased nuclear fuel and interest on the related lease obligation could be combined with other costs and displayed as "fuel cost." However, the disclosure of total interest cost incurred, required by [*Capitalization of Interest Cost*], Statement 34, would include the interest on that lease obligation; and the disclosure of the total amortization charge, required by Statement 13, would include amortization of that leased asset. (paragraph 43)

With regard to accounting for leases, the classification of the lease is not affected by the regulator's actions. The regulator cannot eliminate an obligation that was not imposed by the regulator. Nonetheless, the timing of expense recognition related to the lease would be modified to conform to the rate treatment and related regulatory asset or liability recognized in the financial statements if the conditions set out in General Principles 4 or 8, respectively, are met. Furthermore, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, how rate regulation affects the reported values of leases on a going-forward basis (General Principle 13).

As discussed earlier in this chapter, some are opposed to the strict application of the General Principles because it would result in an increase in large corporations taxes and capital taxes payable by rate-regulated enterprises, an amount that would generally be passed on to shareholders or customers, depending on whether or not the regulator allows the increased cost

to be included in the cost of service. They maintain that, where regulators use the cash method, expenses related to the lease would be recognized in the period when they are included in rates and appropriate disclosure would be provided in the notes to the financial statements.

Revenue Collected Subject to Refund

In Canada, no specific accounting pronouncements address the issue of accounting by rate-regulated enterprises for revenue collected subject to refund. In the United States, however, SFAS 71 (paragraph 44) notes that, "in some cases, a regulated enterprise is permitted to bill requested rate increases before the regulator has ruled on the request." In other words, regulated enterprises are granted temporary rate increases by a regulatory authority, subject to the condition that all or a portion of the additional revenues may be refundable to customers. If the rates finally authorized are lower than the temporary rates, usually the utility is required to refund the excess revenues.

According to SFAS 71, paragraph 45, the provisions of *Accounting for Contingencies*, SFAS 5, determine whether a provision for estimated refunds should be accrued for this loss contingency. Generally, a regulated enterprise records a liability to refund revenues previously collected from customers when it is probable that a refund will be due and the amount of the refund is reasonably determinable. In practice, these conditions are often met only when the regulator issues an order for a refund. In some circumstances, however, the conditions of SFAS 5 may be met before a formal rate order is issued. SFAS 71 does not permit refunds to be recognized as prior-period adjustments. Instead, refunds must be recognized in the accounting period in which the requirements of SFAS 5 are met. The enterprise must disclose the effect of the refund on net income of the current year and indicate the years when the refunded revenue was recognized.

With regard to accounting for revenue collected subject to refund, a regulatory liability should be recognized in the financial statements if the conditions set out in General Principle 8 are met. Furthermore, rate-regulated enterprises should disclose, in the notes to the general purpose financial statements, how rate regulation affects the reported values of liabilities on a going-forward basis (General Principle 13).

Refunds to Customers

In Canada, no specific accounting pronouncements address the issue of accounting by rate-regulated enterprises for refunds to customers. In the United States, however, SFAS 71, paragraph 46, notes that *Prior Period Adjustments*, SFAS 16, "limits prior period adjustments (other than those that result from reporting accounting changes) to corrections of errors, and adjustments related to prior interim periods of the current fiscal year."

According to SFAS 71, paragraph 47, "in accordance with Statement 16, estimated refunds that were not previously accrued would be charged to income in the first period in which they meet the criteria for accrual (paragraph 8, Statement 5). If the amounts are material, the disclosures

specified in paragraph 19 of [SFAS 71] would be furnished." That is, for refunds that are recognized in a period other than the period in which the related revenue was recognized and that have a material effect on net income, the enterprise should disclose the effect on net income and indicate the years in which the related revenue was recognized. Such effect may be disclosed by including it, net of related income taxes, as a line item in the income statement. It should not be presented as an extraordinary item.

With regard to accounting for refunds to customers, a regulatory liability should be recognized in the financial statements if the conditions set out in General Principle 8 are met. Furthermore, rate-regulated enterprises should disclose in the notes to the general purpose financial statements, how rate regulation affects the reported values of such liabilities on a going-forward basis (General Principle 13).

Alternative Revenue Programs

In Canada, no specific accounting pronouncements address the issue of accounting by rate-regulated enterprises for alternative revenue programs. In the United States, *Accounting by Rate-Regulated Utilities for the Effects of Certain Alternative Revenue Programs*, EITF Issue 92-7, the consensus of the task force was that once specified events occur that permit billing of additional revenues due to weather abnormalities or to compensate the utility for demand-side management initiatives or reward the utility for achieving certain objectives, the regulated utility should recognize the additional revenues if all of the following conditions are met:

1. The program is established by an order from the utility's regulatory commission that allows for automatic adjustment of future rates. Verification of the adjustment to future rates by the regulator would not preclude the adjustment from being considered automatic.
2. The amount of additional revenues for the period is objectively determinable and is probable of recovery.
3. The additional revenues will be collected within 24 months following the end of the annual period in which they are recognized.

With regard to accounting for alternative revenue programs, a regulatory asset should be recognized in the financial statements if the conditions set out in General Principle 4 are met.

DISCONTINUING ACCOUNTING FOR THE EFFECTS OF RATE REGULATION

General Principle 3 states: "When an enterprise that has regulated operations no longer meets the criteria set out in Principle 1, it should discontinue reporting the economic impact of rate regulation and reflect the effects of discontinuation in its general purpose financial statements."

Whether a rate-regulated enterprise is in the private sector or the public sector, it must be mindful of circumstances that may indicate the need to discontinue accounting for the effects of rate regulation.

In Canada, no specific accounting pronouncements address the issue of discontinuation of accounting for the economic impact of rate regulation. 18(70) In the United States, the FASB issued *Regulated Enterprises — Accounting for the Discontinuation of Application of FASB Statement No. 71*, SFAS 101, in 1988. SFAS 101 specifies that an entity that ceases to meet the criteria for application of SFAS 71 should report that event in its general purpose financial statements.

It is possible for an enterprise to continue to be regulated (and meet the first criterion) and not be able to meet one or both of the other two criteria (cover the costs of providing services through the established rates and recover those costs from customers). As a result, the enterprise would continue to have its rates established by the regulator and would follow regulatory requirements, but would not be able to recognize the impact of the regulator's actions in its general purpose external financial statements.

Changing regulatory practices and alternative forms of rate regulation may raise questions about an enterprise's ability to continue to meet the second criterion. When a regulator departs from the traditional rate-making model, the regulated enterprise must assess whether the new rate regulation is designed to recover the costs of providing the regulated services or products. In this respect, General Principle 3 calls for an ongoing assessment of the likelihood of recovery of regulatory assets subsequent to their initial recognition. At each balance sheet date, management should ensure that sufficient evidence exists to support a recorded regulatory asset. Evidence should be available to demonstrate that the costs in question continually meet the "probable" criteria for creating and continuing to record regulatory assets.

Reporting the Effects of Discontinuation

When an enterprise discontinues accounting for the economic impact of rate regulation, it should eliminate from its balance sheet the effects of any actions of regulators that had been recognized as assets and liabilities, but would not have been recognized as such by business enterprises in general. In accordance with GAAP, the carrying amounts of plant, equipment and inventory would not be adjusted, however, unless their value is impaired. Similarly, an example of a legal liability that would not be written off is an obligation for rate refunds to be distributed to customers based on past sales.

The net income effect of these adjustments would be recognized in the period in which discontinuation occurs. It would be reported as an extraordinary item because it is not in the normal course of operations. As well, the notes to general purpose financial statements would disclose pertinent information regarding the discontinuation of accounting for the effects of rate regulation (refer to General Principle 12 and 13 regarding note disclosures).

Application to Separable Portions of a Business

General Principle 2 states: "If some of an enterprise's operations are regulated and meet the above criteria, the financial statements should reflect the economic impact of rate regulation on only that portion of operations." Accordingly, the discontinuation would be applied to a separable portion of operations within a jurisdiction if the enterprise can establish that its other operations within the jurisdiction continue to meet the established criteria.

This is consistent with the approach taken in the United States, where SFAS 71 applies to separable portions of a regulated enterprise's operations (paragraph 6). SFAS 101 also applies to separable portions of operations, such as a customer class or a functional group of assets within a jurisdiction. In *Deregulation of the Pricing of Electricity — Issues Related to the Application of FASB Statements No. 71 and 101*, Issue 97-4, the EITF considered when an enterprise should cease applying SFAS 71 to a separable portion of its business whose pricing is being deregulated. The consensus was that the appropriate time is when the enterprise can reasonably determine how the transition plan will affect the portion of the business being deregulated. The related regulatory assets and liabilities should be evaluated on the basis of the source of the cash flows that will realize or settle them. SEC staff requires assurance that such regulatory assets have been specifically provided for *via* he collection of regulated cash flows.

CONCLUSION

Chapter 7 of this Research Report sets out General Principles for accounting and financial reporting by rate-regulated enterprises. While detailed guidance is not essential to recognize the economic impact of rate regulation on the financial reporting of rate-regulated enterprises, in the Study Group's opinion additional guidance would help avoid any misunderstanding and, at the same time, illustrate how the general principles should be applied in practice.

Accordingly, this chapter provides specific guidance on accounting issues that are considered of interest to the regulatory community, with emphasis given to those areas that may have a material impact on general purpose financial statements. Also addressed are general considerations with respect to the recording of regulatory assets and liabilities, demonstrating the ongoing recoverability of assets created by rate regulation, and recognizing when it is time to discontinue accounting for the effects of rate regulation.

Appendix A

CONCEPTUAL FRAMEWORKS OF CANADA AND THE UNITED STATES

The accounting standards boards of Canada and the United States have issued conceptual framework statements to create a basis for the development and application of accounting standards. Although the frameworks vary significantly in structure and detail, there are few fundamental differences between them.

The Canadian framework, "Financial Statement Concepts," is set out in Section 1000 of the *CICA Handbook – Accounting*. The US framework is set out in separate, but interrelated, FASB Concepts Statements — *Objectives of Financial Reporting by Business Enterprises, Qualitative Characteristics of Accounting Information, Elements of Financial Statements, Objectives of Financial Reporting by Nonbusiness Organizations, Recognition and Measurement in Financial Statements of Business Enterprises*, and *Using Cash Flow Information and Present Value in Accounting Measurements.*

The Canadian and US frameworks specifically state that the concepts do not, in themselves, establish standards or generally accepted accounting principles but are the tools for solving accounting and reporting problems and for developing standards. In this regard, the Canadian framework notes that the concepts are "to be used by preparers of financial statements and accounting practitioners in exercising their professional judgment as to the application of generally accepted accounting principles and in establishing accounting policies in areas in which accounting principles are developing." 1(71)

The frameworks in the two countries indicate that their purpose is to present concepts that are relevant to the preparation and presentation of financial statements. The Canadian framework applies to general purpose **financial statements**, whereas the US framework applies to general purpose **financial reporting**. Both frameworks identify what is normally included in a set of financial statements: a balance sheet (a statement of financial position), an income statement, a statement of retained earnings (a statement of changes in stockholders' equity) and a statement of changes in financial position (a cash flow statement). The frameworks limit the items recognized in the financial statements to those based on past transactions and events. They also note that the information provided often results from approximate, rather than exact, measures. The US framework further notes that financial reporting is only one source of information needed by users to make economic decisions.

Objective and Users of Financial Statements

In Canada and the United States, the conceptual frameworks state that the objective of **financial statements** is to provide information to users about an entity's financial position and results of operations. 2(72) They emphasize providing information that is useful in making investment, credit and other decisions and in assessing management stewardship.

Specifically, *CICA Handbook – Accounting* Section 1000, "Financial Statement Concepts," states (in paragraph 1000.15) that:

> The objective of financial statements is to communicate information that is useful ... in making ... resource allocation decisions and/or assessing management stewardship. Consequently, financial statements provide information about:
>
> (a) an entity's economic resources, obligations and equity / net assets;
>
> (b) changes in an entity's economic resources, obligations and equity / net assets; and
>
> (c) the economic performance of the entity.

In the United States, FASB Concepts Statement 1, *Objectives of Financial Reporting by Business Enterprises*, sets out objectives and concepts for use in developing standards of financial accounting and reporting. The discussion begins with a broad focus on information that is useful in investment and credit decisions (paragraph 34). It then narrows that focus to investors' and creditors' primary interest in the prospects for receiving cash from their investments in, or loans to, business enterprises and the relation of those prospects to an enterprise's cash flow prospects (paragraph 37). Finally, the discussion focuses on information about the economic resources of an enterprise, the claims to those resources, and the effects of transactions, events and circumstances that change resources and claims to those resources (paragraph 40).

According to FASB Concepts Statement 1, financial reporting should provide the following:

- information about an enterprise's economic resources, obligations, and owners' equity;
- information about an enterprise's performance and earnings;
- information about an enterprise's liquidity, solvency and funds flows;
- information about management's stewardship and performance;
- management's explanations and interpretations.

In both countries, the focus is on users and their information needs. In Canada, the users of general purpose financial statements include those identified in the *CICA Handbook – Accounting* (paragraph 1000.09 lists investors, creditors and their advisers) and in the *CICA Public Sector Accounting Handbook* (PS 1400.09 lists the public, legislators, investors and analysts). Although investors (shareholders) and creditors are considered to be the primary users, it is stated that other users will find the information in financial statements generally useful.

Investors and creditors of profit oriented enterprises are interested, for the purpose of making resource allocation decisions, in predicting the ability of the entity to earn income and generate cash flows in the future to meet its obligations and to generate a return on investment. Investors and creditors also require information about how the management of an entity has discharged its

stewardship responsibility to those who have provided resources to the entity.

FASB Concepts Statement 1 identifies the following potential users of financial information: "owners, lenders, suppliers, potential investors and creditors, employees, management, directors, customers, financial analysts and advisors, brokers, underwriters, stock exchanges, lawyers, economists, taxing authorities, regulatory authorities, legislators, financial press and reporting agencies, labour unions, trade associations, business researchers, teachers and students, and the public" (paragraph 24). Except for management, and to some extent directors, these potential users are "external users" and the focus is on the external aspect of financial reporting.

Among external users, taxing and regulatory agencies have statutory authority to require specific information needed to fulfill their functions. Similarly, some present or potential investors and creditors may be able to require an enterprise to provide specified information as a condition to entering into a particular transaction. This Research Report is concerned primarily with the needs of external users who lack the authority to prescribe the financial information they want from an enterprise and, therefore, must use the information that management communicates to them. This does not mean that regulatory agencies are not users, in the sense of having a legitimate interest in the general purpose financial reporting of enterprises they regulate. Inasmuch as they can prescribe the financial information they require, however, they do not have the same reliance on general purpose financial statements as external users who lack that authority.

Certain government-owned and operated rate-regulated enterprises are equivalent to private-sector businesses. In fact, some may consider them to be business enterprises and regard contributors, customers and citizens as the equivalent of investors in those enterprises. Furthermore, many of those enterprises sell bonds to the public and, hence, have at least some investors in the usual sense of the word; all of those enterprises have creditors.

Qualities and Characteristics of Useful Information

The qualities and characteristics that make information useful for decision making are the criteria for selecting preferable accounting choices from among available alternatives. Both conceptual frameworks refer to *understandability, relevance, reliability, predictive and feedback value, materiality, representational faithfulness, neutrality, conservatism (prudence), completeness, comparability, consistency, timeliness, the benefit versus cost constraint*, and *verifiability* as qualities and characteristics that have an impact on the usefulness of information provided in the financial statements. The emphasis given to some of those qualities and characteristics varies between the two countries, and there are some minor differences in the definition or interpretation of some of those listed.

For example, the US framework sets out a hierarchy that distinguishes between primary and other accounting qualities. It notes, however, that the hierarchy is an exploratory device, whose purpose is to clarify certain relationships rather than assign relative weights or importance to

specific qualities. The Canadian framework notes four principal characteristics (understandability, relevance, reliability and comparability) and identifies other qualities that have an impact on these principal characteristics. It notes that, in practice, a trade-off between qualitative characteristics often is necessary.

The Canadian framework also refers to *substance over form* as a characteristic of financial information, whereby transactions are accounted for and presented in a manner that conveys their substance rather than necessarily their legal form. The US framework notes that this is rather a vague idea that defies precise definition. It considers that *representational faithfulness* leaves no room for accounting representations that subordinate substance to form. Furthermore, the US framework stresses that accounting standards cannot be phrased in such a way that their application can suit all circumstances; therefore, judgmental choices must be made.

Underlying Assumptions

Two basic underlying assumptions are noted in the frameworks: the *accrual basis* and *going concern*. The *accrual basis* recognizes the effect of transactions and other events and circumstances in the period in which they occur, regardless of whether there has been a receipt or payment of cash or its equivalent. The frameworks note that accrual accounting also encompasses *deferrals* (cash payments and receipts that occur prior to fulfilling the criteria for recognition of expense or revenue). *Going concern* relates to the assumption that an entity will continue in operation for the foreseeable future and will be able to realize assets and discharge liabilities in the normal course of operations, unless there is evidence to the contrary.

Elements of Financial Statements

CICA Handbook – Accounting Section 1000 (paragraph 1000.25) states that:

> Elements of financial statements are the basic categories of items portrayed therein in order to meet the objective of financial statements. There are two types of elements: those that describe the economic resources, obligations and equity / net assets of an entity at a point in time, and those that describe changes in economic resources, obligations and equity / net assets over a period of time. Notes to the financial statements ... are not considered to be an element.

Both frameworks identify *assets* and *liabilities*, *equity, income (revenues)* and *expenses, gains* and *losses*, and *performance (profit* or *earnings)* as the elements of financial statements. Although the wording differs somewhat, the various elements may generally be described as follows:

- *Assets* are the economic resources obtained or controlled by an entity as a result of past transactions or events, from which future benefits may be obtained (see *CICA*

Handbook – Accounting paragraph 1000.29).

- *Liabilities* are obligations arising from past transactions and events that may result in future sacrifices of economic benefits through transfer or use of assets or provision of services to other entities (see *CICA Handbook – Accounting* paragraph 1000.32).
- *Equity* is the residual (ownership) interest in the assets of an entity after deducting its liabilities (see *CICA Handbook – Accounting* paragraph 1000.35). 3(73)
- *Income (revenues)* refers to increases in economic resources, by way of inflows or enhancement of assets, or reductions of liabilities, resulting from the ordinary activities of an entity (see *CICA Handbook – Accounting* paragraph 1000.37). 4(74)
- *Expenses* refer to decreases in economic resources, by way of outflows or reduction of assets, or incurrences of liabilities, resulting from the ordinary activities of an entity (see *CICA Handbook – Accounting* paragraph 1000.38). 5(75)
- *Gains* are increases in equity resulting from peripheral or incidental transactions and events of an entity, and from other events, transactions and circumstances affecting the entity, except those resulting from revenues or investments by owners (see *CICA Handbook – Accounting* paragraph 1000.39).
- *Losses* are decreases in equity resulting from peripheral or incidental transactions and events of an entity, and from other events, transactions and circumstances affecting the entity, except those resulting from expenses or distributions to owners (see *CICA Handbook – Accounting* paragraph 1000.40).
- *Performance (profit or earnings)* is a measure of the residual amount after expenses and losses are deducted from revenues and gains during a period.

In addition, the US framework defines "other comprehensive income" as the change in equity from all transactions and other events other than transactions with owners and distinguishes it from earnings in that certain classes of gains and losses are included in comprehensive income that are excluded from earnings.

Recognition and Measurement

Recognition is defined as the process of incorporating an item in the financial statements of an entity. It consists of the amount and a narrative description of the item, with the amount being included in a financial statement total. *Recognition* cannot be substituted with notes, disclosure or other similar types of information.

The general criteria for recognition noted in both frameworks are that there is a reliable and relevant basis of measurement and that a reasonable estimate can be made. The US framework specifically states that the item must meet the definition of an element of financial statements and

that recognition is subject to a cost-benefit constraint 6(76) and a materiality 7(77) threshold. These are implied in other parts of the Canadian framework.

The criteria for recognition of *revenues, expenses, gains* and *losses* are covered in both frameworks. Again, the wording differs, but the criteria generally are as follows:

- *Revenues* are recognized when performance is completed. The Canadian framework also refers to reasonable assurance regarding measurement and collectibility.
- *Expenses* are recognized when an expenditure does not have a future economic benefit.
- *Gains* are recognized when realized. The US framework also permits recognition when realizable.
- *Losses* are recognized when a previously recognized asset does not have a future economic benefit. The US framework also refers to the situation in which a liability has been incurred or increased without associated economic benefits.

Measurement is the process of determining the amount at which an item is recognized in the financial statements. There are a number of bases on which an amount can be measured, but financial statements are prepared primarily using the *historical cost* basis of measurement, whereby transactions and events are recognized in financial statements at the amount of cash or cash equivalents paid or received or the fair value ascribed to them when they took place.

Other bases of measurement include: current cost — United States; current market value — US; net realizable (settlement) value — US; present (or discounted) value of future cash flows — Canada and US; realizable value — Canada; and replacement cost — Canada. These measurement alternatives can be used in limited circumstances only. Although some of these alternatives are not specifically mentioned in the conceptual frameworks, they are being used in Canada and the United States.

Both frameworks mention the financial capital maintenance concept in the preparation of financial statements, stipulating that capital maintenance should be measured in nominal terms. The concept of capital maintenance affects measurement because income in an economic sense exists only after the capital of an enterprise has been maintained. Therefore, income is the increase or decrease in the amount of capital at the end of the period over the amount at the beginning of the period, excluding the effects of capital contributions and distributions.

Appendix B

SURVEY OF FINANCIAL STATEMENT DISCLOSURES BY INDUSTRY

Chapter 4 of the Research Report provides an analysis of the current state of accounting and financial reporting by rate-regulated enterprises in Canada. To supplement that analysis, this Appendix presents the results of a survey of financial statement disclosures in corporate annual reports for 1999 or 2000. The survey covers 25 regulated enterprises in four industries — electric, natural gas distribution and transmission, telecommunications and transportation. A list of the survey companies is provided below followed by a schedule of disclosures provided in their general purpose financial statements.

Electric enterprises	**Year**
1. British Columbia Hydro and Power Authority	2000
2. Canadian Utilities Limited	2000
3. Emera Inc.	2000
4. Epcor Utilities Inc.	2000
5. Hydro One Inc.	1999
6. Hydro Québec	2000
7. New Brunswick Power Corporation	2000
8. Newfoundland and Labrador Hydro	1999
9. Newfoundland Power Inc.	2000
10. Saskatchewan Power Corporation	2000

Natural gas distribution and transmission enterprises	**Year**
11. ATCO Ltd.	2000
12. BC Gas Utility Ltd.	2000
13. Enbridge Inc.	2000
14. Pacific Northern Gas Ltd.	2000
15. The Consumers' Gas Company Ltd.	2000
16. TransCanada Pipelines Limited	2000
17. Westcoast Energy Inc.	2000

Telecommunications enterprises	**Year**
18. Aliant Inc.	2000
19. Bell Canada	2000
20. Manitoba Telecom Services Inc.	2000
21. Saskatchewan Telecommunications Holding Corporation	1999
22. Télébec ltée	2000

23. Telus Corporation	2000

Transportation enterprises	**Year**
24. NAV Canada	2000
25. Halifax-Dartmouth Bridge Commission	2000

RATE-REGULATED ENTERPRISES IN CANADA

Survey of Disclosures in Notes to Financial Statements

Appendix C

ILLUSTRATIVE FINANCIAL STATEMENT DISCLOSURES

This appendix provides examples of disclosures presented in the notes to the general purpose financial statements of selected rate-regulated enterprises. The examples are drawn from the published annual reports of survey companies listed in Appendix B to this Research Report.

The examples are intended to reflect current practices in Canada. Variations may be necessary to meet the requirements of differing circumstances and other typical reporting situations that are not represented in these examples.

Regulator / Impact of Rate Regulation

- Epcor Utilities Inc. — pages 136-137
- Hydro One Inc. — page 138
- Newfoundland Power Inc. — pages 139-141
- Westcoast Energy Inc. — page 142
- Teleses ltée — page 143

Accounting for Capital Assets

- British Columbia Hydro and Power Authority — pages 144-145

- Enbridge Inc. — page 146

Accounting for Income Taxes

- TransCanada Pipelines Limited — pages 147-149

You will require Adobe Acrobat Reader to view the following. Should you require it, click here to install the program.

Financial Statements

Epcor Utilities Inc.

Hydro One Inc.

Newfoundland Power Inc.

Westcoast Energy Inc.

Télébec ltée

British Columbia Hydro and Power Authority

Enbridge Inc.

TransCanada Pipelines Limited

Appendix D

SURVEY OF PUBLIC SECTOR PRACTICES

With regards to the public sector in Canada, the Study Group is proposing that the application of General Principle 1 should be limited to "government business enterprises." General Principle 1 defines a "rate-regulated enterprise" as an enterprise (i.e., a separate legal entity) that has regulated operations meeting all of the following criteria:

- The enterprise's rates for regulated services or products provided to its customers are established by, or are subject to approval by, an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
- The regulated rates are designed to recover the specific enterprise's costs of providing the regulated services or products.
- In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

To assess the feasibility of this proposal, the Study Group undertook a survey of the current financial reporting practices of the federal and provincial governments in Canada. Survey participants were asked the following questions:

- In your jurisdiction, what entities that are included in the federal or provincial government's summary financial statements currently follow GAAP for rate-regulated enterprises as set out in the *CICA Handbook*?
- Do the entities that currently following GAAP for rate-regulated enterprises meet all of the criteria set out in the above-noted definition of a "rate-regulated enterprise?" Which entities do not have rates established by, or subject to approval by, an

independent, third party regulator?

- The Study Group is proposing to limit application of the criteria for qualifying as a "rate-regulated enterprise" to "government business enterprises" because their financial statements should be prepared on the same basis as private sector businesses (refer to Public Sector Handbook, paragraph PS 1300.27). In your jurisdiction, would this eliminate any of the entities currently following GAAP for rate-regulated enterprises?
- Is it important that the general purpose financial statements of rate-regulated enterprises in the public sector be prepared on a basis consistent with that in the private sector?

The following excerpts are drawn from the responses to the survey.

Government of Canada

None of the organizations within the Government of Canada reporting entity fit the definition of a rate-regulated enterprise.

British Columbia

In addition to British Columbia Hydro and Power Authority (BC Hydro), there are several other organizations that meet the definition of rate-regulated, but do not follow GAAP for rate-regulated enterprises. If a new set of guidelines / recommendations come out for rate-regulated enterprises, some of these organizations or their auditors may determine that they should be following rate-regulated GAAP. We note that the definition of rate-regulated is not just that rates be established by an independent, third-party regulator, but that they may be established by the organization's own governing board.

Any accounting treatment determined to be appropriate for rate-regulated enterprises should be applicable to both private sector and public sector enterprises alike. It is important that the general purpose financial statements for rate-regulated enterprises in the public sector be prepared on a basis consistent with that of rate-regulated enterprises in the private sector.

Alberta

The Alberta Government does not have any rate-regulated enterprises that form part of the reporting entity. In general, we agree that the financial statements of rate-regulated enterprises in the public sector should be consistent with those in the private sector.

Saskatchewan

Saskatchewan's largest Crown corporations, SaskEnergy Incorporated (SaskEnergy), Saskatchewan Power Corporation (SPC), and Saskatchewan Telecommunications Holding

Corporation (SaskTel), follow rate-regulated GAAP. All three of the Crown corporations meet the definition of a government business enterprise.

SaskTel is regulated by the Canadian Radio-television and Telecommunications Commission (CRTC). It does not appear that SaskTel would meet the second or third criterion of the proposed definition, as local telephone access is subsidized and, therefore, the rates would not recover the enterprises's costs for that service. As a result, SaskTel would not be considered rate-regulated by the proposed definition. It is likely that this will affect all phone companies regulated by CRTC.

SaskEnergy and SPC's rates are subject to review by the Saskatchewan Rate Review Panel. The rates are then subject to approval by the Crown's Board of Directors, the Crown Investments Corporation's Board and, ultimately, Saskatchewan Cabinet. This rate-approval process meets the proposed definition as the Boards and Cabinet are empowered by statue or policy to establish rates that bind customers. Therefore, SaskEnergy and SPC would be considered rate-regulated. However, this might be an issue of further debate in Saskatchewan. In order to be consistent and comparable to other companies in the same industry, it is important that Crown corporations are allowed to follow rate-regulated accounting.

The main focus of developing financial reporting policies for rate-regulated enterprises is to ensure companies in the same industry have comparable reporting practices. If an accounting treatment is accepted by industry, it should be accepted by all similar companies regardless of who owns the company (i.e., government versus private sector). Therefore, it is important for similar organizations to follow similar accounting policies, whether they are public or private.

Ontario

In the past, Ontario Hydro was the only Crown agency to prepare its general purpose financial statements in accordance with GAAP for rate-regulated enterprises. Prior to the electricity restructuring, the activities of Ontario Hydro were not reflected in the Province's books as the Province had no access to the "retained earnings" of the agency under the Power Corporations Act. With the restructuring, the Province now includes in its accounts, on a modified equity basis, the activities of HYDRO1 and Ontario Power Generation. HYDRO1 meets the definition of a "rate-regulated enterprise" for financial reporting purposes as its rates are established by the Ontario Energy Board (an agency of the Crown whose members are appointed by OIC but operate independently of these enterprises and the government), their rates are designed to recover the costs of providing the regulated services or products, and it is reasonable to assume that their rates can be charged to and collected from customers.

New Brunswick

In New Brunswick, NB Power is the only organization in the government reporting entity that uses rate-regulated accounting. NB Power meets the definition of a rate-regulated enterprise. By

legislation, it has the authority to increase rates by up to 3% in any year on its own — subject to interest coverage rate limits. Any increase outside of this must be approved by the Public Utilities Board, which acts independently but is appointed by government. 1(78) NB Power is a government business enterprise (GBE) so, if rate-regulated enterprises have to be GBEs, it will not have an impact on us. It is important for public sector and private sector rate-regulated operations to be accounted for on a consistent basis.

Nova Scotia

Nova Scotia has two rate-regulated entities that are reported in the Province's summary financial statements, Halifax-Dartmouth Bridge Commission and Highway 104 Western Alignment Corporation. Both of these entities prepare their statements according to GAAP. They are Government Business Enterprises. Therefore, their results are included in the Province's summary statements using the modified equity basis. The toll rates of the Halifax-Dartmouth Bridge Commission are subject to approval of the Nova Scotia Utility and Review Board. The toll rates of Highway 104 are set in the agreement with the bondholders and agreed to by the corporation and the Province, but are not regulated by an independent third party, such as the Nova Scotia Utility and Review Board. We agree that rate-regulated enterprises in the public sector should be prepared on a basis consistent with those of the private sector to accommodate the needs and expectations of other users of their financial statements.

Northwest Territories and Nunavut

The GNWT includes the financial statements of the NWT Power Corporation. The assets of this entity are shared by the Government of the NWT and the Government of Nunavut. The NWT Power Corporation was established after the GNWT purchased the Northern Canada Power Commission and is still trying to align rate structure / revenue requirements with the associated costs within the various rate zones. In addition, the GNWT also provides a direct subsidy to residential and commercial consumers in all rate zones outside Yellowknife. This unique situation would prevent us from meeting all the criteria until we complete realignment of revenues to costs. General Rate Applications are submitted and approved by an independent Public Utilities Board. Limiting application to "government business enterprises" would not prevent NWT Power Corporation from qualifying as a rate-regulated enterprise.

Appendix E

RATE REGULATION IN THE ELECTRIC POWER INDUSTRY

Public utilities are often described as businesses so affected with the public interest that they

must be regulated by government regarding entry into and exit from the market, rate charges to customers, rate of return allowed to owners, and for the requirement to serve all customers within their area of operation. 1(79) With very few exceptions, rate regulation has been imposed on both publicly-owned and privately-owned utilities, or example, in the electric power industry.

Development of the electric power industry in Canada involved a mix of politics, economics, geography and technology. In the early 20th century, demand for electric power was being met by many isolated electric generating plants, both thermal and hydro. Because of the sophisticated technology and significant capital investment, the electric utilities evolved quickly into monopolies. With the growing importance of electricity as a basic need for commerce, industry and domestic life, and the apparent economies offered by large-scale integrated systems, there was a need to make some fundamental choices. Were essential services to be provided by private enterprise or publicly-owned utility? How, and to what extent, were they to be regulated? Depending on such factors as political will, population density and vested interests, intervention by way of government regulation came at different times and in different ways in each province and territory. This is illustrated, in part, by developments in Québec and Ontario.

In Québec, much of the electric power industry was under private control. In 1918, only 20 of the 119 power plants were owned and operated by municipalities. In 1940, five private companies supplied 90 per cent of the power. Largely in response to growing consumer dissatisfaction over high rates, the Québec Hydro-Electric Commission (Hydro-Québec) was created in 1944. It was to supply power to municipalities and commercial enterprises at the lowest possible rate and to generate, transmit and distribute electricity throughout the province. In 1963, a political decision was made to nationalize existing utilities and Hydro-Québec quickly acquired most privately-owned suppliers. By 1984, it had become one of the 10 largest public utilities in North America.

Unlike Québec, most of Ontario's early 20th century history is dominated by a publicly-owned utility. Many municipalities and boards of trade in southern Ontario felt that cheap power was essential to economic growth. In response to public pressure, the Hydro-Electric Power Commission of Ontario (Ontario Hydro) was incorporated in 1905. Ontario Hydro was given the legal authority to control the rates charged for electricity and the right to generate and distribute electrical energy. As a wholesaler of power to municipalities, it also controlled the rates they charged. By 1930, Ontario Hydro was supplying electric power to 550 communities. Despite massive expansion, it needed more power. Additional input came from nuclear-powered thermal generating plants, developed in conjunction with Atomic Energy of Canada Limited.

In Canada, the provinces have jurisdiction over property and, therefore, the electric power industry could not be regulated on a national level. Each province reacted differently to a technology that demanded the creation of a monopoly. As provincial and interprovincial integration became necessary to achieve maximum efficiency through diversification of load and supply, regulation became more important, and the distinction between private and public

utilities became blurred. Today, a variety of approaches continue to exist, with some provinces dominated by a public utility (for example, Ontario and Québec), some having mixed private and public utilities (for example, Alberta and Newfoundland), and one province dominated by a private utility (Prince Edward Island).

Of the major electric utilities in Canada today, eight are provincially owned, seven are investor owned, four are privately-owned and two are territorial Crown corporations. In addition, there are a number of municipally owned utilities, particularly in Ontario. Pubic sector enterprises and private sector enterprises each represent about half of the 21 major electric utilities. According to the Statistics Canada publication *Electric Power Generation, Transmission and Distribution 1998*, however, public utilities generate about 83% of the power in Canada and private utilities about 17%. 2(80) Public utilities account for 90% of the total net fixed assets of $124 billion and about 95% of the total long-term debt of $91 billion. In addition, the account for 87% of the total annual operating revenues of approximately $40 billion.

In contrast to the Canadian environment, where there are a few, relatively large rate-regulated enterprises (e.g., hydro utilities) owned by the provincial governments, the US environment is characterized by many, relatively small rate-regulated enterprises of state and local governments. According to the American Public Power Association's *2000 Annual Directory and Statistical Report*, there are 3,170 electric utilities in the United States. Of these, 2,009 (63%) are publicly owned utilities, 239 (8%) are investor owned utilities, 912 (29%) are cooperatives and 10 (less than 1%) are federal power agencies.

There is no connection, however, between the type of ownership and the capacity to serve the ultimate customers. Although investor-owned utilities comprise only 8% of the total number of utilities, they generate approximately 75% of the power and service approximately 75% of the ultimate customers (1998 revenues exceeded $168 billion). On the other hand, publicly-owned utilities comprise 63% of the total number of utilities, but they generate only 12% of the power and service less than 15% of the ultimate customers (1998 revenues were $30 billion).

In summary, there are relatively few publicly-owned electric power utilities in Canada, but they generate the majority of the total power. This contrasts sharply with the situation in the United States which has many publicly-owned electric power utilities, but they generate only a small fraction of the total power. Nevertheless, both public and private sector utilities are similar in that they carry on a business and prepare their general purpose financial statements in accordance with GAAP for private sector enterprises. This similarity is highlighted by a move in recent years towards unbundling services provided by electric utilities, leading to more and more deregulated or market-oriented rates for the generation services, with transmission and distribution rates remaining regulated.

GLOSSARY

The following terms are used in the Research Report or are commonly used in the regulatory community and may be useful to the reader. Terms in bold within definitions are separately defined in the Glossary. 1(81)

Allowance for funds used during construction (AFUDC)

AFUDC is the amount that a **rate-regulated enterprise** is allowed to earn to recover its cost of financing assets under construction. It is equal to the average cost of the construction work in process, times a financing rate, which is usually equal to the enterprise's **cost of capital** rate. AFUDC is included in the cost of the related assets and recovered in future periods through the depreciation charge. AFUDC is similar to "Interest During Construction" for unregulated industries, except that the **cost of equity** capital is normally taken into account.

Allowed rate of return

The rate of return a regulated enterprise is allowed the opportunity to earn. When applied to the **rate base**, the allowed rate of return provides an amount equal to the forecast cost of financing the investment required for regulated operations. The financing costs include both the **cost of debt** and the **cost of equity**.

Argument

A submission to a regulatory authority at the end of a hearing that summarizes a party's position. Argument may be presented on behalf of the regulated enterprise, each intervenor and, in some cases, the regulator's staff. Argument is usually presented by the party's counsel and draws on the evidence presented in the hearing and legal precedent. At the regulator's discretion, arguments may be presented either orally or in writing, though written submissions are more common.

Avoidable cost

A cost that would be avoided if the cost object did not exist. Avoidable costs will generally be the same as the direct and variable indirect costs.

Capital asset pricing model

A method for estimating the **cost of equity** in which that cost equals a risk-free rate plus a risk premium. The yield on government bonds is usually used as the risk-free rate. The risk premium is equal to the market risk premium times a "Beta" factor, the Beta factor being a measure of the enterprise's risk in relation to the market.

Capital structure

The manner in which an enterprise is financed, which usually includes debt, equity and deferred income tax credits.

Cash working capital

Cash working capital is the investment required by the difference in time between when

cash operating expenses are paid and when the cash to cover the expenses is eventually recovered from customers.

Comparable earnings method

A method for estimating the **cost of equity**. The cost of equity is determined based on the realized return on investments of similar risk to that of the regulated enterprise.

Construction work in process (CWIP)

CWIP refers to the capital assets under construction by a regulated enterprise for its future use. It may or may not be included in the regulated enterprise's **rate base**.

Cost-based pricing

A basis for determining how the **cost of service** will be recovered through individual rates. Rates for each type of service are set to reflect the cost of providing the service.

Cost object

Whatever is being costed, such as a product or service, activity, operating division, etc.

Cost of capital

The cost of financing the **rate base**. It is equal to the weighted average cost of each component in the capital structure. The weight for each component equals the percentage of the total capital structure represented by the component.

Cost of debt

The costs associated with debt financing, including interest payments, plus amortization of issuance expense, any purchase discount / premium and any foreign-exchange losses / gains.

Cost of equity

The cost to equity investors of investing their funds in a regulated enterprise. In regulatory proceedings, it is generally determined in relation to what could be earned on investments of similar risk in unregulated companies.

Cost of service

The total cost of providing service, including operating and maintenance expenses, depreciation, amortization, taxes and cost of capital. The cost of service is also referred to as "**revenue requirements**."

Cost of service study

A study to determine the **cost of service** by class of service and/or customer. These studies are used to help determine how the **revenue requirements** are to be allocated among the rates for the various services / customers.

Cross-subsidization

Increasing the rates for one service or class of customers so that the rates for another

service or class of customers can be reduced below cost.

Current cost

The cost of acquiring an asset or service at current prices.

Deemed capital structure

A capital structure used for rate-making purposes that differs from an enterprise's actual **capital structure**. A regulator may deem a capital structure for an enterprise when it considers its actual capital structure inappropriate.

Deferral account

An account that records the deferral of a cost or revenue until a future date. A deferred asset account records a cost that would normally be expensed and recovered in the current period, but is to be expensed or recovered in a future period. A deferred liability account records an amount recovered in the current period to cover costs of providing service in a future period.

Direct cost

A cost incurred for one specific cost object.

Discounted cash flow method

The discounted cash flow method is one of the methods used for estimating the **cost of equity** using market data. Using this method, the cost of equity is equal to the expected dividend yield (the expected dividend divided by current share price), plus the expected dividend growth rate.

Embedded cost

See "**Historical cost**."

Financial viability

Ability to meet financial obligations.

Fixed cost

A cost that doesn't vary with the provision of a cost object (which would be the same whether or not the cost object existed).

Historical cost

The amount originally paid for assets and services.

Incentive regulation

A form of **rate regulation** where the regulated enterprise has financial incentives to improve its efficiency or achieve other goals. Incentives can include financial rewards for exceeding targets and financial penalties for failing to achieve them. Incentive rate regulation is also referred to as "**performance-based regulation**."

Indirect cost

A cost incurred for two or more cost objects.

Interest coverage

A measure of an enterprise's ability to meet interest charges, this is income available to cover interest charges, divided by interest charges. Income to cover interest charges equals net income plus interest charges and income tax expense.

Information requests

Questions posed to those who provide evidence in a hearing. Information requests and their responses are made prior to the hearing, in writing, and become evidence in the hearing. Information requests are also referred to as "**interrogatories**."

Interrogatories

See "**Information requests**."

Lead-lag study

A lead-lag study is used for estimating **cash working capital**. It is an analysis of the average number of days between the time payment is made for operating expenditures and the time the amounts are collected from customers to recover these costs. The resulting time delay is divided by the number of days in the year, then multiplied by the estimated amount of cash operating expenses to determine the amount of necessary cash working capital.

Negotiated settlement

An agreement between a regulated enterprise and its customers (or their representatives) dealing with allowed rates or an issue that affects their determination. Generally, negotiated settlements must be approved by the regulator.

Non-avoidable cost

A cost that would not be avoided if the cost object did not exist. Non-avoidable costs are generally the same as fixed indirect costs.

Performance-based regulation

See "**Incentive regulation**."

Price-cap regulation

A form of **rate regulation** where the focus is on the prices that can be charged. Limits are set on initial prices and a formula is put in place to allow for future increases in the maximum prices that can be charged.

Purchase premium

An amount paid for assets, or an entire enterprise, in excess of original cost, less depreciation.

Rate-regulated enterprise

For financial reporting purposes, a "rate-regulated" enterprise is an organization which has regulated operations that meet all of the following criteria:

- The enterprise's rates for regulated services or products provided to its customers are established by, or are subject to approval by, an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
- The regulated rates are designed to recover the specific enterprise's costs of providing the regulated services or products.
- In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

Rate base

The amount of investment in regulated operations on which a regulated enterprise is allowed to earn a return. It usually consists of the depreciated value of the plant in service required for regulated operations, plus an allowance for working capital and deferred assets.

Rate regulation

The restriction in the setting of prices that can be charged to customers for services or products. Under rate regulation, an enterprise's rates are established by, or are subject to approval by, a regulator.

Rates

The prices at which regulated services are provided.

Rebuttal evidence

Evidence submitted in a hearing in response to evidence provided by another party. Such evidence may address only the evidence that has been submitted by the other party, not a new area.

Reply argument

A submission to a regulatory body addressing another party's argument. A reply argument may address only the other party's previously submitted argument, not a new area.

Return on rate base regulation

A form of **rate regulation** where the focus is on the allowed earnings, in particular the allowed return per dollar of investment (rate base). Under this form of rate regulation, total revenue requirements are set equal to the expected cost of providing service. This expected cost is equal to the operating costs, plus an allowed return where that return is

set equal to the allowed rate base times the allowed rate of return.

Revenue requirements
See "**Cost of service**."

Risk premium method
A method for estimating the **cost of equity** using market data. The cost of equity is determined as the sum of the yield on a debt security (usually the yield on government bonds or the enterprise's bonds), plus an estimate of the equity risk premium (i.e., the required return on the enterprise's equity over the required return on the debt security).

Social contract regulation
A form of **rate regulation** whereby allowed rates are the result of an agreement between the regulated enterprise and the regulatory authority. It is an imprecise form of regulation since it can be argued that almost any form of rate regulation qualifies as social contract regulation.

Test period
The operating period selected to evaluate the **cost of service** and whether proposed rates are adequate to cover costs without providing an excess return. Although the test period is usually a prospective 12-month period, other periods, including historical periods, have been used.

Value-of-service pricing
A basis for determining how the **cost of service** will be recovered through individual rates that reflects the perceived value of the services without regard to the cost of providing them.

Working capital
For regulatory purposes, working capital represents the investment required to finance inventory, plus **cash working capital**.

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Endnotes

1 (Popup - Popup)

1. Where the Research Report presents the views, opinions or conclusions of the Study Group, it refers to the majority of the members and not necessarily to the entire Study Group.

2 (Popup - Popup)

1. The questions were initially raised in May 1999 when the Accounting Standards Board (AcSB) reviewed a draft project proposal on accounting for rate-regulated enterprises. In addition, the Public Sector Accounting Board (PSAB) raised questions about the application to public sector enterprises (see Chapter 8).

3 (Popup - Popup)

2. Chapter 6 examines the criteria that an enterprise must meet to qualify as a rate-regulated enterprise for financial reporting purposes. In short, the rates must be subject to regulation, they must be designed to recover the costs of providing service, and they must be chargeable and collectible from customers.

4 (Popup - Popup)

3. As noted in Chapter 3, there are differing views on the extent to which specific guidance for rate-regulated enterprises should be provided.

5 (Popup - Popup)

4. The survey was undertaken, on the CICA's behalf, by Peggy Coady, Memorial University of Newfoundland.

6 (Popup - Popup)

5. Where the Research Report presents the views, opinions or conclusions of the Study Group, it refers to the majority of the members and not necessarily to the entire Study Group.

7 (Popup - Popup)

1. Appendix E to this Research Report provides a brief overview of rate regulation in the electric power industry in Canada.

8 (Popup - Popup)

2. Circumstances may differ between the public sector and the private sector. Issues of particular relevance to rate-regulated enterprises in the public sector — such as the independence of the regulator and self-regulation — are addressed in Chapter 8 of this Research Report.

9 (Popup - Popup)

1. Statement of Financial Concepts, No. 3, paragraph 85, Financial Accounting Standards Board. A similar view is expressed in "Financial Statement Concepts," *CICA Handbook – Accounting*, paragraph 1000.46.

10 (Popup - Popup)

2. *CICA Handbook – Accounting*, paragraph 1500.06; Exposure Draft "Generally Accepted Accounting Principles" (July 2001), paragraph 19.

11 (Popup - Popup)

1. It is important to understand that Statements issued subsequent to SFAS 71 may amend, interpret, supplement or otherwise affect the provisions of that Statement.

12 (Popup - Popup)

2. It should also be noted that SFAS 71, "Basis for Conclusions," paragraph 64 indicates that this criterion was specifically modified by the Board so as not to preclude application by government-owned utilities with rates set by their own governing board.

13 (Popup - Popup)

3. SFAS 143 is effective for fiscal years commencing after June 15, 2002, although earlier application is encouraged.

14 (Popup - Popup)

4. *Accounting for Regulation in UK Utilities* (London: The Research Board of The Institute of Chartered Accountants in England and Wales, 1994).

15 (Popup - Popup)

5. The observations were drawn from papers presented at a conference, "Accounting for Regulation – A Comparative Assessment," sponsored by the Centre for the Study of Regulated Industries (CRI) of the University of Bath, that took place at the London School of Economics on September 23, 1999. The papers are titled "Reconciling Generally Accepted Accounting Practice (GAAP) and Regulatory Accounts – The Lessons of Reporting in GAS," by M. Duthie; "A

Comprehensive Accounting Model For Regulation," by P. Vass, and "Statements of Recommended Practice (SORPs) – Role and Rules for Development," by Andrew Lennard, Assistant Technical Director, UK ASB.

16 (Popup - Popup)

6. Refer to "Financial Statement Concepts, " *Handbook* Section 1000, and "General Standards of Financial Statement Presentation," *Handbook* Section 1500. As stated in paragraph 1000.02, Section 1000 is to be used in establishing accounting policies in areas in which accounting principles are developing.

17 (Popup - Popup)

1. The rate-setting processes and methodologies are discussed in Chapter 2 of this Research Report.

18 (Popup - Popup)

2. As noted in Chapter 1, in July 2001, the Accounting Standards Board issued an Exposure Draft of a proposed new *Handbook* Section on "Generally Accepted Accounting Principles." The material in this Section is based on that Exposure Draft. Reference should therefore be made to the new *Handbook* Section once it is issued.

19 (Popup - Popup)

3. Financial statement concepts are discussed in Appendix A of this Research Report.

20 (Popup - Popup)

4. "Contingencies," *Handbook* Section 3290, paragraph .06, states that the uncertainty relating to the occurrence of a future event can be expressed by a range of probabilities that provide a basis for establishing the appropriate accounting treatment. The three main areas of this range are likely, unlikely and not determinable.

21 (Popup - Popup)

5. For a liability to be recognized, however, it must be probable that an outflow of resources embodying economic benefits will be required to settle the obligation (paragraph 1000.44). This effectively disqualifies the recognition of most equitable obligations and some constructive obligations.

22 (Popup - Popup)

Canadian Accounting and Assurance Reference Service (CAARS)

1. Note that some enterprises carry on both rate-regulated and non-rate-regulated activities.

23 (Popup - Popup)

2. See Appendix A of this Research Report for a comparison of the conceptual frameworks in Canada and the US.

24 (Popup - Popup)

3. As noted later in this chapter, only a subset of an enterprise's operations may be subject to rate regulation. For example, the transmission and distribution activities in the electric power industry may be subject to rate regulation but the power-generating activities may not (see Appendix E for an overview of rate regulation in the electric power industry).

25 (Popup - Popup)

4. For example, NAV Canada is given the exclusive right to provide certain services under the 1996 *Civil Air Navigation Services Commercialization Act* and is empowered by the *Act* to set and collect user charges for air navigation services.

26 (Popup - Popup)

5. Circumstances may differ in the public sector, however, and issues of particular relevance to rate-regulated enterprises in the public sector — such as the independence of the regulator and self-regulation — merit further consideration. These are addressed separately in Chapter 8 of this Research Report.

27 (Popup - Popup)

6. In Chapter 2, it was noted that there are a number of basic regulatory methodologies and, within each basic methodology, there can be different applications that vary with the regulatory authority.

28 (Popup - Popup)

7. Rate regulators usually consider a fair return on investment to be a cost recoverable through rates.

29 (Popup - Popup)

8. Refer to the definition of a liability, *CICA Handbook – Accounting*, paragraph 1000.32.

30 (Popup - Popup)

1. With regard to the "benefit versus cost" constraint, the Study Group maintains that the benefits expected to arise from providing information in financial statements should exceed the cost of doing so. This constraint is also a consideration in the preparation of financial statements in accordance with GAAP (for example, in considering disclosure of information beyond that required by the standards). The benefits and costs may accrue to different parties and, therefore, the evaluation of the nature and amount of benefits and costs is substantially a judgmental process.

31 (Popup - Popup)

2. Materiality is the term used to describe the significance of financial statement information to decision makers. An item of information, or an aggregate of items, is material if it is probable that its omission or misstatement would influence or change a decision. Materiality is a matter of professional judgment in the particular circumstances.

32 (Popup - Popup)

3. It is assumed that any change in regulatory assets or liabilities would not be associated with a gain or loss as a result of a contribution or distribution of equity / net assets.

33 (Popup - Popup)

4. Appendix A compares the conceptual accounting frameworks of Canada and the United States, including users and their general information needs.

34 (Popup - Popup)

5. Appendix B summarizes the disclosure practices of 25 rate-regulated enterprises.

35 (Popup - Popup)

1. In this regard, the terms of reference for this project ask the Study Group to consider the following:

- Should rate regulation over private sector enterprises be distinguished from rate regulation over public sector enterprises? If so, what are the distinguishing criteria?
- What is the nature of rate regulation and to what degree must it be independent of the enterprises being regulated?

36 (Popup - Popup)

2. *PSAB Handbook*, "Introduction to Public Sector Accounting Recommendations," paragraphs

.03 and .04.

37 (Popup - Popup)

3. A government business has all the following characteristics:
(a) it is a separate legal entity with the power to contract in its own name and that can sue and be sued;
(b) it has been delegated the financial and operational authority to carry on a business;
(c) it sells goods and services to individuals and organizations outside of the government reporting entity as its principal activity; and
(d) it can, in the normal course of operations, maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity.
(PSAB Handbook, PS 1300.21)

38 (Popup - Popup)

4. A government business-type organization has all of the following characteristics:
(a) it is a separate legal entity with the power to contract in its own name and that can sue and be sued;
(b) it has been delegated the financial and operational authority to carry on a business; and
(c) it sells goods and services to individuals and organizations as its principal activity. (PSAB Handbook, Introduction .10)

39 (Popup - Popup)

5. Appendix 2 of the "Introduction to Public Sector Accounting Recommendations" states that government organizations should adhere to "Solid Waste Landfill Closure and Post-Closure Liability, *PSAB Handbook* PS 3270, regarding accounting for solid waste landfill closure and post-closure liability, and "Government Assistance — application of *CICA Handbook* Section 3800," *PSAB Handbook* PS 3800, regarding accounting for government assistance.

40 (Popup - Popup)

6. A fund is defined as a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on

specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

41 (Popup - Popup)

7. Statement No. 34 (paragraph 67) notes that enterprise funds are those whose principal revenue sources are from activities for which a fee is charged to external users for goods and services. Activities are *required* to be reported as enterprise funds if any one of the following criteria is met:

- The activity is financed with debt that is secured solely by a pledge of the net revenues from fees and charges of the activity.
- Laws or regulatons require that the activity's costs of providing services, including capital costs (such as depreciation or debt service), be recovered with fees and charges, rather than with taxes or similar revenues.
- The pricing policies of the activity establish fees and charges designed to recover its costs, including capital costs (such as depreciation or debt service).

42 (Popup - Popup)

8. This viewpoint is strongly supported by one member of the Study Group, who is a legislative auditor.

43 (Popup - Popup)

9. It should be noted, however, that the first criterion is just one of three criteria for meeting the definition of a rate-regulated enterprise and that all three criteria must be met. Also, meeting the definition of a rate-regulated enterprise does not necessarily mean that the enterprise would recognize any regulatory assets or liabilities. It means that, if there is an economic impact, the enterprise would be entitled to apply the principles for recognizing regulatory assets and liabilities.

44 (Popup - Popup)

10. Some public sector rate-regulated enterprises, however, do have publicly traded debt.

45 (Popup - Popup)

11. This viewpoint is supported by nine of the ten Study Group members.

46 (Popup - Popup)

12. For example, rates may be set to maintain essential services, to effect economies of scale and/or to prevent discriminatory pricing.

47 (Popup - Popup)

14. The Ontario Energy Board and the New Brunswick Public Utilities Board were cited as examples of regulators that operate at arm's length from both the government and the enterprises that they regulate.

48 (Popup - Popup)

15. One of the ten members expressly stated that he did not agree with the other members on this issue.

49 (Popup - Popup)

16. The CICA has authorized the Public Sector Accounting Board to issue Recommendations and guidance with respect to matters of accounting in the public sector.

50 (Popup - Popup)

17. A government reporting entity comprises the organizations that are accountable for the administration of their financial affairs and resources either to a minister of the government or directly to the legislature, or local government council, and are owned or controlled by the government. (*Public Sector Accounting Handbook*,"Financial Reporting Entity," paragraph PS1300.07)

51 (Popup - Popup)

18. See footnote 4 for a definition of this type of organization.

52 (Popup - Popup)

19. For an overview of rate regulation in the electric power industry, see Appendix E to this Research Report.

53 (Popup - Popup)

1. This complements the Accounting Standards Board initiative to harmonize Canada / US GAAP (see Chapter 3).

54 (Popup - Popup)

2. The criteria set out in the definition of rate-regulated property, plant and equipment is essentially the same as the definition of a rate-regulated enterprise in Handbook Section 3465, paragraph .09.

55 (Popup - Popup)

3. The survey of current practices presented in Appendix B shows that all 25 survey companies disclosed, in the significant accounting policies note, the basis of valuation of property, plant and equipment (items of rate-regulated property, plant and equipment were valued at cost) and the basis of depreciation. Additional disclosures in other notes included the depreciation rate(s) and expense for the period (23 companies), accumulated depreciation (25 companies) and net book value (15 companies).

56 (Popup - Popup)

4. SFAS 90 adds a restriction that the AFUDC may be capitalized only if its subsequent inclusion in allowable costs for rate-making purposes is probable. It further limits capitalization of the AFUDC to that recorded during construction or as part of a qualifying phase-in plan.

57 (Popup - Popup)

5. The survey of current practices presented in Appendix B shows that 20 of 25 survey companies disclosed, in the significant accounting policies note, the accounting treatment of the AFUDC. Of these, 16 companies provided additional information on construction work in progress and four provided additional information on the AFUDC in other notes to the financial statements.

58 (Popup - Popup)

6. The survey of current practices showed that none of the survey companies reported disallowances.

59 (Popup - Popup)

7. SFAS 143 is effective for fiscal years commencing after June 15, 2002, although earlier application is encouraged.

60 (Popup - Popup)

8. The survey of current practices presented in Appendix B shows that 15 of 25 survey companies provided information on site restoration and future removal costs in the significant accounting policies note to the financial statements. Seven companies provided additional disclosures on environmental costs in other notes.

61 (Popup - Popup)

9. In practice, losses on disposal are applied to accumulated depreciation unless they are considered extraordinary.

62 (Popup - Popup)

10. The survey of current practices presented in Appendix B shows that 19 of 25 survey companies provided information regarding the treatment of gains or losses on disposal of fixed / capital assets in the significant accounting policies note to the financial statements. Two companies provided additional disclosures on write-offs and three companies provided additional disclosures on decommissioning of capital assets.

63 (Popup - Popup)

11. Since 1992, *Accounting For Income Taxes*, SFAS 109, has required the use of the future income tax asset / liability approach in dealing with interperiod income tax allocation.

64 (Popup - Popup)

12. The survey of current practices presented in Appendix B shows that 18 of 25 survey companies disclosed information on income taxes in the significant accounting policies note to the financial statements (some were exempt from paying income taxes). Twenty-two companies provided additional information disclosures in other notes to the financial statements.

65 (Popup - Popup)

13. According to the survey of current practices presented in Appendix B, 21 of 25 survey companies provided information on pensions and 19 companies provided information on other postemployment benefits in the signification accounting policies note to the financial statements. As well, 24 companies disclosed additional information in other notes to the financial statements.

66 (Popup - Popup)

14. Prior to the new standard being approved in July 2001, exchange gains or losses related to a foreign currency monetary item with a fixed or ascertainable life extending beyond the end of the following fiscal year were required to be deferred and amortized over the remaining life of the monetary item.

67 (Popup - Popup)

15. This new standard is effective for years commencing on or after January 1, 2002, with earlier

adoption permitted in certain circumstances.

68 (Popup - Popup)

16. The survey of current practices presented in Appendix B shows that five if the 25 survey companies disclosed information in the notes to the financial statements about accounting changes such as future income taxes and employee future benefits.

69 (Popup - Popup)

17. This assumes that the enterprise is required to amortize the difference for regulatory purposes and, if it were not regulated, it would have to recognize the difference in the period that the debt was extinguished.

70 (Popup - Popup)

18. Nonetheless, many telecommunications companies have ceased to apply accounting for the economic impact of rate regulation for external reporting. The notes to the general purpose financial statements of such companies disclose that they are still subject to rate regulation and are required to maintain regulatory records.

71 (Popup - Popup)

1. Refer to *CICA Handbook – Accounting*, paragraph 1000.02.

72 (Popup - Popup)

2. Two 1991 CICA publications, *Information to be Included in the Annual Report to Shareholders* (Chapters 2 and 3) and Interim Financial Reporting: A Continuous Process (Chapter 2) discuss the objectives of financial reporting, assess the uses of annual and interim reports and identify users and their information needs.

73 (Popup - Popup)

3. While equity of a profit oriented enterprise in total is a residual, it includes specific categories of items, for example, types of share capital, contributed surplus and retained earnings.

74 (Popup - Popup)

4. Revenues of entities normally arise from the sale of goods, the rendering of services or the use by others of entity resources yielding rent, interest, royalties or dividends.

75 (Popup - Popup)

Canadian Accounting and Assurance Reference Service (CAARS)

5. *CICA Handbook – Accounting* (paragraphs 1000.50 and 1000.51) state that expenses that are not linked with specific revenues are related to a period on the basis of transactions or events occurring in that period or by allocation. Expenses that are linked to revenue generating activities in a cause and effect relationship are normally matched with the revenue in the accounting period in which the revenue is recognized.

76 (Popup - Popup)

6. With regard to the "benefit versus cost" constraint, the benefits expected to arise from providing information in financial statements should exceed the cost of doing so. This constraint is also a consideration in the preparation of financial statements in accordance with GAAP (for example, in considering disclosure of information beyond that required by the standards). The benefits and costs may accrue to different parties and, therefore, the evaluation of the nature and amount of benefits and costs is substantially a judgmental process.

77 (Popup - Popup)

7. Materiality is the term used to describe the significance of financial statement information to decision makers. An item of information, or an aggregate of items, is material if it is probable that its omission or misstatement would influence or change a decision. Materiality is a matter of professional judgment in the particular circumstances.

78 (Popup - Popup)

1. All rates are, however, subject to approval by Cabinet.

79 (Popup - Popup)

1. Businesses engaged in the production and distribution of electricity, the distribution of natural gas, the distribution of water, telecommunications (particularly telephone service), and pipelines (gas, oil and commodities) are generally considered public utilities. In earlier times, railways, grain elevators, ferries and privately owned bridges were also considered public utilities. In the future, highways may be considered public utilities, especially if governments are contractually obligated to take ownership after an elapsed period of time under private ownership.

80 (Popup - Popup)

2. Statistics Canada compiles data on the supply and disposition of electric energy by approximately 200 producers in Canada. It publishes reports on those statistics in addition to the financial and operating statistics of the major electric utilities.

81 (Popup - Popup)

Canadian Accounting and Assurance Reference Service (CAARS)

1. The terms and definitions used in this Glossary were drawn primarily from *Basics of Canadian Rate Regulation*, John Browne and Charles Perron (Toronto, Deloitte & Touche, 1997), and *Introduction to Public Utility Accounting* (Washington, DC, American Gas Association / Edison Electric Institute, 1992).

Public Accounts Technical Briefing 2016-17_Aug 30_430pm.ppt.pdf

From:	Veinot, Cindy (TBS)
To:	Kim Marshall
Subject:	Public Accounts Technical Briefing 2016-17_Aug 30_430pm.ppt
Date:	August 30, 2017 4:39:00 PM
Attachments:	Public Accounts Technical Briefing 2016-17_Aug 30_430pm.ppt

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Hi Kim -- as discussed earlier today, attached is a draft of a briefing deck on Public Accounts should a decision be made to go ahead with one. Could you please review the IESO content ASAP and get back to me with any edits (EOD tomorrow)? I will let you know when I hear of a final decision one way or the other. Please do not circulate any further at this point given the go/no go decision has not been made.

Thanks,

Cindy

Public Accounts Technical Briefing 2016-17_Aug.pdf

2016-17 Public Accounts

Technical Briefing

September 7, 2017

Purpose of today's briefing

1. Provide an overview of the results for fiscal 2016-17
2. Provide an overview of the issues on which the Auditor General has qualified her opinion as well as the Province's professional staff's interpretation of Public Sector Accounting Standards on these issues.
    a. Pension accounting
    b. Change in accounting for the market accounts of Independent Electricity System Operator (IESO)
3. Provide an overview of the issues raised by the Auditor General in the Other Matters section of her opinion as well as the Province's professional staff's view on these issues.

Ontario

Preparation of the Financial Statements

- The consolidated financial statements are prepared by the Government of Ontario in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB).
- PSAB independently establishes accounting standards for the public sector in Canada.
- The objective of PSAB standards is to meet the needs of users of financial statements by providing the information needed for accountability and decision making.
- PSAB standards specify how transactions and other events are to be recognized, measured, presented and disclosed in a public sector entity's financial statements.
- PSAB recognizes that their standards cannot address every potential situation, and that it may be necessary to refer to other sources of guidance.

Summary 2016-17 Results

2016-17 Actual Results					
$ Billions	**2016-17 Budget[1]**	**2016-17 Actual**	**2015-16 Actual[2]**	**Change from Budget**	**% Change**
Revenues	138.5	**140.7**	136.1	2.2	1.6%
Expenses	141.8	**141.7**	139.7	0.1	-0.1%
Reserve	1.0	**-**	-	(1.0)	
Annual Deficit	(4.3)	**(1.0)**	(3.5)	3.3	-76.7%
Net Debt		**(301.6)**	(295.4)		
Accumulated Deficit		**(193.5)**	(192.0)		

[1] 2016-17 Budget has been restated for BPS line-by-line reporting (no change to deficit)
[2] 2015-16 Actual has been restated to reverse the impact of regulated accounting for pensions

Ontario

Accounting for Jointly Sponsored Pension Plans

- Ontario Public Service Employee's Union Pension Plan (OPSEUPP) and Ontario Teachers' Pension Plan (OTPP) are jointly sponsored pension plans (JSPPs) where the Government of Ontario is a co-sponsor.
- The plans are funded on a 50/50 basis, co-managed by the sponsors, and decisions regarding benefits and contributions require negotiation and agreement between them.
- Since 2001-02, the Province's share of pension assets reflected on the audited consolidated financial statements of the Province has been based on a policy considered to be appropriate and consistent with PSAB standards related to accounting for retirement benefits, which have not changed since their inception in 2001.
- Under PSAB standards, an asset arises when the government's total contributions to a plan, including interest earned thereon, are greater than the pension expense recognized since the start of the plan.

Auditor General's Qualification on Pension Accounting

- The Auditor General qualified her opinion on the 2016-17 consolidated financial statements regarding the Province's accounting for the net pension assets of OTPP and OPSEUPP.
- The Auditor General's position is that a full valuation allowance should have been recorded in 2016-17 (and prior years) to reduce the net pension assets of OTPP and OPSEUPP to NIL.
- The Auditor General states that the Government does not have the unilateral right to use this asset because its ability to reduce future minimum contributions or withdraw any pension plan surplus is subject to agreement with the respective pension plan's joint sponsors.
- The Auditor General notes that Canadian Public Sector Accounting Standards require the Government to record a valuation allowance against this asset.

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Impact of Auditor General's Qualification on Pension Accounting

($ Millions)	Province's Interpretation of PSAB standards	Impact of Auditor General Interpretation	Auditor General's Interpretation
Consolidated Statement of Operations			
Total Expenses	141,725	1,444	143,169
Annual Deficit	(991)	(1,444)	(2,435)
Consolidated Statement of Financial Position			
Net Pension Asset / (Liability)	11,033	(12,429)	(1,396)
Total Debt	333,102	0	333,102
Net Debt	(301,648)	(12,429)	(314,077)
Accumulated Deficit	(193,510)	(12,429)	(205,939)

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Province's Position – Pension Accounting

- Based on professional staff's interpretation of PSAB standards, the government believes that pension assets for OPSEUPP and OTPP should be reported in order to fairly present the Province's financial position.
- The professional staff does not agree with the Auditor General's interpretation of PSAB standards that the Province must have a unilateral right to reduce contributions in order to record an asset.
- The Province has shared control over the pension plan and the existing agreements in place between the sponsors support the recognition of the pension asset.
- The professional staff does not believe that the Government has the right to withdraw any surplus from the plan, and has supported the value of the pension asset by assuming this right.
- The Province has recorded the pension assets for OTPP and OPSEUPP in its 2016-17 consolidated financial statements and has restated the 2015-16 consolidated financial statements to recognize the pension assets.

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Province's Position – Pension Accounting

- The professional staff's interpretation of PSAB standards is supported by its own research and analysis as well as:
  - The report of the Pension Asset Expert Advisory Panel (https://www.ontario.ca/page/pension-asset-expert-advisory-panel-report) released on February 13, 2017 stating that the Government should record an asset for its share of the surplus reported in the accounting valuations for each plan and that no valuation allowance is required.
  - An opinion from Deloitte LLP on OTPP, a summary of which is included in Appendix A, supporting the ability to recognize a pension asset in the absence of having a unilateral right to reduce contributions to the plan.
  - Analysis completed by Ernst & Young LLP as to whether any valuation allowance is required to be recorded for OTPP or OPSEUPP as of March 31, 2017. Ernst & Young LLP confirmed no valuation allowance was required for either plan.

- On June 12, 2017, the co-sponsors of OTPP (Ontario Teachers Federation and the Government) announced a 1.1% reduction in contributions effective January 1, 2018

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Independent Electricity System Operator and Market Accounts

- Independent Electricity System Operator (IESO) is a not-for-profit, non-taxable corporation established pursuant to Part II of the *Electricity Act, 1998*.
- IESO prepares its financial statements in accordance with PSAB standards.
- IESO's financial statements are audited by KPMG LLP, who issued an unqualified opinion on the December 31, 2016 financial statements.
- One of IESO's roles is to settle the market accounts, which are the amounts due to the entities who provide electricity to the market (e.g. power generators) and due from those who consume electricity (e.g. local distribution companies on behalf of their consumers).
- In 2016, IESO changed the accounting for the market accounts, recognizing the amounts to be settled as assets and liabilities, equal in amount. In prior years, these amounts were not reflected in the financial statements of IESO.
- IESO made the change to better reflect the amounts due to and from the market participants.

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Independent Electricity System Operator and Market Accounts

- Additional background on IESO:
  - On January 1, 2015, IESO was amalgamated with Ontario Power Authority (OPA) and continued as IESO.
  - Prior to the amalgamation, OPA prepared its financial statements in accordance with PSAB standards.
  - OPA's last financial statements prior to amalgamation were audited by KPMG LLP, who issued an unqualified opinion on the December 31, 2014 financial statements.
  - OPA's audited financial statements included a segment of the market accounts. The inclusion of a segment of the market accounts was not raised as an issue by the Auditor General in her report to management or in her Annual Report.
  - OPA's audited financial statements also referred to the use of rate-regulated accounting. The use of rate-regulated accounting was not raised as an issued by the Auditor General in her report to management or in her Annual Report.

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Auditor General's Qualification on IESO Market Accounts

- The Auditor General qualified her opinion on the 2016-17 consolidated financial statements regarding the change in Independent Electricity System Operator's accounting for the "market accounts".
- The "market accounts" are amounts owed to entities that generate electricity (e.g. power generators) and amounts due from entities that consume electricity (e.g. local distribution companies on behalf of their consumers).
- The Auditor General's position is that the market accounts are not assets and liabilities of the Province.
- The Auditor General notes that the Government has no access or discretion to use the market account assets for their own benefit, nor does the Government have an obligation to settle the market account liabilities in the event of default by market participants.

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Impact of Auditor General's Qualification on IESO's Market Accounts

($ Millions)	Province's interpretation of PSAB standards	Auditor General Adjustment	Auditor General's Interpretation
Consolidated Statement of Operations			
Annual Deficit	(991)	0	(991)
Consolidated Statement of Financial Position			
Total Financial Assets	93,782	(1,652)	92,130
Total Liabilities	395,430	(1,652)	393,778
Total Debt	327,413	0	327,413
Net Debt	(301,648)	0	(301,648)
Accumulated Deficit	(193,510)	0	(193,510)

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Province's Position – Market Accounts

- Based on professional staff's interpretation of PSAB standards, the government believes that reporting the IESO's market accounts in the consolidated financial statements of Province is more transparent accounting.
- The IESO is a party to the contracts with each market participant, and each market participant either owes an amount to the IESO or is owed an amount from the IESO.
- The amounts due from the market participants meet the definition of an asset and the amounts due to the market participants meet the definition of a liability under PSAB standards.
- The IESO reviewed the accounting for eight other independent system operators in North America, and all but one recognize market accounts in the financial statements.
- IESO management, their Audit Committee, their Board of Directors, their external auditor and the Office of the Provincial Controller support the change in accounting.

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Auditor General Opinion – Other Matters

- In the Other Matters section of the Auditor General's Opinion, the Auditor General notes:
  - IESO adopted rate-regulated accounting during the year,
  - Rate-regulated accounting is not permitted by Canadian public sector accounting standards,
  - The opinion is not modified for the use of rate-regulated accounting in 2016-17 because the adoption of rate-regulated accounting did not have a material impact on the financial statements,
  - The Ontario Fair Hydro Plan Act, 2017 and its related regulations legislate accounting, which is not in accordance with Canadian public sector accounting standards, and which may cause the financial statements to be materially misstated in the future, and
  - The Financial Statement Discussion and Analysis does not discuss pension accounting and market accounts using her interpretation of PSAB standards on these matters.

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Province's use of Rate-Regulated Accounting

- The use of rate-regulated accounting by organizations controlled and included in the financial statements of the Province is not new
- Ontario Power Generation, Hydro One and Hydro One Brampton Hydro Networks Inc. all apply rate-regulated accounting in preparing their financial statements
  - These entities are included in the province's financial statements based on International Financial Reporting Standards
  - The results of these entities are included with those of the Province on a one-line basis
- Prior to its amalgamation with IESO in 2015, the Ontario Power Authority also referenced the use of rate-regulated accounting in its financial statements
  - Ontario Power Authority prepared its financial statements in accordance with Public Sector Accounting Standards
  - Ontario Power Authority was fully consolidated with the statements of the Province

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Rate-Regulated Accounting Basics

- If the rates an entity is able to charge to its customers are set by another party (i.e. a regulator), provided specified criteria are met, rate-regulated accounting permits the entity to defer costs that would otherwise be expensed to the period that the related revenue is charged to customers
- Typical example:
  - A storm causes unexpected maintenance expenses of $100 million
  - The regulator (e.g. Ontario Energy Board) permits the utility to recover these costs from consumers through increased rates over five years as opposed to the year the costs are incurred by the utility
  - The utility has a rate-regulated asset of $100 million when the costs are incurred and expenses these amounts over five years (for example, $20 million per year)
  - In the absence of rate-regulated accounting, the full $100 million would be recorded as an expense in the year incurred

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Rate-Regulated Accounting -- IESO

- IESO's adoption of rate-regulated accounting resulted in recognition of rate regulated assets for:
  - Unrecovered smart metering expenses -- $21.6 million
  - Unrecovered PSAB transition items related to pension and post employment benefits -- $43.4 million
- Smart metering – IESO incurred operating and capital costs related to its role as the Smart Metering Entity, which it recovers through fees from users of smart meters in Ontario, with the fees set by the Ontario Energy Board (OEB)
- Pension and post-employment benefits – IESO accounts for its pension and post-employment benefits on an accrual basis, but the OEB only permits the entity to recover for these expenses on a cash basis

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Rate-Regulated Accounting and Public Sector Accounting Standards

- Public Sector Accounting Standards (PSAS) are silent on the use of rate-regulated accounting
- PSAS acknowledges that it does not provide guidance on all possible transitions and notes that it is necessary to refer to other sources of guidance:
  - *No rule of general application can be phrased to suit all circumstances or combinations of circumstances that may arise. As a result, matters may arise that are not specifically addressed in the primary sources of GAAP. It is necessary to refer to other sources when the primary sources do not deal with the accounting and reporting in financial statements of transactions or events that a public sector reporting entity encounters, or when additional guidance is needed to apply a primary source to specific circumstances.*
- The following accounting frameworks provide for the use of rate-regulated accounting:
  - International Financial Reporting Standards
  - Financial Accounting Standards Board
  - Government Accounting Standards Board
  - Accounting Standards for Private Enterprises
- IESO management, IESO's Audit Committee, IESO's Board of Directors, IESO's external auditor, and the Office of the Provincial Controller all support the use of rate-regulated accounting by IESO

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Fair Hydro Plan Legislation and Related Regulations

- Ontario Fair Hydro Plan Act, 2017 (the "Act") and its related regulations establish a framework under which costs and benefits associated with Ontario's clean energy initiative are to be allocated among present and future consumers of electricity
- The Act and its related regulations enable a current reduction in electricity rates for certain classes of customers and the framework for the current reductions to be repaid in the future
- The Act and its related regulations do not prescribe the accounting to be followed
- The Province prepares its financial statements in accordance with Public Sector Accounting Standards and the transactions resulting from the enactment of the Act and its related regulations will be reported in accordance with Public Sector Accounting Standards

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Appendix A – Deloitte summary of accounting opinion issued re: pension accounting

Deloitte was engaged to provide a report ("Deloitte Report") on the application of accounting standards by the Ontario Treasury Board Secretariat. Our report, which was issued on October 2, 2016, was prepared under professional standards for such reports set out by CPA Canada.

The subject of this report was the application of Public Sector Accounting Standards (PSAS), as established by CPA Canada, in the recognition of a pension asset in the Province of Ontario's financial statements. Pension accounting is subject to professional judgement and interpretation, and involves significant accounting estimates. The Deloitte Report focused on a specific aspect of this complex area as it relates to the Province of Ontario's accounting for the Ontario Teachers' Pension Plan (OTPP).

OTPP is a pension plan that is jointly sponsored by the Ontario government (or the Province) and the Ontario Teachers' Federation (OTF). Based on the Province's application of PSAS, OTPP is in a plan surplus position. We accepted this aspect of the Province's application of PSAS as a matter of fact in developing our report.

The Deloitte Report addressed the question of whether it was possible to record a pension asset related to the plan surplus in the Province's financial statements, given that the plan is jointly sponsored. We concluded that, based on the information provided to us by the Province and our professional judgement, that it was permissible under PSAS to record a pension plan asset, even though the Province's ability to benefit from any plan surplus, through future contribution reductions for example, would need to be negotiated with and agreed between the Province and OTF.

It is to be noted that even if a pension asset is recorded, PSAS would also require that consideration should be given to limiting the recorded amount of this pension asset to an amount that would be less than the calculated amount of the pension surplus. The Deloitte Report did not express a view on whether any limit to the recorded amount of the asset is needed in the case of the Province's accounting for the pension asset related to OTPP. Therefore, our report did not express a view on the amount of the pension asset that should be recorded in the Province's financial statements as at March 31, 2016 or at any other date.

Public Accounts Technical Briefing 201617_v8_IESO only.pptx 3.pdf

From:	Hosick, Sarah (TBS)
To:	Kim Marshall
Cc:	Veinot, Cindy (TBS); Donaldson, Mark (TBS)
Subject:	Public Accounts Technical Briefing 201617_v8_IESO only.pptx
Date:	September 6, 2017 5:36:40 PM
Attachments:	Public Accounts Technical Briefing 201617_v8_IESO only.pptx

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Hi Kim

Please see attached for updated IESO slides for tomorrow. Based on the meeting earlier, we've reduced into 2 slides + speaking points.

Happy to take have proposed edits for either the slides or the speaking points.

Pw to follow

Thanks,

Sarah

Public Accounts Technical Briefing 201617_v8_.pdf

Accounting for Independent Electricity System Operator (IESO) Market Accounts

- Independent Electricity System Operator (IESO) is a corporation established pursuant to Part II of the *Electricity Act, 1998*, and prepares its financial statements in accordance with PSAB standards.
- KPMG LLP audits IESO's financial statements and issued an unqualified opinion on the December 31, 2016 financial statements.
- IESO administers a $17 billion annual market reflecting the amounts *due to* entities that provide electricity to the market (e.g. power generators) and *due from* entities who consume electricity (e.g. local distribution companies on behalf of their consumers). IESO is a party to these agreements with the market participants.
- In 2016, IESO changed the accounting for the market accounts, recognizing these amounts due from and due to the market participants as assets and liabilities respectively.
- This change has no impact to the province's annual deficit, net debt or accumulated deficit.
- The Ontario Power Authority (which was merged with the IESO on January 1, 2015) included similar accounts in its financial statements, and received an unqualified opinion by its external auditor, KPMG LLP. The financial statements of the Province were not qualified by the Office of the Auditor General as a result of including these accounts.

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Accounting for IESO Market Accounts

- The IESO is a party to agreements with each market participant, and each market participant either owes an amount to the IESO or is owed an amount from the IESO. For example:
  - Ontario Power Generation has a receivable from IESO recorded on its financial statements related to power generated, and historically, IESO did not have a payable recorded to Ontario Power Generation – now it does
  - Hydro One has a payable to IESO recorded on its financial statements related to power purchases, and historically, IESO did not have a receivable recorded from Hydro One – now it does
- The amounts due from market participants meet the definition of an asset and the amounts due to market participants meet the definition of a liability under PSAB standards.
- In connection with this change, the accounting for eight other independent system operators in North America were reviewed, and all but one recognize market accounts in the financial statements.
- IESO management, their Audit Committee, their Board of Directors, their external auditor and the Office of the Provincial Controller support the change in accounting as being more transparent.
- A qualified opinion was issued by the Office of the Auditor General on the 2016-17 consolidated financial statements regarding the change in Independent Electricity System Operator's accounting for the "market accounts".

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Quick Question.pdf

From: Veinot, Cindy (TBS)
To: Kim Marshall; Susan Nicholson
Subject: Quick Question
Date: August 9, 2017 11:27:00 AM

Hi Kim and Susan – do you have a summary of the interactions with the AG on the FHP – specifically, I'm looking for the date the cabinet submission from March 1 was provided to the AG.

Thanks,

Cindy

Rate Mitigation.pdf

From:	Veinot, Cindy (TBS)
To:	Petsche, Nadine (TBS); Kim.Marshall@ieso.ca; Picard, Michel; Ho, Ailee (MECP)
Cc:	Hosick, Sarah (TBS); Virani, Shyrose (TBS)
Subject:	Rate Mitigation
Start:	February 13, 2017 8:30:00 AM
End:	February 13, 2017 9:30:00 AM
Location:	Frost South -- 2nd Floor, OPCD ADM Boardroom

modified language in TPA is better now_ I think so. n.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: modified language in TPA is better now? I think so. n
Date: Wednesday, March 22, 2017 16:27:58

5.0 Acquisition. If the Recipient acquires goods, services, or both with or by applying the proceeds

of the Funds, it is expected to do so through a process that promotes the best value for money

and to take reasonable steps to ensure that its Administrative Services Agents and

Implementation Agents also follow a process that promotes the best value for money when

acquiring goods and services with or by applying the proceeds of the Funds. In this regard, it is

expected that the Recipient will have regard the following procurement principles:

(a) ***Accountability*** - Procurement is conducted in a manner that is well-informed and

reflects rules of good governance

and decision-making.

(b) ***Geographic Neutrality and Reciprocal Non-Discrimination***Procurement

should not differentiate between competing goods, services, or suppliers based on their

geographic origin or location.

(c) ***Responsible Management*** - Procurement of goods and services should

be responsibly, efficiently and effectively managed and should observe the highest standard of ethics, avoiding conflict of

interest.

(d) ***Value for Money*** - Procurement processes should apply a value for money evaluation that

takes into account price as well as other costs and benefits, including life cycle costs and

relevant non-price attributes such as quality.

(e) ***Vendor Access, Transparency, and Fairness*** - Procurement is conducted in a fair and

transparent manner, offering all qualified suppliers equal treatment and open access to

compete for the opportunity to supply goods and services.

noticed.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: noticed
Date: Wednesday, March 22, 2017 21:09:35

Michel,

I had thought that the language has change to reflect expectations, but just noticed these terms being used in the delegations annex. I think I have to flag to Stephen?

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

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

psab response_.pdf

From: Kim Marshall
To: Veinot, Cindy (TBS)
Subject: psab response?
Date: November 30, 2017 8:04:42 AM

Here is what I am running by opg – any thoughts on approach before I do that? Need more detail on opg accounting or leave for another discussion ? Thx

Would it be the IESO or would it be OPG that would ultimately go to the Ontario Energy Board to recover these costs?

As per the legislation, OPG provides the clean energy adjustment recoverable for a specific period to the OEB who establishes the rate for specified consumers.

If it is the IESO, my understanding is the OFHPA creates the deferral and variance account that enables the IESO to recover costs from future rates. If it is OPG, would they already have a deferral and variance account to house these costs until it is recovered? Or does the legislation apply to OPG as well?

Parts of the legislation do apply to OPG. The IESO has the original right to recover from future rates. This creates the regulatory asset, like the fair hydro predecessor – RPP or . The IESO right to recover and any obligations will be transferred to the financing entity. While the financing entity is better able to speak to their accounting than I am, my understanding is they will have a variance account which will be consolidated into OPG and then the provincial books.

Finally, when it comes time to recover those costs, would it go through the OEB prudence review or is that not necessary as a result of the OFHPA legislation?

The OFHPA legislation covers the OEB oversight. Note – can we be more specific here?

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

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Web: www.ieso.ca <http://www.ieso.ca> | Twitter: IESO_Tweets <http://www.twitter.com/ieso_tweets> | LinkedIn: IESO <https://www.linkedin.com/company/ieso>

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca <http://www.saveONenergy.ca> | Twitter: saveONenergyOnt <https://twitter.com/saveonenergyont> | LinkedIn: saveONenergy <https://www.linkedin.com/company/saveonenergy-ontario>

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OPA Accounting Treatment for Regulatory Based Assets and Liabilities.docx.rtf

From: Petsche, Nadine (TBS) []
To: Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]
CC: Susan Nicholson [susan.nicholson@ieso.ca]; Natalie Schaus (Natalie.Schaus@ieso.ca) [Natalie.Schaus@ieso.ca]
Subject: OPA Accounting Treatment for Regulatory Based Assets and Liabilities.docx
Date: Wednesday, May 17, 2017 08:43:55
Attachment 1: OPA Accounting Treatment for Regulatory Based Assets and Liabilities.docx

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Hi Kim.

The attached internal (OPA) memo is somewhat dated, but reflects the relevance of RRA to the entity's books prior to the merger. From my perspective, the memo reflects some important messages that could be useful references in relation to the IESO's activities and accounting choices that best reflect the substance of the entity's activities and meet user needs.

Nadine

OPA Accounting Treatment for Regulatory Based Assets and Liabilities.pdf

Memorandum

To: File
Date: March 22, 2012
Re: Accounting Treatment for OPA Charges, Other Financial Assets and Other Financial Liabilities

---

1. **Charges – Overview**

"Charges" are amounts incurred by the OPA to recover amounts paid or payable by the OPA to another person with respect to electricity.

The OPA has a legislated responsibility to record the transactions flowing through the global adjustment mechanism. The global adjustment and settlement accounts have been created for this purpose. The global adjustment and settlement accounts record charges that flow between the OPA and the IESO. The account flows include the amounts paid and received for: Demand Response 2 (DR2), Demand Response 3 (DR3), non-utility generation (NUG), regulated nuclear generation balancing amount (nuclear) and regulated hydro electric generation balancing amount (hydro). These accounts are settled simultaneously by the IESO. The account also records the amounts paid and received for OPA contracts (standard offer, generation and conservation/demand management, Feed-In Tariff and hydroelectric contract initiatives) which the OPA settles on a monthly basis with the IESO.

The DR3, NUG, nuclear, hydro, and OPA contract balances are offset in the global adjustment account eliminating the need for a flow of funds between the IESO and the OPA. The OPA records the effect of the transactions to meet its legislated responsibility. The OPA's generation contracts are estimated each month and settled on the actual amount owing in the following month. This gives rise to timing differences. The settlement dates can cross calendar months, creating a monthly balance in the account. Differences created from timing or settlement dates are reclassified into accounts receivable at month end.

The OPA is entitled under legislation to recover eligible charge amounts, as per section 25.2 (3) of the Electricity Act:
(3) For greater certainty, the OPA may, subject to the regulations, establish and impose charges to recover from consumers its costs and payments under procurement contracts.

1.1 Accounting Treatment for OPA Contract and Conservation Charges

Charges are currently recorded as accounts receivable from the IESO in the OPA's financial statements, as they represent current assets that are recoverable within 1 year. Specifically, charges represent financial assets, as per **PS.S.1000.40** below and are only recorded as receivable once they have been incurred by the OPA. Under legislation, the OPA has a contractual right to receive cash from another party (in this case the IESO via the Global

Adjustment Mechanism) with respect to amounts incurred for eligible charge amounts. This concept is consistent with criteria (c) of the definition below:

*.**40*** *A financial asset is any asset that is:*

(a) cash;
(b) a realizable asset that is convertible to cash;
(c) a contractual right to receive cash or another financial asset from another party;
(d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;
(e) an equity instrument of another entity;
(f) an investment in a government business enterprise or government business partnership;
(g) a financial claim on an outside organization or individual; or
(h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph **Error! Hyperlink reference not valid.***. [Former paragraph* **Error! Hyperlink reference not valid.** *retained in Archived Pronouncements]*

Amounts Payable

Amounts payable arise for OPA contract charges when the value of HOEP exceeds the value of the suppliers' contract price. In this case, the charges would become an OPA liability to the market in the form of charges payable to the IESO (which, in turn, must be returned to the market via the Global Adjustment). Such charges payable to the market meet the criteria for recognition as a liability, as outlined below:

PS.3200.03

Liabilities should be recognized in the financial statements when:

(a) there is an appropriate basis of measurement; and

(b) a reasonable estimate can be made of the amount involved. [SEPT. 2004]

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2. Other financial assets and liabilities

Other financial assets and liabilities are made up of retailer settlement amounts, government procurements and regulated price plan variance amounts.

2.1 Other Financial Assets - Retailer Settlements and Government Procurements - Overview

Legislative provisions ensure that electricity retailers are made whole by the OPA for contracts with low-volume and designated consumers that were entered into before prices were frozen by legislation effective November 11, 2002. The OPA and retailers settling any differences between the HOEP and the contract price for each contract meet these provisions. When HOEP is greater than the contract price, the OPA receives payments from the retailers and records a financial liability. When HOEP is less than the contract price, the OPA pays the retailer and records a financial asset. The OPA tracks these variances in the retailer contract settlement deferral accounts. The retailer contract discount settlement account captures the funds related to the retailer incentives existing at the creation of the RPP. The retailer incentives captured are

held in a separate deferral account for settlement concurrent with the retailer settlement deferral accounts.

The OPA began amortizing these costs over the period of 2009-2011 to reflect the recovery of these amounts through its annual usage rate approved by the OEB. As at December 31, 2011, the balances of the retailer settlements are nil and have been recovered in full.

The OPA reimburses the government for costs incurred for electricity procurement and records the costs as a financial asset. Any subsequent balances are included in future revenue requirement submissions. The OPA began amortizing the government procurement costs in 2009 on a straight-line basis, and as at December 31, 2011, the balance to recover for these costs is nil.

2.2 Accounting Treatment – Retailer Settlements and Government Procurements

Under PSAS, retailer settlements and government procurements are treated as other financial assets in the OPA's financial statements. As they are normally not recovered within one year, they are categorized as non-current assets. As per **PS.S.1000**, retailer settlement and government procurement balances qualify as financial assets as per criteria (c) below:

> ***.40*** *A financial asset is any asset that is:*
>
> *(i) cash;*
> *(j) a realizable asset that is convertible to cash;*
> *(k) a contractual right to receive cash or another financial asset from another party;*
> *(l) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
> *(m) an equity instrument of another entity;*
> *(n) an investment in a government business enterprise or government business partnership;*
> *(o) a financial claim on an outside organization or individual; or*
> *(p) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph* **Error! Hyperlink reference not valid.***. [Former paragraph* **Error! Hyperlink reference not valid.** *retained in Archived Pronouncements]*

The OPA is required to carry the balance related to retailer settlement variances between the HOEP and contract price, as per legislation. The OPA is also entitled to recover these balances through legislative provisions, which represent a contractual right to receive cash or another financial asset from another party, as per criteria (c) above. Where retailer settlements fall into a liability balance, they would be categorized as other financial liabilities, as they would meet the criteria for recognition of a liability, as outlined in section 3.1 below.

3. Other Financial Liabilities – Regulated Price Plan (RPP) Variance - Overview

While prices for RPP consumers are set every six months by the OEB based upon a forecast of the cost of power over the next year, it is likely that there will be a difference between the actual and forecast cost of supplying electricity to all RPP consumers. When the hourly Ontario

energy price (HOEP) is greater than the RPP, the OPA pays the excess amount and records a financial asset as the electricity market funds paid are receivable from the market. When the HOEP is less than the RPP, the OPA receives the difference and records a financial liability as the funds received will be returned to the market. The OPA tracks this variance in the RPP variance account.

3.1 Accounting Treatment – RPP

RPP variance amounts are recorded by the OPA as other financial liabilities in the financial statements, as they meet the liability criteria outlined below:

PS. S.1000

.45 *Liabilities have three essential characteristics:*

(a) they embody a duty or responsibility to others, leaving a government little or no discretion to avoid settlement of the obligation;

(b) the duty or responsibility to others entails settlement by future transfer or use of assets, provision of goods or services, or other form of economic settlement at a specified or determinable date, on occurrence of a specified event, or on demand; and

(c) the transactions or events obligating the government have already occurred.

Under legislation, the OPA is required to fund RPP variances where the HOEP is less than the RPP, which implies a duty or responsibility that the OPA has little to no discretion to avoid, as per criteria (a). For instances where the HOEP exceeds the RPP rate, the OPA would record a financial asset, as this circumstance would meet the criterion of **PS.S.1000.40** (financial asset), outlined in section 2.2 above.

External Auditor Approval of Accounting Treatment

The accounting treatment of OPA charges, retailer settlement, government procurement and RPP balances has been consistent since the OPA's inception and is approved by the OPA's external auditors on an annual basis. Based on governing legislation, the external auditors agree that these balances represent true assets and liabilities to the OPA. The signed auditors' report, along with the OPA's audited annual financial statements, can be found on the OPA website in the MD&A section of the OPA annual report.

OPA email.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) (Cindy.Veinot@ontario.ca) [Cindy.Veinot@ontario.ca]
Subject: OPA email
Date: Friday, July 21, 2017 09:46:29

This message has been archived. View the original item
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View the original item

FYI. Nadine

From: Terry Gabriele [mailto:Terry.Gabriele@powerauthority.on.ca]
Sent: October-17-11 1:41 PM
To: Provis, Ian (FIN)
Cc: Rozic, Mark (FIN); Petsche, Nadine (FIN)
Subject: RE: U

OPA email.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: OPA email
Date: Friday, July 21, 2017 09:46:29

FYI. Nadine

From: Terry Gabriele [mailto:Terry.Gabriele@powerauthority.on.ca]
Sent: October-17-11 1:41 PM
To: Provis, Ian (FIN)
Cc: Rozic, Mark (FIN); Petsche, Nadine (FIN)
Subject: RE: Urgent request

Ian,

I have included below an email from the KPMG Manager on the OPA account. Note that she has confirmed that what the OPA had titled as 'regulatory' assets and liabilities are assets and liabilities per handbook definitions.

From: Chiu, Sandra [mailto:schiu1@kpmg.ca]
Sent: Monday, October 17, 2011 12:20 PM
To: Bonny Wong
Subject: RE: Urgent request

Hi Bonny,

Confirmed with Kevin – the answer is yes. They represent assets/liabilities under reporting framework that OPA currently reports under and that they will transition to. We moved away from the category of regulatory assets/liabilities last year so as to not confuse with similar titled assets in other entities where the circumstances may differ.

Regards,

Sandra

Regards,

Terry Gabriele

Director, Finance

Ontario Power Authority

416 969 6006

From: Provis, Ian (FIN) [mailto:Ian.Provis@ontario.ca]
Sent: October 13, 2011 3:42 PM
To: Terry Gabriele
Cc: Rozic, Mark (FIN); Petsche, Nadine (FIN)
Subject: Urgent request

Terry

Nadine gave me the answer about your auditor being Ok with Rate regulated Assets and liabilities but we wanted to determine under what basis. Are they calling these an intangible under NFP accounting or something else?

When we consolidate NFP government organizations we eliminate intangibles because

PSAB pure (without the 4400 section) doesn't allow them currently

Thanks in advance for the info

Ian

Ian Provis, C.A.

Manager Accounting Policy

Office of the Provincial Controller Division

Ministry of Finance

' 416.327.2722 | 8 ian.provis@ontario.ca

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OPCD Accounting Paper GA (for review and comment).rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: OPCD Accounting Paper GA (for review and comment)
Date: Tuesday, May 16, 2017 09:35:13
Attachment 1: OPCD Accounting Paper GA Refinancing V1 May 16.docx

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Suzie/Lee Anne/Blake,

Please find attached a preliminary draft (outline) of the FHP accounting paper for the FHP on the Province's consolidated financial statements.

Your feedback/input/edits would be much appreciated.

Thanks in advance.

Nadine

OPCD Accounting Paper GA Refinancing V1 May 16.pdf

GA Refinancing

OPCD Accounting Paper DRAFT Outline:

Purpose:

The purpose of this document is to summarize the preliminary views of the Office of the Provincial Controller in accounting for the Global Adjustment Deferral Account on the Province's consolidated financial reports.

Background:

- Provincial CFS –
    - prepared on PSAS basis, focus on fair and transparent reporting of the economic substance of government's activities and financial position.
    - RRA represent economic inflows and outflows (Appendix: 'what is RRA – recognized under different GAAPS, reference to CICA Research Project, IASB Project – no requirement for Independence of Regulator, different types of RRA – leg and those subject to prudence).
    - Application of GAAP Hierarchy where accounting standards do not specifically address a type of transaction
    - PSAS conceptual framework under review; accounting standards subject to change; analysis based on current accounting standards and currently available information.
    - PSAS definition of Asset

- Key entities:
    - Ministry of Energy – establishes legislation, provide provincial guarantee, etc.
    - IESO – Nature of IESO, types of RRA
    - OPG- Nature of OPG, types of RRA (O.Reg 53/05 legislated assets as well as assets subject to prudence review)
    - OEB - The OEB has broad jurisdiction as the administrative tribunal responsible for regulating the electricity industry in Ontario. It has jurisdiction to set payment amounts for regulated entities which has been conveyed by the legislature under which the OEB authorizes the establishment of accounts as well as the power to dispose of the amounts recorded in such accounts. (Again, confirm that Independence not required under accounting standards)

- Classification of entities –
    - IESO (OGO-NFPO, not GBE but no funding received from the Province)
    - OPG
    - OEB (OGO)

- Legal opinion – consider requesting for OPG and IESO assets to reflect recoverability (to justify accounting for assets on Province's books)

- Intro to Fair Hydro Plan:

Intro to FHP:

On March 2, 2017, the Province of Ontario (the Province) announced Ontario's Fair Hydro Plan (the Plan) aimed at reducing electricity bills by 25 percent on average for all residential consumers in the province. As part of the Plan, the Province has proposed financing a portion of the Global Adjustment costs over a longer time period for Regulated Price Plan eligible customers (e.g., residential, farm, small businesses).

Why structured this way

DRAFT

- The nature of the recoverable is an asset, but to be reported as a regulatory asset, OPG would have had to have incurred the cost itself. Since the costs would not have been incurred directly by OPG, the proposed structure will allow it to record an intangible on its books through consolidation of the Trust, coincidental with the adoption of rate regulated accounting by the IESO under which it will appropriately reflect the deferred amounts, prior to sale to OPG, as regulatory assets.
- Insert support for reporting GA financing costs as a RRA by the IESO (does not have to be related to interest capitalized on a capital asset to be a RRA
- Insert commentary confirming that activities of generators do not have to be regulated in order for the IESO to recover their costs under RPP, or for any deferred portion thereof to be considered part of a RRA.

IESO

As of January 1, 2016, the IESO changed its accounting policy to recognize the economic impacts of rate regulation and now applies guidance from US GAAP Topic 980, *Regulated Operations,* as PSAS does not have any guidance for entities with rate-regulated activities.

- Specific parts of the IESO's activities which are subject to rate regulation include (smart meters, IESO's operating cost, GA costs which are recoverable through RPP, and pension related costs. **(IESO details to follow)**

IESO concluded that it met the requirements of PS2120.02, which allows them to reflect the impacts of rate regulation, as it is considered that the change of accounting policy in its 2016 financial statements resulted in a more appropriate presentation of transactions in the financial statements. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The regulatory framework in Ontario relating to the generation and sale of electricity will be significantly impacted by the proposed Act. Currently, a substantial amount of the energy purchased from the generators is collected by IESO from the local distribution companies through the customer billing, with the remaining being recovered through variance accounts over a period of 12 months maximum. As mentioned above, the effect of the proposed Act is to defer the collection of a total estimated amount of $28 billion (plus interest) of energy purchased from the generators over a period of 30 years.

The proposed Act will not permit IESO to collect the funding shortfall before May 1, 2021 and the recovery process will be established through regulations, similar therefore to those accounts of OPG's which are also rate regulated and established through regulations under O.Reg. 53/05. As such, the OEB has no discretion with respect to the continuation of these accounts and has no discretion to evaluate prudence.

The IESO has assessed that despite the long-term deferred recovery plan, the uncollected energy costs should qualify for deferral as a regulatory asset under the proposed legislation as they would continue to meet the criteria applied by IESO in regards to its financial reporting (ASC 980):

(a) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

(b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Deferred recovery plans are plans adopted by regulators or legislations in response to significant increases in costs (e.g. purchased power costs). These plans typically provide for rates to remain fixed or increase moderately with a variance account mechanism to capture costs in excess of the level allowed in current rates. A regulated utility subject to such plans is required to consider whether it continues to meet the criteria that allow it to use the guidance for regulated operations of Topic 980, especially criteria ASC 980-10-15-2 (b).

The proposed plan for the recovery of purchase power costs over a 30 year period is considered a deferred recovery plan as the rates for the first four years will remain fixed and subsequently the rates will increase moderately with a variance account to capture energy costs in excess of the level allowed in current rates.

(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

(d) IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by the proposed Act.

The variance account created by the proposed Act is subject to rate regulation by the OEB and the variance account will be established with the right to collect funds against the variance amount in the future. In these circumstances, the IESO is able to establish a regulated asset. The IESO financial statements are prepared in accordance with Canadian public sector accounting standards. Although PSAB does not provide specific guidance on rate regulated accounting, it does allow for guidance to be followed from other accounting frameworks. IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations in its accounting policies.

IESO management has concluded that the OPG Trust to be established would not be controlled by the IESO and therefore is not subject to consolidation by the IESO. Based on the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity*, there is no evidence of control by the IESO for the OPG Trust either collectively or individually. The IESO will not have the power to govern the Trust, nor have ongoing access to Trust's assets. The IESO will also not have any voting shares or future rights to the Trust nor the power to dissolve the Trust. Without control, the Trust is not subject to consolidation within the IESO financial statements.

Sale of the Regulatory Asset to OPG (Transfer)

(1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Although ASC 980-20-40 states that

"Derecognition Section provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation."

In the absence of clear guidance for the derecognition of regulatory asset under ASC 980, guidance from PSAS should be analyzed for the criteria for the derecognition of assets.

It should also be noted that PSASs provide limited guidance on derecognition of non-financial assets and liabilities. Section 3430 *Restructuring transactions,* which is applicable for fiscal years on or after April 1, 2018 with early application permitted, has guidance for the derecognition of assets and liabilities.

- Paragraph 21 states that individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.
- As stated in paragraph 24, when a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether derecognition of the asset and liability transferred would be appropriate and whether its continued involvement gives rise to a new asset or new liability that needs to be recognized.

Recognizing the proposed transaction is not a restructuring transaction, Section 3430, which has recently been issued by PSAB, provides current thinking in the application for the recognition and derecognition of assets and liabilities which is consistent with derecognition guidance in other aspects of GAAP. Accordingly, the analysis as to whether the regulatory asset transferred to the OPG Trust can be derecognized is based on the guidance in paragraph 21.

DRAFT

OPG

The design of the GA Financing Plan includes OPG administering the financing associated with the Plan based on OPG's participation in the market and regulatory knowledge. and the foreseen accounting for financing activities on OPG's financial statements (i.e. consolidation of the Trust). Having exercised discretion over the decision to participate in the Fair Hydro Plan, OPG will establish a Financing Entity Trust (the Trust) to finance and administer the Global Adjustment costs through a mixture of external financing and an equity injection from the Ontario Financing Authority. It is expected that OPG will control the Trust for accounting purposes and that its financial position and results will be consolidated within OPG's consolidated financial statements. For purposes of the Province's consolidated financial statements, the intangible assets reported on the books of OPG would be reflected on the CFS under PSAS through modified equity consolidation of OPG.

As the sole unit holder of the Trust, OPG will exercise discretion over all decisions over the activities of the Trust. For example, OPG is expected to have the ability to OPG will have the power to establish operating and capital budgets of the Trust, and to make decisions about the financing alternatives, duration, and the strategy to minimize financing costs, with no veto right by the Province. While the Province maybe involved in the Board of Trustees, OPG is expected to have the majority vote to support its controlling position.

Once drafted, the related Regulations, Trust documents and various agreements are expected to confirm the expectation that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns.

The purpose of the Trust is to allow OPG to earn a return on the Intangible Asset from the IESO by effectively managing financing to earn a spread, earn management fees, and earn interest fees. For the reasons noted above, OPG has control over the decisions to be made about the relevant activities. It is expected that OPG will have both power over the Trust (i.e. as a Principal, not an agent), exposure or rights to the variable returns from the Trust, and the ability to use its power to affect OPG's returns from its involvement with the Trust. OPG is expected to have the ability to use its power over the relevant activities of the Trust to affect its returns from its involvement with the Trust through the variable fee component. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns. Neither the OEB nor any other party can discretionally reduce the management fee or performance fee except due to a calculation error. The approval by the Ontario Energy Board of the Financial Services Manager (i.e. OPG's) fees as described in *Part IV – Implementation - Section 14.4 Same, Board Approval* will not allow them to change or limit the management fee structure, but only ensure that it is prudent by ensuring it is calculated in accordance with the Regulations.

Relevant activities:

The relevant activities of the Trust are:

- To evaluate and make decisions on financing alternatives, duration, and the strategy to minimize financing costs.
- To effectively manage funding obtained through the capital markets and be able to make or lose any spread from financing
- To provide funding to the IESO in return for an interest in a future cash flow stream
- To obtain funding through the capital markets and other vehicles available to OPG to be able to provide the IESO funding.
- To make capital and funding decisions required to meet the Fair Allocation Plan objectives as set out in Legislation
- To finance the requirements associated with the short-fall amount
- To raise debt, pay bond debt holders, and determine capacity for the Trust to raise additional financing

OPG has the ability to direct the relevant activities of the Trust. OPG can amend the Financing Plan at any time, without approval from the Minister. Further, if the Minister of Energy chooses not to continue with OPG's current Financing Plan, OPG can withdraw its Financing Plan, without impacting the existing debt and related intangible assets that is already in the Trust. The Province would just appoint a new party to participate in future securitizations and OPG would continue to manage the debt that already exists in the Trust. If future financing transactions are with a different SPV, a separate consolidation analysis would be prepared at that time as to which party if any would consolidate the SPV.

The indemnification provided to the Trust by the Minister of Finance on behalf of the Province as described in *Part I – General - Section 5.3 Guarantee, indemnification Protection and assurances* will be subject to terms and conditions in a separate Provincial support agreement. The guarantee is expected to be in place only in the event of a Payment Guarantee Event, such as if the Legislative Assembly of Ontario repeals the Fair Hydro Act or amends the Act in a way that adversely impacts the ability of the Trust to fully recover an intangible asset in order to pay the obligations of the Trust.

At the Provincial level, cash flow from the Trust's intangible asset will include interest income that is equal to the interest expense charged by the debt providers. Interest expense on the debt will be recovered through rates charged to ratepayer commencing with the recovery period.

The Regulations are expected to provide further details related to the 'Fair Allocation Plan' which will be based on high level Principles and Parameters of the Plan, including the attribution methodology. The Legislation or Regulation determines the following principles:

- 25% Reduction (June 1, 2017) where the average bill will reduce by 25% including HST and social programs
- Inflation Period (November 2017 – April 2022) where bill increases are capped at inflation
- Straight-line Increase Period (May 2022 – April 2027) where bills increased at a straight-line rate (i.e., 8% per year) which is set so that borrowing will not exceed the Trust's capacity.
- Amortization Period (May 2027 – April 2047) where debt built up over the previous periods is repaid by ratepayers.

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OPCD Accounting Paper GA (for review and comment).rtf

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Subject: OPCD Accounting Paper GA (for review and comment)
Date: Tuesday, May 16, 2017 09:35:13
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GA Refinancing

OPCD Accounting Paper DRAFT Outline:

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- The nature of the recoverable is an asset, but to be reported as a regulatory asset, OPG would have had to have incurred the cost itself. Since the costs would not have been incurred directly by OPG, the proposed structure will allow it to record an intangible on its books through consolidation of the Trust, coincidental with the adoption of rate regulated accounting by the IESO under which it will appropriately reflect the deferred amounts, prior to sale to OPG, as regulatory assets.
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As of January 1, 2016, the IESO changed its accounting policy to recognize the economic impacts of rate regulation and now applies guidance from US GAAP Topic 980, *Regulated Operations,* as PSAS does not have any guidance for entities with rate-regulated activities.

- Specific parts of the IESO's activities which are subject to rate regulation include (smart meters, IESO's operating cost, GA costs which are recoverable through RPP, and pension related costs. **(IESO details to follow)**

IESO concluded that it met the requirements of PS2120.02, which allows them to reflect the impacts of rate regulation, as it is considered that the change of accounting policy in its 2016 financial statements resulted in a more appropriate presentation of transactions in the financial statements. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

The regulatory framework in Ontario relating to the generation and sale of electricity will be significantly impacted by the proposed Act. Currently, a substantial amount of the energy purchased from the generators is collected by IESO from the local distribution companies through the customer billing, with the remaining being recovered through variance accounts over a period of 12 months maximum. As mentioned above, the effect of the proposed Act is to defer the collection of a total estimated amount of $28 billion (plus interest) of energy purchased from the generators over a period of 30 years.

The proposed Act will not permit IESO to collect the funding shortfall before May 1, 2021 and the recovery process will be established through regulations, similar therefore to those accounts of OPG's which are also rate regulated and established through regulations under O.Reg. 53/05. As such, the OEB has no discretion with respect to the continuation of these accounts and has no discretion to evaluate prudence.

The IESO has assessed that despite the long-term deferred recovery plan, the uncollected energy costs should qualify for deferral as a regulatory asset under the proposed legislation as they would continue to meet the criteria applied by IESO in regards to its financial reporting (ASC 980):

(a) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

(b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Deferred recovery plans are plans adopted by regulators or legislations in response to significant increases in costs (e.g. purchased power costs). These plans typically provide for rates to remain fixed or increase moderately with a variance account mechanism to capture costs in excess of the level allowed in current rates. A regulated utility subject to such plans is required to consider whether it continues to meet the criteria that allow it to use the guidance for regulated operations of Topic 980, especially criteria ASC 980-10-15-2 (b).

The proposed plan for the recovery of purchase power costs over a 30 year period is considered a deferred recovery plan as the rates for the first four years will remain fixed and subsequently the rates will increase moderately with a variance account to capture energy costs in excess of the level allowed in current rates.

(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

(d) IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by the proposed Act.

The variance account created by the proposed Act is subject to rate regulation by the OEB and the variance account will be established with the right to collect funds against the variance amount in the future. In these circumstances, the IESO is able to establish a regulated asset. The IESO financial statements are prepared in accordance with Canadian public sector accounting standards. Although PSAB does not provide specific guidance on rate regulated accounting, it does allow for guidance to be followed from other accounting frameworks. IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations in its accounting policies.

IESO management has concluded that the OPG Trust to be established would not be controlled by the IESO and therefore is not subject to consolidation by the IESO. Based on the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity*, there is no evidence of control by the IESO for the OPG Trust either collectively or individually. The IESO will not have the power to govern the Trust, nor have ongoing access to Trust's assets. The IESO will also not have any voting shares or future rights to the Trust nor the power to dissolve the Trust. Without control, the Trust is not subject to consolidation within the IESO financial statements.

Sale of the Regulatory Asset to OPG (Transfer)

(1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Although ASC 980-20-40 states that

"Derecognition Section provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation."

In the absence of clear guidance for the derecognition of regulatory asset under ASC 980, guidance from PSAS should be analyzed for the criteria for the derecognition of assets.

It should also be noted that PSASs provide limited guidance on derecognition of non-financial assets and liabilities. Section 3430 *Restructuring transactions,* which is applicable for fiscal years on or after April 1, 2018 with early application permitted, has guidance for the derecognition of assets and liabilities.

- Paragraph 21 states that individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.
- As stated in paragraph 24, when a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether derecognition of the asset and liability transferred would be appropriate and whether its continued involvement gives rise to a new asset or new liability that needs to be recognized.

Recognizing the proposed transaction is not a restructuring transaction, Section 3430, which has recently been issued by PSAB, provides current thinking in the application for the recognition and derecognition of assets and liabilities which is consistent with derecognition guidance in other aspects of GAAP. Accordingly, the analysis as to whether the regulatory asset transferred to the OPG Trust can be derecognized is based on the guidance in paragraph 21.

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OPG

The design of the GA Financing Plan includes OPG administering the financing associated with the Plan based on OPG's participation in the market and regulatory knowledge. and the foreseen accounting for financing activities on OPG's financial statements (i.e. consolidation of the Trust). Having exercised discretion over the decision to participate in the Fair Hydro Plan, OPG will establish a Financing Entity Trust (the Trust) to finance and administer the Global Adjustment costs through a mixture of external financing and an equity injection from the Ontario Financing Authority. It is expected that OPG will control the Trust for accounting purposes and that its financial position and results will be consolidated within OPG's consolidated financial statements. For purposes of the Province's consolidated financial statements, the intangible assets reported on the books of OPG would be reflected on the CFS under PSAS through modified equity consolidation of OPG.

As the sole unit holder of the Trust, OPG will exercise discretion over all decisions over the activities of the Trust. For example, OPG is expected to have the ability to OPG will have the power to establish operating and capital budgets of the Trust, and to make decisions about the financing alternatives, duration, and the strategy to minimize financing costs, with no veto right by the Province. While the Province maybe involved in the Board of Trustees, OPG is expected to have the majority vote to support its controlling position.

Once drafted, the related Regulations, Trust documents and various agreements are expected to confirm the expectation that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns.

The purpose of the Trust is to allow OPG to earn a return on the Intangible Asset from the IESO by effectively managing financing to earn a spread, earn management fees, and earn interest fees. For the reasons noted above, OPG has control over the decisions to be made about the relevant activities. It is expected that OPG will have both power over the Trust (i.e. as a Principal, not an agent), exposure or rights to the variable returns from the Trust, and the ability to use its power to affect OPG's returns from its involvement with the Trust. OPG is expected to have the ability to use its power over the relevant activities of the Trust to affect its returns from its involvement with the Trust through the variable fee component. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns. Neither the OEB nor any other party can discretionally reduce the management fee or performance fee except due to a calculation error. The approval by the Ontario Energy Board of the Financial Services Manager (i.e. OPG's) fees as described in *Part IV – Implementation - Section 14.4 Same, Board Approval* will not allow them to change or limit the management fee structure, but only ensure that it is prudent by ensuring it is calculated in accordance with the Regulations.

Relevant activities:

The relevant activities of the Trust are:

- To evaluate and make decisions on financing alternatives, duration, and the strategy to minimize financing costs.
- To effectively manage funding obtained through the capital markets and be able to make or lose any spread from financing
- To provide funding to the IESO in return for an interest in a future cash flow stream
- To obtain funding through the capital markets and other vehicles available to OPG to be able to provide the IESO funding.
- To make capital and funding decisions required to meet the Fair Allocation Plan objectives as set out in Legislation
- To finance the requirements associated with the short-fall amount
- To raise debt, pay bond debt holders, and determine capacity for the Trust to raise additional financing

OPG has the ability to direct the relevant activities of the Trust. OPG can amend the Financing Plan at any time, without approval from the Minister. Further, if the Minister of Energy chooses not to continue with OPG's current Financing Plan, OPG can withdraw its Financing Plan, without impacting the existing debt and related intangible assets that is already in the Trust. The Province would just appoint a new party to participate in future securitizations and OPG would continue to manage the debt that already exists in the Trust. If future financing transactions are with a different SPV, a separate consolidation analysis would be prepared at that time as to which party if any would consolidate the SPV.

The indemnification provided to the Trust by the Minister of Finance on behalf of the Province as described in *Part I – General - Section 5.3 Guarantee, indemnification Protection and assurances* will be subject to terms and conditions in a separate Provincial support agreement. The guarantee is expected to be in place only in the event of a Payment Guarantee Event, such as if the Legislative Assembly of Ontario repeals the Fair Hydro Act or amends the Act in a way that adversely impacts the ability of the Trust to fully recover an intangible asset in order to pay the obligations of the Trust.

At the Provincial level, cash flow from the Trust's intangible asset will include interest income that is equal to the interest expense charged by the debt providers. Interest expense on the debt will be recovered through rates charged to ratepayer commencing with the recovery period.

The Regulations are expected to provide further details related to the 'Fair Allocation Plan' which will be based on high level Principles and Parameters of the Plan, including the attribution methodology. The Legislation or Regulation determines the following principles:

- 25% Reduction (June 1, 2017) where the average bill will reduce by 25% including HST and social programs
- Inflation Period (November 2017 – April 2022) where bill increases are capped at inflation
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The IESO has assessed that despite the long-term deferred recovery plan, the uncollected energy costs should qualify for deferral as a regulatory asset under the proposed legislation as they would continue to meet the criteria applied by IESO in regards to its financial reporting (ASC 980):

(a) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

(b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Deferred recovery plans are plans adopted by regulators or legislations in response to significant increases in costs (e.g. purchased power costs). These plans typically provide for rates to remain fixed or increase moderately with a variance account mechanism to capture costs in excess of the level allowed in current rates. A regulated utility subject to such plans is required to consider whether it continues to meet the criteria that allow it to use the guidance for regulated operations of Topic 980, especially criteria ASC 980-10-15-2 (b).

The proposed plan for the recovery of purchase power costs over a 30 year period is considered a deferred recovery plan as the rates for the first four years will remain fixed and subsequently the rates will increase moderately with a variance account to capture energy costs in excess of the level allowed in current rates.

(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

(d) IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by the proposed Act.

The variance account created by the proposed Act is subject to rate regulation by the OEB and the variance account will be established with the right to collect funds against the variance amount in the future. In these circumstances, the IESO is able to establish a regulated asset. The IESO financial statements are prepared in accordance with Canadian public sector accounting standards. Although PSAB does not provide specific guidance on rate regulated accounting, it does allow for guidance to be followed from other accounting frameworks. IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations in its accounting policies.

IESO management has concluded that the OPG Trust to be established would not be controlled by the IESO and therefore is not subject to consolidation by the IESO. Based on the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity*, there is no evidence of control by the IESO for the OPG Trust either collectively or individually. The IESO will not have the power to govern the Trust, nor have ongoing access to Trust's assets. The IESO will also not have any voting shares or future rights to the Trust nor the power to dissolve the Trust. Without control, the Trust is not subject to consolidation within the IESO financial statements.

Sale of the Regulatory Asset to OPG (Transfer)

(1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.

Although ASC 980-20-40 states that

"Derecognition Section provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation."

In the absence of clear guidance for the derecognition of regulatory asset under ASC 980, guidance from PSAS should be analyzed for the criteria for the derecognition of assets.

It should also be noted that PSASs provide limited guidance on derecognition of non-financial assets and liabilities. Section 3430 *Restructuring transactions,* which is applicable for fiscal years on or after April 1, 2018 with early application permitted, has guidance for the derecognition of assets and liabilities.

- Paragraph 21 states that individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.
- As stated in paragraph 24, when a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether derecognition of the asset and liability transferred would be appropriate and whether its continued involvement gives rise to a new asset or new liability that needs to be recognized.

Recognizing the proposed transaction is not a restructuring transaction, Section 3430, which has recently been issued by PSAB, provides current thinking in the application for the recognition and derecognition of assets and liabilities which is consistent with derecognition guidance in other aspects of GAAP. Accordingly, the analysis as to whether the regulatory asset transferred to the OPG Trust can be derecognized is based on the guidance in paragraph 21.

DRAFT

OPG

The design of the GA Financing Plan includes OPG administering the financing associated with the Plan based on OPG's participation in the market and regulatory knowledge. and the foreseen accounting for financing activities on OPG's financial statements (i.e. consolidation of the Trust). Having exercised discretion over the decision to participate in the Fair Hydro Plan, OPG will establish a Financing Entity Trust (the Trust) to finance and administer the Global Adjustment costs through a mixture of external financing and an equity injection from the Ontario Financing Authority. It is expected that OPG will control the Trust for accounting purposes and that its financial position and results will be consolidated within OPG's consolidated financial statements. For purposes of the Province's consolidated financial statements, the intangible assets reported on the books of OPG would be reflected on the CFS under PSAS through modified equity consolidation of OPG.

As the sole unit holder of the Trust, OPG will exercise discretion over all decisions over the activities of the Trust. For example, OPG is expected to have the ability to OPG will have the power to establish operating and capital budgets of the Trust, and to make decisions about the financing alternatives, duration, and the strategy to minimize financing costs, with no veto right by the Province. While the Province maybe involved in the Board of Trustees, OPG is expected to have the majority vote to support its controlling position.

Once drafted, the related Regulations, Trust documents and various agreements are expected to confirm the expectation that OPG will have significant variability and exposure from the activities of the Trust relative to the rate of return that OPG would recognize from its role as the Financial Services Manager of the Trust. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns.

The purpose of the Trust is to allow OPG to earn a return on the Intangible Asset from the IESO by effectively managing financing to earn a spread, earn management fees, and earn interest fees. For the reasons noted above, OPG has control over the decisions to be made about the relevant activities. It is expected that OPG will have both power over the Trust (i.e. as a Principal, not an agent), exposure or rights to the variable returns from the Trust, and the ability to use its power to affect OPG's returns from its involvement with the Trust. OPG is expected to have the ability to use its power over the relevant activities of the Trust to affect its returns from its involvement with the Trust through the variable fee component. The performance fee will be meaningful and allow OPG to make decisions that will significantly impact its returns. Neither the OEB nor any other party can discretionally reduce the management fee or performance fee except due to a calculation error. The approval by the Ontario Energy Board of the Financial Services Manager (i.e. OPG's) fees as described in *Part IV – Implementation - Section 14.4 Same, Board Approval* will not allow them to change or limit the management fee structure, but only ensure that it is prudent by ensuring it is calculated in accordance with the Regulations.

Relevant activities:

The relevant activities of the Trust are:

- To evaluate and make decisions on financing alternatives, duration, and the strategy to minimize financing costs.
- To effectively manage funding obtained through the capital markets and be able to make or lose any spread from financing
- To provide funding to the IESO in return for an interest in a future cash flow stream
- To obtain funding through the capital markets and other vehicles available to OPG to be able to provide the IESO funding.
- To make capital and funding decisions required to meet the Fair Allocation Plan objectives as set out in Legislation
- To finance the requirements associated with the short-fall amount
- To raise debt, pay bond debt holders, and determine capacity for the Trust to raise additional financing

OPG has the ability to direct the relevant activities of the Trust. OPG can amend the Financing Plan at any time, without approval from the Minister. Further, if the Minister of Energy chooses not to continue with OPG's current Financing Plan, OPG can withdraw its Financing Plan, without impacting the existing debt and related intangible assets that is already in the Trust. The Province would just appoint a new party to participate in future securitizations and OPG would continue to manage the debt that already exists in the Trust. If future financing transactions are with a different SPV, a separate consolidation analysis would be prepared at that time as to which party if any would consolidate the SPV.

The indemnification provided to the Trust by the Minister of Finance on behalf of the Province as described in *Part I – General - Section 5.3 Guarantee, indemnification Protection and assurances* will be subject to terms and conditions in a separate Provincial support agreement. The guarantee is expected to be in place only in the event of a Payment Guarantee Event, such as if the Legislative Assembly of Ontario repeals the Fair Hydro Act or amends the Act in a way that adversely impacts the ability of the Trust to fully recover an intangible asset in order to pay the obligations of the Trust.

At the Provincial level, cash flow from the Trust's intangible asset will include interest income that is equal to the interest expense charged by the debt providers. Interest expense on the debt will be recovered through rates charged to ratepayer commencing with the recovery period.

The Regulations are expected to provide further details related to the 'Fair Allocation Plan' which will be based on high level Principles and Parameters of the Plan, including the attribution methodology. The Legislation or Regulation determines the following principles:

- 25% Reduction (June 1, 2017) where the average bill will reduce by 25% including HST and social programs
- Inflation Period (November 2017 – April 2022) where bill increases are capped at inflation
- Straight-line Increase Period (May 2022 – April 2027) where bills increased at a straight-line rate (i.e., 8% per year) which is set so that borrowing will not exceed the Trust's capacity.
- Amortization Period (May 2027 – April 2047) where debt built up over the previous periods is repaid by ratepayers.

OPG will determine the manner in which the intangible asset, once purchased from the IESO will be collected and the period of collection. The recoverability of the existing intangible assets cannot be impacted by the Province. Although the Province may determine the Principles and Parameters around the 'Fair Allocation Plan', it does not impact the activities of the Trust once OPG has purchased the intangible asset.

- OPG's plan for managing the assets of the Trust will be dictated through a 'Financing Plan'.
- The Financial Services Manager (i.e. the Trust) shall provide the Financing Plan to the Minister. The Financing Plan is expected to follow Principles as stipulated in the Legislation which indicate that the assumptions must be reasonable and that the Trust has the power to determine what is reasonable and cost-effective. The Trust makes all the decisions in determining the relevant activities as listed above.
- OPG can amend the Financing Plan at any time without the approval of the Minister.
- The 'Fair Allocation Amount' ("FAA") is the amount of the deferral for the reference period and includes finance amounts. The current Legislation dictates that the Minister of Energy is to calculate the FAA.

This does not impact OPG's relevant activities in the Trust as OPG's variable returns are based on financing decisions which are not dictated by the FAA. OPG can choose to accept or reject the purchase of the intangible asset which is based on the Fair Allocation Amount.

(INSERT ANALYSIS SUPPORTING NON-CONTROL OF THE TRUST BY THE PROVINCE, despite guarantee)

Understanding of the transition of asset from RRA in IESO to Intangible Asset in OPG, including interest/admin charge component and any possible impact on Public Accounts.

- Consider also performance metrics for OPG, and potential balance of RRA on IESO books at year-end.

**Potential impact of 3070 and 3420 on transactions if no RRA (EY)

- ** Potential impact if OPG no longer controls the Trust (replaced as Financial Services Manager)

The Minister of Energy will have the ability to replace the Financial Services Manager (OPG) if there is a failure to perform. There will be a bifurcation of roles where the Province could not remove OPG as manager/administrator with respect to the existing debt placed by the Trust, but could remove OPG's responsibility/right to prepare the Financing Plan going forward. The ability for the Minister of Energy to remove OPG as the Financial Services Manager should not impact the recoverability of existing intangible assets and the IESO is required to continue to make cash payments for interest to the Trust for the existing

debt. Principal repayments on existing debt will continue to be repaid by ratepayers to the Trust in accordance with the terms of the issued debt.

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** Impact if GA deferral deemed an unconstitutional tax at some point during the deferral/recovery period. (EY- OPG EY)

List of (proposed) Appendices:

- 'What is RRA – recognized under different GAAPS, reference to CICA Research Project, IASB Project – no requirement for Independence of Regulator, different types of RRA – leg and those subject to prudence).
- PSAS references to GAAP Hierarchy, with accompanying narrative explaining how applicable (IESO)
- PSAS references:
  - Consolidation of OGOs, GBEs
  - Definition of Asset
- Entities – extracts on IESO, OPG, IEB
- Extracts/summary of draft legislation
- Legal opinions(?)
- IESO accounting paper
- OPG accounting paper
- Accounting entries
- Illustration of fiscal impacts if accounted for as RRA vs. period cost with future recovery

DRAFT

OPCD analysis for consideration.rtf

From: Schmidt, Colin A [caschmidt@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]; Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]; Lindo, Murray (TBS) [Murray.Lindo@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Ng, Edwin K. [ekng@kpmg.ca]; Beer, Simon [sbeer1@kpmg.ca]
Subject: OPCD analysis for consideration
Date: Thursday, January 22, 2015 11:59:28

All - some of our people are not able to make this call time. Can we please push this to 1pm?

Organizer: Virani, Shyrose (TBS)
When: 8:00 AM - 8:30 AM January 22, 2015
Subject: OPCD analysis for consideration
Location: APFR Boardroom, teleconference 416-212-8014 passcode 1474532#

From: Petsche, Nadine (TBS)
Sent: January 22, 2015 7:03 AM
To: Virani, Shyrose (TBS)
Subject: Fw: OPCD analysis for consideration
Attachments: Risk Analysis - different Scenarios (4).docx; Change in Ownership Interests - PSAB v IFRS.DOCX; Consolidation guidance under US GAAP and IFRS.DOCX

Please set up some time this morning to discuss (before 12), including Bharat (and Murray if he's available). Thx. 1/2 might do. N

From: Beer, Simon [mailto:sbeer1@kpmg.ca]
Sent: Thursday, January 22, 2015 01:22 AM
To: Petsche, Nadine (TBS)
Cc: Nelms, Scott (ENERGY); 'Alan.hibben@rogers.com' <Alan.hibben@rogers.com<mailto:Alan.hibben@rogers.com>>; 'Omar.Javed@HydroOne.com' <Omar.Javed@HydroOne.com<mailto:Omar.Javed@HydroOne.com>>; Chinchon, Francisco (OFA); Nalasco, Adrian (OFA); Schmidt, Colin A <caschmidt@kpmg.ca<mailto:caschmidt@kpmg.ca>>; Mitchell, Damien <damienmitchell@kpmg.ca<mailto:damienmitchell@kpmg.ca>>; Taylor, Karen J <karentaylor@kpmg.ca<mailto:karentaylor@kpmg.ca>>; MacDonald, Mark R <markmacdonald@kpmg.ca<mailto:markmacdonald@kpmg.ca>>; Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>; Lindo, Murray (TBS); Patel, Bharat (TBS); Veerman, Alan (CAB)
Subject: RE: OPCD analysis for consideration

Nadine,

I hope this email finds you well. Many thanks for the comments. Michel and our accounting policy team have been working through the comments and we have included initial responses to each of the points raised.

The team have also pulled together a few background documents:

- a summary of the accounting requirements on the treatment of changes in ownership interests, and

- a memo summarizing the control guidance under US GAAP and IFRS from Accounting literature

We'd be happy to arrange a session to walk you and the team through our thinking behind the analysis in detail if you or the team thought that appropriate?

As you noted we are also producing an updated set of forecast numbers based on the discussions on Monday and the revised assumptions.

Please let us know how you want to proceed and we're obviously happy to work around your schedule.

Cheers,

Simon

Simon Beer

+1 416 301 5946

From: Veerman, Alan (CAB) [mailto:Alan.Veerman@ontario.ca]
Sent: Wednesday, January 21, 2015 7:35 PM
To: Beer, Simon; Picard, Michel
Cc: Nelms, Scott (ENERGY); 'Alan.hibben@rogers.com'; 'Omar.Javed@HydroOne.com'; Chinchon, Francisco (OFA); Nalasco, Adrian (OFA)
Subject: Fw: OPCD analysis for consideration
Importance: High

Came in from Office of the Provincial Controller; I haven't had a chance to review yet, as I'm in transit. Passing on directly to you in the interests of time.

pw to follow.

Alan

From: Petsche, Nadine (TBS)
Sent: Wednesday, January 21, 2015 06:57 PM
To: Veerman, Alan (CAB)

Cc: Lindo, Murray (TBS); Patel, Bharat (TBS)
Subject: OPCD analysis for consideration

Hi Alan,

Attached is OPCD's input to the scenarios presented earlier this week. Please feel free to contact us if you have any questions. I understand that KPMG is undertaking additional analysis to consider fiscal implications taking into account IFRS based reporting of the scenarios for purposes of the Public Accounts. As the attached analysis illustrates, the differences between US GAAP and IFRS can vary significantly based especially on the different interpretations of 'control' for accounting purposes.

We've also referenced considerations related to the OEB and impact on future value under other potential future scenarios (i.e. associated with a possible rate decrease).

Regards,

Nadine

Pw to follow

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At KPMG we are passionate about earning your trust and building a long-term relationship through service excellence. This extends to our communications with you.

Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

* Disclaimer concerning confidential and privileged information/unintended recipient<http://www.kpmg.com/Ca/en/Pages/Disclaimer-Confidential.aspx> (http://disclaimer.kpmg.ca<http://www.kpmg.com/Ca/en/Pages/Disclaimer-Confidential.aspx>).
* Disclaimer concerning tax advice<http://www.kpmg.com/Ca/en/Pages/Disclaimer-Tax.aspx> (http://taxdisclaimer.kpmg.ca<http://www.kpmg.com/Ca/en/Pages/Disclaimer-Tax.aspx>).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

Sent from my BlackBerry 10 smartphone on the Rogers network.

OPG -IFRS Analysisto MP.pptx.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
CC: Patel, Bharat (TBS) [Bharat.Patel3@ontario.ca]; Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: OPG -IFRS Analysisto MP.pptx
Date: Friday, May 01, 2015 16:17:08
Attachment 1: OPG -IFRS Analysisto MP.pptx

Hi Michel.

Can you please review the attached draft deck that Bharat and I compiled based on our recent discussion with OPG. We thought that this deck might be a good focus of discussion for this Wednesday's discussion.

Please advise of your availability for a call on Monday morning to discuss.

Also, with regards to the PAC work, can you please send a copy of your firm's research on voting patterns that supported your control analysis. We would like to make reference to the research in our upcoming discussions with the AG.

Thanks so much and have a great weekend.

Nadine

OPG -IFRS Analysisto MP.pdf

Office of the Provincial Controller Division

Draft Slide Deck

OPG- Preliminary IFRS14 Analysis and Impact on the Province's Consolidated Financial Statements

Confidential – For Internal Discussion Purposes

Background

- OPG is regulated based on US GAAP and is directed by the Province to report on US GAAP.
- To date, the Province had consolidated OPG on a Canadian GAAP basis in accordance with AcSB's extension for the deferral of the mandatory IFRS changeover date for entities with qualifying rate-regulated activities which ends on January 1, 2015.
- Since AcSB has not extended the deferral period, the AG may argue that the results of the entity must consolidated in accordance with IFRS or IFRS 14(the IASB's interim standard which grandfathers Regulatory Accounting for first time adopters) as of January 1, 2015.
- For GBEs with a different reporting year-end, the Province's accounting policy is to reflect the change in the subsequent reporting period. Therefore, for the 2014-15 Public Accounts, the Province would consolidate OPG's results using CGAAP for the full 12 month period.
- The AG has asked for comparative IFRSvs.CGAAP analysis be provided for Q1 2015 to assess the impact on the Province's Public Accounts. Note that she has requested that it be done to the entity's level of materiality.
- OPG is preparing comparative analysis reflecting 9 months CGAAP results and 3 months IFRS14 results (including transitional b/s adjustments) as at January 1, 2015 to meet the AG's request.

Preliminary IFRS Analysis

- OPG identified that the following items would impact opening equity (transitional b/s impact) in first year as well as net income on a go forward basis:
  - Pension and Other Post Retirement Benefits
  - Paragraph 122 adjustments (IAS 19 Pensions)
  - Nuclear Asset Retirement Obligations

- In addition, if the Province adopts IFRS based reporting for OPG (and H1) future IFRS changes with potential impact would also include:
  - IFRS 14 rate regulated accounting (RRA) may be eliminated if the IASB decides against RRA in the future
  - Financial Instruments – IFRS 9
  - Lease Accounting
  - Revenue Accounting

Preliminary IFRS Analysis – Pension & OPRB

$ Millions	CGAAP	CGAAP to US GAAP	US GAAP to IFRS 14	IFRS	Comment
Balance-sheet					
Pension/OPEB (Liability) Asset	(1,900)	(4,900)	(4,900)	TBD	US GAAP requires *funded status be reported (significantly* unfunded).
Regulatory (Liability) Asset		4,300	4,300		
Transitional Impact before Tax – AOCI		(600)	(600)		Non-regulated business portion of the pension and OPRB impact. After tax would be roughly 450.

Note: Province does not recognize AOCI on the CFS. For the 2014/15 audit, it would be reflected in SUDs because it is a non-ONFA related adjustment for non-realized gains/losses (B/S only as Jan1/15) impacting Net Debt.

Preliminary IFRS Analysis – Paragraph 122 (Pension)

$ Millions	CGAAP	CGAAP to US GAAP	US GAAP to IFRS 14	IFRS	Comment
Balance-sheet					
Pension/OPEB (Liability) Asset – IAS 19	-	-	1,100	TBD	
Pension/OPEB (Liability) Asset – IFRS 14	-	-	(50)		
Paragraph 122 Adjustments	-	-	(1,050)		No net Impact- just re-classes from one equity account to another equity account

Note: Under paragraph 122 (see below) OPG is allow to reclassify OCI to the retained earning to eliminate mismatch in equity. No impact on the Province's balance sheet (as we pick up Net Assets.)

IAS-19 paragraph 122: Re-measurements of the net defined benefit liability/(asset) recognised in other comprehensive income shall not be reclassified to profit or loss in a subsequent period. However, the entity may transfer those amounts recognised in other comprehensive income within equity.

Preliminary IFRS Analysis – Nuclear ARO

$ Millions	Bruce facility 5% Discount	Prescribed facility (OPG) 5% Discount (vs. current US GAAP 5.4%)	Bruce facility 4.5% Discount	Prescribed facility (OPG) 4.5% Discount
Balance-sheet Dr/(Cr)				
Nuclear Asset Retirement Obligation (IFRS)	400	(830)	(700)	(2,200)
Asset Retirement Cost US GAAP (PP&E) * why US GAAP?	(100)	(90)	100	300
Retain Earnings (Opening Adjustments)	300	740	(600)	1,900
Offset by Reg. Asset/(Liability)	(300)	NA	600	NA
Net ARO Transitional Impact to opening balance sheet	-	740 (EY likely to agree)	-	1,900

Prescribed facility: OPG does not recover accretion expense or seg fund earnings related to PN or DN. Since those two components are not part of the costs that are eligible for recovery by the OEB, a change in the discount rate that impacts those two components are, by definition, not recoverable and therefore not eligible for IFRS 14 offset. Even though the facilities themselves are regulated, these costs are not. They are treated no differently than unregulated costs in general. (RATES WOULD BE UPDATED AT NEXT ONFA UPDATE IN 2016 AND CHANGE WOULD IMPACT OPG's RESULTS IN 2016 – LIKELY IN THE PROVINCE's 2016/17 CFS.)

Bruce facility: The Bruce method produces no profit (return) for OPG to compensate against risk but does cover OPG for all accounting based costs of nuclear liabilities for the Bruce assets
THERFORE – Variance account basis of accounting allowed. We even have an OEB authorized Bruce Lease Variance Account to book to.

Annual Surplus/Deficit Impact

3 key risks:

1. Impact of changes in discount rates on pension, OPRB and ARO which are not recoverable (i.e. Pickering and Darlington) through rates
2. ARO valuation methodology (would be updated and impact at each ONFA update)
3. Future IFRS Changes:
   - IFRS rate regulated accounting adoption (IFRS 14 permanency uncertainty)
   - Other uncertainty on IFRS changes to lease accounting, financial instruments and revenue standards

Additional considerations

- Cost of maintaining 2 sets of books (running detailed models of ARO calculations on variable cost methodology) and updates to discount rates
- OEB to continue to regulate based on US GAAP. No user need for IFRS based statements
- Cost of consulting with external auditors and advisors
- Internal staff time and attention
- Unlikely that the AG would accept FV adjustment defence for discount rate changes or OCI under paragraph122
- OEFC calculation of Electricity Sector Dedicated Income will be impacted

Fiscal Risk- IFRS current discount rate

- Pension/OPRB: B/S approx. NET $600M increase in liability; I/S uncertain treatment of para 122 adjustment under PSAB (according to Province's policy as a FV adjustment (OCI related) this might possibly be eliminated on consolidation. Start at OPG US income ($73M) reverse unrealized component of $178M which will still end up on the Province's b/s and impact Net Debt.
- IFRS requires the ARO be valued using a current discount rate at period end.
- Calculations have been performed using a rate of 4.5% and 5% based on a 15 year and 20 year rolling average of a 30 year provincial bond (using 10 or 15 years of historical rates and 5 of forecasted rates).
- This compares to a weighted average historical rate for US GAAP of 5.4%.
- Rates would be updated at ONFA update time (2016). Full impact reportable in year of change (OPG to ESTIMATE impact on 2016), unless can argue that this is a FV related change and OPCD could possibly eliminate.

Fiscal Risk- Change in Valuation

- Future changes in ARO such as change in useful life of Bruce or Prescribed facility would have a more significant impact under IFRS because of the ARO valuation methodology which treats step up costs as variable vs. fixed.
- Change in accretion rate would also impact Province's fiscal plans in future years (accretion not recoverable through rates therefore no IFRS14 protection).

Fiscal Risk – elimination of IFRS14

- IASB decision on permanently introducing rate regulated accounting not expected until 2017 at earliest
- If IASB decides against, then impact for OPG's results (for purposes of CFS consolidation) would be:
  1. Elimination of some of OPG's rate regulated balances (net impact: XXX as at Dec. 31/2014)

     Net Debt increase:
  2. Volatility in annual surplus/deficit: calculate based on 2014 example

OPG GBE Analysis.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: OPG GBE Analysis
Date: Wednesday, March 01, 2017 23:27:48
Attachment 1: OPG as GBE analysis Mar1.docx

Michel,

Further to our discussion earlier today following Cabinet, please find attached a preliminary analysis of OPG as a GBE. Can you please review and advise w.r.t. your understanding of the envisioned structure and legislation. We'd also be interested in any additional points that you think we should include for a more fulsome analysis. We'd like to share this analysis with John and Alec tomorrow. We'll look forward to your feedback.

Thanks in advance.

Nadine

OPG as GBE analysis Mar1.pdf

Ontario Power Generation Inc.

Section 4 - Summary of Evaluation for Government Business Enterprises (PS 1300)	Criteria Applies Yes/No	
	Status Quo	**Post – Global Adjustment Considerations**
(A) It is a separate legal entity with the power to contract in its own name and that can sue and be sued	Yes. • OPG was incorporated on December 1, 1998 pursuant to the Business Corporations Act (Ontario) (Note 1); • Wholly owned by the Province of Ontario (Note 1); • A corporation has the capacity and the rights, powers and privileges of a natural person. R.S.O. 1990, c. B.16, s. 15; and • OPG is subject to various claims, legal actions and investigations that arise in the normal course of business and can enter contracts in its own name (Note 15, 18, 6).	**Yes** OPG would remain a separate legal entity, and through proposed amendments to the Electricity Act would have expanded powers to engage in establishing the GAM Trust/SPV if OPG's Board of Directors evaluated the opportunity as an attractive business initiative. Trust would also be legislated the power to enter into contracts and transactions with the IESO, OPG and external parties.

(B) It has been delegated the financial and operational authority to carry on a business	Yes. • A corporation has the capacity and the rights, powers and privileges of a natural person. R.S.O. 1990, c. B.16, s. 15; • OPG's Board of Directors is made up of individuals with substantial expertise and has established a number of committees to focus on areas critical to the success of the Company; and • The Board exercises its independent supervision over management, who manages the affairs of corporation to achieve its operational and financial goals (http://www.opg.com/about/management/Pages/management.aspx).	Yes Through legislative changes to the Electricity Act, the Trust/SPV would be delegated the authority to hold the right to charge customers (of LDCs) for the benefit of debt holders and/or investors.

(C) It sells goods and services to individuals and organizations outside of the government reporting entity as its principal activity; and	Yes. • OPG is Ontario's largest energy provider. At Dec. 31, 2015, OPG generating portfolio had an in-service capacity of 17,055 megawatts (MW) (2015 Annual Report); • OPG produces almost half of the electricity used by Ontario homes, schools, hospitals and businesses (http://www.opg.com/about/Pages/about.aspx.); • OPG receives regulated prices for electricity generated from most of its hydroelectric facilities and all of the nuclear facilities that it operates (2015 Annual Report); and • OPG earns revenue from five business segments: nuclear generation, nuclear waste management, Hydroelectric, contracted generation portfolio and services, trading and other non-generation (Note 16).	**Yes.** **OPG's <u>principal</u>, active business activity would remain electricity generation; however, it is acknowledged that the level of debt associated with the GAM Trust/SPV may exceed OPG's debt associated with its primary business activity.** The controlled SPV structure would be used to hold the right to charge customers (of LDCs) for the benefit of debt holders/investors. **With regards to OPG's loan to the Trust/SPV, it is expected that OPG** shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required. The benefit of the structure is intended to provide a service to ratepayers who are individuals and organizations outside of the government reporting entity.

(D) It can, in the normal course of its operations, maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity.	Yes. OPG has reported positive financial results, does not receive transfers from the Province of Ontario and has demonstrated its ability of maintaining its operations and meeting its liabilities without relying on the Province of Ontario.	Yes. Liabilities of the Trust/SPV will be funded through a combination of both debt from OPG as well as external financing, the latter of which will exceed 50%. Legislation would allow for recovery of interest, carrying and administrative costs, so that the Trust/SPV is able to sufficiently cover any ongoing costs through future recoveries through LDC billings. (Sources of future economic inflows is outside of the government reporting entity). In order to preserve the Trust's ability to recover deferred costs, and to mitigate risks for external and OPG debt, the right to recover will be irrevocable and, if amended by future governments, debt holders would have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment.
Conclusion <u>Status Quo</u> OPG meets all the four characteristics and therefore qualifies as a GBE.		<u>Post-GA Implementation</u> assuming the legislation works, we will have a view that OPG can fund its operations between the external market and the OFA

Ontario Fair Hydro Plan.rtf

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Subject: Ontario Fair Hydro Plan
Date: Saturday, April 15, 2017 22:06:10
Attachment 1: Fair Hydro Act (April 15 2017) Consultationv4.docx
Attachment 2: Concordance - summary to bill (April 15, 2017).docx
Attachment 3: Excerpt EA OEBA Consequential Amendments.docx
Attachment 4: TOR_2528-#23107566-v13-_Fair_Hydro_Act_.docx
Attachment 5: TOR_2528-#23107566-vpdf-_Fair_Hydro_Act_.pdf

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

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Fair Hydro Act (April 15 2017) Consultationv4.pdf

This confidential draft document is provided for discussion purposes only. It should not be construed as representing a position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Intergenerational Fairness in Hydro Rates Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix including renewable energy, and to removing barriers to and promoting opportunities for renewable energy projects.

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing the generation of electrical energy and the production therefrom.

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating facilities in a manner that allocates the costs of and benefits from these investments fairly among present and future consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means…

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in renewable energy projects [which use cleaner sources of energy],

(b) removing barriers to and promoting opportunities for renewable energy projects, and

(c) promoting a green economy [including conservation and demand management]; ("French")

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"electricity vendor"[1] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"Fair Allocation Plan" means a plan prepared under section X; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. or such other entity as may be prescribed; ("French")

"Financing Plan" means a plan prepared under section X; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means [O. Reg. 95/05 definition];] ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")

"invoice amount" means the sum of the following amounts:

1. The commodity price of the electricity used during the invoice period.

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. Any adjustment required under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

[1] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a), or such shorter period as may be set out in a Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of the owner of an investment asset by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset; ("French")

[NOTE: CURRENT PROPOSAL IS THAT THE REGULATORY ASSET WILL REPRESENT THE RIGHT OF RECOVERY. UPON A TRANSFER OF AN INVESTMENT INTEREST, THE QUANTUM OF THE RIGHT OF RECOVERY FOR THE REGULATORY ASSET WILL BE REDUCED. THE TRANSFER OF AN INVESTMENT INTEREST WILL RESULT IN IESO RELINQISHING ANY INTEREST IN THE TRANSFERRED INVESTMENT INTEREST, AND WILL RESULT IN THE TRANSFEREE ACQUIRING THE RIGHT OF RECOVERY OF AN INTEREST IN THE CLEAN ENERGY ADJUSTMENTS DETERMINED BY REFERENCE TO FINANCE AMOUNTS INCURRED BY OR ON BEHALF OF THE TRANSFEREE.]

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

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(b) such other person as may be prescribed ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"weekday means [O. Reg. 95/05 definition]; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

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Intention of the Legislature[2]

(5) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

2. (1) The purposes of this Act are,[3]

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy initiative that accrue over time and will continue to benefit present and future electricity consumers in the Province;

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[4] and

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

Crown bound

3. This Act binds the Crown.

[2] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[3] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.
[4] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

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Protection and guarantee of scheme
Prohibition

4. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an owner of an investment asset;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[5]

IESO obligations

(5) If the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

[5] Note to translator: See s. 9 of the Public Authorities Protection Act.

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PART II
FAIR ADJUSTMENT PERIOD

Application of Part

5. This Part applies in respect of the five year period beginning on May 1, 2017 and ending on April 30, 2022.

[NOTE: THIS IS A ROUGH ADAPTATION OF THE "FAIR ADJUSTMENT" CONCEPT. FOR YEARS 2 TO 5, THE LGIC WILL PASS A REGULATION TO LIMIT THE INCREASE TO REDUCED HYDRO BILLS TO REFLECT A FURTHER "FAIR ADJUSTMENT". THE SUM OF ALL FAIR ADJUSTMENTS WILL CORRESPOND TO THE SUM (TIME VALUE ADJUSTED) OF THE PAYMENTS BY PAST RATEPAYERS OF MORE THAN THEIR FAIR SHARE OF THE GREEN COSTS (I.E., AS A RESULT OF THE EXISTING AMORTIZATION RATE OF GREEN COSTS THROUGH THE GA CALCULATION). THE VALUE OF THOSE PAST OVER-PAYMENTS WILL BE A LIMIT ON THE TOTAL AMOUNT OF FAIR ADJUSTMENTS. THE CONCEPT IS MORE FLEXIBILE THAN THE SUGGESTION HERE, WHICH RELATES ONLY TO THE FIRST 5 YEARS – ALTHOUGH THAT IS CERTAINLY THE CURRENT FOCUS. THE IDEA FOR NOW IS THAT THE ACT WILL REDUCE HYDRO BILLS FOR THE FIRST YEAR, AND EACH OF THE FOLLOWING 4 YEARS BY REGULATION – IN AGGREGATE EQUAL TO THE PAST OVER-CHARGES. TO ENSURE THAT THE INCURRENCE OF FUNDING OBLIGATIONS AND CORRESPONDING FINANCE AMOUNTS DO NOT CONFLICT WITH THE FAIR ADJUSTMENT (AND REDUCED HYDRO RATES), THERE WILL BE A MORATORIUM ON CLEAN ENERGY ADJUSTMENTS DURING THE FIRST 5 YEARS (ON BOTH IESO CHARGE THROUGH RECOVERIES AND IN RESPECT OF FINANCE AMOUNTS PAYABLE DURING THESE FIRST 5 YEARS – PROVIDED THAT IF THE LGIC DOES NOT ULTIMATELY DETERMINE THAT A FAIR ADJUSTMENT WILL APPLY IN A YEAR, THE BALANCE, UNDER THE FAP, WILL BE RECOVERABLE BY WAY OF A PASS-THROUGH OF FINANCE AMOUNTS /IESO RECOVERIES. THE IDEA WILL BE THAT THE LGIC WILL DETERMINE THE AMOUNT OF A FAIR ADJUSTMENT PRIOR TO THE RELEVANT PERIOD TO WHICH IT APPLIES. NOTE THAT THE PAST-OVERPAYMENTS WILL BE FACTORED INTO THE FAP ON A GO FORWARD BASIS, IN ADDITION TO THE CONTINUING GREEN COSTS – AND AMORTIZED OVER THE LONGER PERIOD. THE FOLLOWING PROVISION ADDRESSES ONLY THE FIRST YEAR OF THE FAIR ADJUSTMENT.]

Determination of rates, first twelve months

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative consumer by applying the method set out in subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[Note: Query whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the follow method applies:[6]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. In determining the rates, the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends,

        A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

        B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

[6] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

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ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. On and after May 1, 2018, the Board shall determine the rate for electricity payable by a specified consumer in the following manner:

1. Determine the rate by applying the steps set out in section 6.

2. Adjust the rate determined under paragraph 1 for inflation in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT PERIOD

Application of Part

8x. This Part applies in respect of the period beginning on May 1, 2022 and ending on April 30, 2047.

[NOTE: CONSISTENT WITH THE EARLIER NOTE, THE MORATORIUM IS LIFTED IF THE LGIC DETERMINES THAT NO FAIR ADJUSTMENT WILL APPLY, IN WHICH CASE CEAs WILL APPLY DURING THE FIRST 5 YEARS. THE DIVISION OF TIME CONTEMPLATED IN THIS DRAFT IS MORE INFLEXIBLE THAN WE HAVE ENVISIONED]

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

[NOTE: MODIFY TO REFLECT THAT THE PAYMENT IS MADE TO AN EV, AS AGENT FOR THE INVESTMENT ASSET OWNERS]

Limitation

(1.1) No clean energy adjustment is payable by a specified consumer on a day before May 1, 2022. [NOTE: MODIFY TO REFLECT EARLIER NOTES]

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Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether payment of the amounts is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due;

(b) whether the payments relate to funding obligations that were incurred in a manner that did not comply with the Financing Plan; and [NOTE: UNDER CONSIDERATION. SEEMS OVERBROAD]

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to the investment asset owners in respect of their respective interests in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise. [NOTE: ENFORCEMENT WILL BE LIMITED UNDER THE ACT, SO THAT INVESTMENT ASSET OWNERS CAN'T SERVE NOTICES ON RATEPAYERS DIRECTLY, OTHER THAN THROUGH A SPECIFIED AGENT AND PROCESS – SEE BELOW]

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is an error in calculations made by the electricity vendor.

Determination of clean energy adjustment

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers. . [NOTE: THE AMOUNTS WILL BE CALCULATED AS FOLLOWS: (1) FSM (FOR ALL IAOs) WILL INFORM OEB OF PERIOD FINANCE AMOUNTS FOR THE REFERENCE PERIOD (IE ESTIMATE OF FAs PLUS PAST TRUE UP ALLOCATION) (2) OEB WILL ATTRIBUTE THAT AGGREGATE AMOUNT

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BASED ON RPP-LIKE RATE DETERMINATION FOR CUSTOMERS OF THE RELEVANT CLASSES (3) OEB WILL TELL EVs THE RATES APPLICABLE TO THEIR CUSTOMERS, SO THAT THE FULL AMOUNT IN (1) IS RECOVERED (BASED ON EXPECTED COLLECTION RATES AND NONE PAYMENTS)]

True up amount

(2) The Ontario Energy Board may adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination. [NOTE: THIS IS ONLY A PARTIAL DESCRIPTION OF THE TRUE UP. SEE EARLIER DRAFTING INSTRUCTION FOR SUGGESTED APPROACH – I.E., DESCRIBE BROADLY THE NATURE OF THE CALCULATION AND THEN SPECIFY THE CALCULATION IN A DETAILED CALCULATION TO BE INCLUDED IN A REGULATION]

Same, regulations

(3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment.

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period. [NOTE: WE ARE NOT SURE THERE IS A ROLE FOR IESO. WE THOUGHT THE PERIOD FINANCE AMOUNTS WOULD BE FORWARED BY FSM TO OEB DIRECTLY]

IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustments in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make reasonably diligent efforts to collect clean energy adjustments from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:

1. Amounts remitted from accounts established under section 31.

2. Payments made by specified consumers directly to the IESO as electricity vendor, in respect of clean energy adjustments.

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Deposit

(4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1). [NOTE: CONSIDER FEASIBILITY OF DAILY SEGREGATION/ REMITTANCES]

Same, held in trust

(2) The amounts collected are deemed to be held in trust for the investment asset owner.

IESO to remit

(5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations.

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall [in accordance with the regulations?] determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations.

Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under X.

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Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of clean energy adjustments.

2. Portions of payments by specified consumers that are allocated to clean energy adjustments under subsection 30 (2).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of clean energy adjustments to the IESO for the benefit of the investment asset owner in accordance with the regulations.

Payment re regulatory asset

(x) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the difference is payable to the IESO by the specified consumers.

[NOTE: REQUIRES FURTHER CONSIDERATION.]

PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

Fair Allocation Plan

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 as of a specified day among specified consumers for the purposes of this Act, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan to take effect on the specified day.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

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Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a specified day,

[NOTE: THE IDEA IS THAT THE EXPECTED FUTURE GREEN COSTS WILL BE INCLUDED AS COSTS, AND RATHER THAN AMORTIZING THEM BASED ON THE TERMS OF THE POWER CONTRACTS, THE COSTS WILL BE AMORTIZED AND PASSED THROUGH BASED ON A MORE ACCURATE AMORTIZATION SCHEDULE TIED MORE TO THE COSTS AND BENEFITS OF THE GREEN PLAN OVER THE NEXT 30 YEARS. IN ADDITION, TO THE EXTENT THAT THERE HAVE BEEN OVER-CHARGES (BASED ON THE SHORT AMORTIZATION OF GREEN COSTS) SINCE 2005, THOSE OVERAGES WILL BE ADDED TO THE AMOUNT OF THE FAP COSTS TO BE AMORTIZED OVER THE FUTURE – I.E., THE FUTURE GENERATIONS WOULD HAVE BENEFITED FROM AN ARTIFICALLY LOW SHARE OF THE COSTS SINCE THE RATEPAYERS FOR 2005 – 2017 PAID TOO MUCH, SO WE SHOULD BE ABLE TO ADD THOSE TO THE FUTURE GROUPS AND RECOGNIZE A FAIR ADJUSTMENT FOR CURRENT RATEPAYERS]

(a) the costs incurred by the IESO before that day or expected to be incurred by the IESO on or after that day in relation to,

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(ii) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before that day or expected to be incurred on or after that day. (“French”)

C.C.R.E. Draft

Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan, the Minister shall have regard to the following principles:

1. The amounts should not be allocated in respect of any period of time after April 30, 2047.

1.1 At no time should the Fair Allocation Plan impair any investment asset, outstanding funding obligation or clean energy adjustment.

2. The share of the amounts allocated to specified consumers who receive an invoice in respect of a reference period should be proportionate to a reasonable assessment of the benefits derived by those consumers during that reference period.

3. The specified consumers to whom an invoice is issued during a reference period should not bear an unreasonably disproportionate share of the amounts allocated.

4. Adjustments should be made over time if the Minister is of the opinion that specified consumers have paid more than is reasonably proportionate.

5. Allocation of amounts should be determined for each reference period.

6. A reasonable estimate of the rate of inflation should be applied [in accordance with the regulations?].

Compliance

8.2 The IESO and the Financial Services Manager shall not, at any time, exceed the limits set out in the applicable Fair Allocation Plan.

[NOTE: THIS IS TOO STRONG. THE IDEA IS THAT IESO'S RIGHT OF RECOVERY WILL BE LIMITED IN A REFERENCE PERIOD BY THE FAP AMOUNT FOR THE PERIOD, MINUS THE FINANCE AMOUNTS FOR THE PERIOD. IN THIS WAY, THE IESO WILL BE ENTITLED TO PASS-THROUGH RECOVERIES IN A WAY THAT AFFECTS THE HYDRO BILLS OF EACH REFERENCE PERIOD RATEPAYERS IN A WAY THAT TRACKS THE FAP. SIMILARLY, IF IESO HAS TRANSFERRED ITS RECOVERY RIGHTS TO A IAO, THEN THE RELATED CEAs FOR THAT IAO WILL BE INSIDE THE FAP – AGAIN, SO THAT THE RATEPAYERS OF THAT PERIOD DO NOT BEAR A DISPROPORTIONATE BURDEN FOR THOSE COSTS. THESE CONCEPTS ARE REFLECTED IN THE MECHANICS DEALING WITH IESO RECOVERIES AND PASSING THROUGH CEAs, AND SO THIS SECTION CAN PROBABLY BE REMOVED]

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FINANCING PLAN

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost-effective and consistent with the Fair Allocation Plan.

Amendments to approved plan

(2) The financial services manager may propose amendments to the Financing Plan at any time.

[NOTE: THE FINANCING PLAN IS SUPPOSED TO BE FLEXIBLE, UNLIKE THE FAP. FORMAL AMENDMENTS WOULD MAKE THIS TOO RIGID. THE FSM SHOULD KEEP RECORDS OF THE FP OVERTIME, SO THAT FUNDING DECISIONS CAN BE DETERMINED BASED ON THE PRINCIPLES AND THERE IS A MEASURE OF ACCOUNTABILITY FOR THE FSM, INSOFAR AS THE RECORD-KEEPING WILL ALLOW THE MINISTER TO DO A PERIODIC CHECK TO MAKE SURE THAT FUNDING OBLIGATIONS WERE INCURRED IN MATERIAL CONFORMITY WITH THE FSM'S EVOLVING FP. THE CONCEPT OF THE FP IS TO CREATE DISCIPLINE, THOUGHFULNESS AND SOME MEASURE OF ACCOUNTABILITY FOR FSM IN MAKING FINDING DECISIONS.]

Compliance with Plan

11.1 The Financial Services Manager shall comply with the Financing Plan.

[NOTE: PROBABLY TOO RIGID A STATEMENT – SEE ABOVE. ALSO, OPG SEEMS TO HAVE ACCOUNTING ISSUES WITH THIS SORT OF MANDATORY DIRECTION – NEED TO CONFIRM]

Contents of plan

12. (1) The Financing Plan shall be prepared in accordance with the regulations and shall include such matters as may be prescribed, which may include the following:

1. A description of one or more transfers that may be made in respect of the regulatory asset established under Part **.

2. A description of the basis upon which funding obligations may be incurred in a manner that is consistent with the applicable Fair Allocation Plan.

3. A description of the funding obligations mentioned in paragraph 2, which may include the following:

    i. Indebtedness.

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ii. Payment obligations arising under or in respect of derivatives.

iii. Payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies.

iv. Refinancing an existing funding obligation by applying the net proceeds obtained by incurring other funding obligations.

[NOTE: PRINCIPLES AND PARAMETERS ARE UNDER CONSIDERATION AND WILL BE INCLUDED IN THE REGULATION.]

Limitation

(1.1) The Financing Plan shall not provide for the payment of the clean energy adjustment by specified consumers before May 1, 2022. [NOTE: WOULD PREFER TO SAY (1) NO CEAs IN THE FIRST 5 YEARS UNTIL, FOR A YEAR, THE LGIC CONFIRMS THAT THERE WILL NOT BE A FAIR ADJUSTMENT FOR THAT YEAR. SEE MECHANICS, ABOVE.]

Special purpose financing entities

(2) If the Financial Services Manager is a prescribed entity, the Financing Plan may, in accordance with the regulations, provide for the establishment by that entity of one or more special purpose financing entities that may incur funding obligations.

[Note: I understand that OPG doesn't need authority to establish a SPV beyond existing OPG authority under the EA, but do you still want something like subs. (2) for an entity other than OPG? It almost makes it look like OPG is not authorized to do so, since the provision singles out prescribed entities. Need to consider further]

[NOTE: THIS CONCEPT SHOULD BE MOVED TO THE REGULATION]

Limit on liquidation, etc. of [special purpose funding entities]

(3) The Financing Plan shall not provide for a [special purpose funding entity] tbe be liquidated, dissolved or voluntarily wound-up until at least one year after all of the funding obligations the entity has incurred have been satisfied. [NOTE: MOVE TO THE REGULATION]

Prohibition

(3) The Financing Plan shall not provide for funding obligations to be incurred with any recourse to any assets of the electricity vendors, the IESO, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

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Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan that is made after the funding obligation has been incurred.

[Note: Consider Article 8 (9) entitled "incurrences are binding" -- I believe we have already stated in the Part dealing with the regulatory asset that the rights are enforceable etc. even if charges have been imposed in a manner that does not follow the Financing Plan. Is more drafting required?]

PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.

[Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall"?* Does that convey the right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount recovered in respect of a reference period may not exceed the amount by which the [fair allocation] in respect of a reference period exceeds the amount of the clean energy adjustment for the reference period. [NOTE: CONSIDER IF THIS SHOULD BE A MAXIMUM OR A MANDATORY FLOW-THROUGH. IF THE IESO RECOVERIES PLUS CEAs FOR A PERIOD ARE LESS THAN THE FAIR ALLOCATION FOR A PERIOD, THEN THE RATEPAYERS OF THE PERIOD WILL BENEFIT FROM A LESSER SHARE OF THE COSTS THAN WOULD BE INDICATED BY THE FAP]
2. No part of the funding shortfall shall be recovered before May 1, 2022. [NOTE: TOO RIGID. SEE CONCEPT OF FAIR ADJUSTMENT, ABOVE]

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books. [NOTE: THIS SHOULD ALSO INCLUDE ADJUSTMENTS WHEN THERE IS A TRANSFER OR RECOVERY – I.E., THE REGULATORY ASSET AMOUNT RECORDED SHOULD BE REDUCED]

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Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[Note: Should the value of any consideration received as part of a transfer be reflected in this section?]

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

[NOTE: FUNDING SHORTFALL DESCRIPTION MAY ALSO RELFECT ADJUSTMENT BASED ON ESTIMATE TO ACTUAL FROM EARLIER MONTH]

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

1. The prospective owner of the investment asset to be acquired through the transfer shall pay to the IESO an amount equal to all or part of the IESO funding shortfall. [NOTE: INVESTMENT ASSET TO BE BASED ON FACE VALUE SO THAT THE IESO RECOVERY IS DOLLAR-FOR-DOLLAR. THIS MEANS THAT ACCRUALS WILL BE NEEDED FOR INITIAL PERIOD, RATHER THAN THE TRUST BUYING INVESTMENT INTERESTS AT A DISCOUNT AND HOLDING BACK ISSUE PROCEEDS TO FUND THOSE AMOUNTS.]

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2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the AGGREGATE IESO funding shortfall in its books.

3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset

Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

[NOTE: DEEMING LANGUAGE TO ADDRESS TRANSFER AND CONVEYANCE IS UNDER CONSIDERATION.]

[NOTE: THE ASSET TRANSFERRED BY IESO WILL BE A RIGHT OF RECOVERY, BY REFERENCE TO CEAs. THE ASSET ACQUIRED WILL BE AN "INVESTMENT INTEREST", BEING A SHARE (THE TERMS AND ENTITLEMENTS OF WHICH WILL BE DETERMINED UNDER A COLLECTIVE RIGHTS AGREEMENT) OF THE RIGHTS AND RELATED PROCEEDS FROM THE RIGHT TO BILL, ETC., CEAs. THE SUM OF ALL INVESTMENT INTERESTS WILL BE THE "INVESTMENT ASSET".]

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

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5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(3) An investment asset is not affected by failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(4) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment asset owner or an owner of distribution system assets in the Province; [NOTE: IF THE MECHANICS FOR CASH FLOWS ADOPT THE PRE-EXISTING METHODS AND TERMS AMONG IESO, LDCs AND RATEPAYERS, THIS PROVISION WILL NEED TO RECOGNIZE THAT THOSE TERMS WILL PREVAIL AND NOT BE AFFECTED BY THE NEUTERING OF SET-OFF, ETC.]

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); [NOTE: CONSIDER IN CONTEXT OF FEDERAL BANKRUPTCY POWERS]

(c) by any affiliate or successor of a person mentioned in clause (a).

Transfer of investment asset

24. The investment asset owner may transfer all or a portion of its rights and interests in an investment asset to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

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Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer. [NOTE: ADDRESSES POSSIBLE RECHARACTERIZATION CONSIDERATIONS. MARKET WILL EXPECT TO SEE THIS GIVEN SECURITIZATION CONCEPTS IN PLAY.]

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.

Administration of investment asset

26. (1) The Financial Services Manager shall administer an investment asset on behalf of the owner of the investment asset. [NOTE: TO BE ELABORATED]

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager. [NOTE: TO BE ELABORATED]

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Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.

[Note: Additional content relating to the PPSA has not yet been addressed in any detail. Please review all subsections that contain the (x) below and advise what is needed. Some of this content was already covered by some of the numbered subsections in this draft.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

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Same

(x) A pledgee shall have a perfected security interest in a related investment interest, including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the investment interest and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx].

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

34. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

35.2 [Note: Still to be drafted:
If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect clean energy adjustments, defaults on any required remittance of Clean energy adjustment Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by a Regulatory Asset Owner or Pledgee and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the Clean energy adjustment Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Regulatory Asset Owner or Pledgee.] [Such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or other person or entity authorized to collect Clean energy adjustments, as applicable.]

Successors

37. [Note: Articles 4 (6) and (7) and Articles 5 (7) and (8) are rules about successors to distributors and the IESO being bound by specific requirements. Still to be drafted.]

Choice of law

37.1 The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

38. The provisions of this Act [and the regulations?] apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

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No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

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[7] FLS - see s. 51 of the Electricity Act, 1998

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.1) to enter into agreements or arrangements with [any special purpose financing entities established under (name of new Fair Hydro Act?)];

(q.2) to engage in activities related to making payments to and receiving payments from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required under that Act, and to engage in related settlement activities;

(q.3) to engage in activities related to the transfer of the regulatory asset created under [(name of new Fair Hydro Act?)], which activities may include,

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset to [any special purpose financing entities established under (name of new Fair Hydro Act?)];

(iii) transferring the regulatory asset to third parties;

(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];

201x. Subsection 53.1 (1) of the Act would be repealed and the following substituted:

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, the following:

1. Owning and operating generation facilities.

2. Establishing, operating and supervising the activities of [any special purpose financing entities established under (name of new Fair Hydro Act?)].

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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3. Providing financial and other support to the IESO in its activities under the [name of new Fair Hydro Act?].

4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.

5. Providing equity, not exceeding the prescribed amount, to support the financing capacity [any special purpose financing entities established under (name of new Fair Hydro Act?)].

[Note: Still to draft:
-for the new Fair Hydro Bill: *if OPG is the Financial Services Manager, it shall be required to provide an accounting of the amounts it charges the trust for the financing entity to the OEB 60 days in advance of the commencement of the fiscal year for the OPG trust/special purpose vehicle*]

Subsidiaries

(1.1) Ontario Power Generation Inc. may create one or more subsidiaries in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

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AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1) - instructions on pp. 8-9 of Rider instructions rec'd April 14th]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

[NOTE: CEAs WILL BE DETERMINED BASED ON AN ESTIMATE OF COSTS AND REPAYMENTS FOR AN UPCOMING PERIOD, AND BE TRUED UP TO ACTUAL COSTS AND REPYAMENTS IN THE NEXT FOLLOWING PERIOD. THESE MECHANICS CAN BE SEEN IN THE SUMMARY DOCUMENT – "PERIOD FINANCE AMOUNTS" AND SECONDARY DEFINITIONS. THIS FORMULAIC APPROACH IS PREFERRED TO ESTABLISH A SUM CERTAIN OF THE DEBT REPRESENTED BY THE CEAs, ONCE BILLED. IT MAY BE USEFUL TO CREATE A DEFINITION TO ENCOMPASS ALL CEAs FOR A PERIOD, SINCE A CEA IS THE AMOUNT BILLED TO A PARTICULAR CUSTOMER]

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by owners of an investment asset [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

[NOTE THAT SHOULD LIMIT CONCEPT OF RESERVE DEPOSITS AS INCURRENCES IF IT WOULD MEAN THAT THE PROCEEDS FROM A TRANSFER WOULD BE REDUCED FROM FACE VALUE WITH THE RESULT THAT IESO WOULD BE TRANSFERRING IAs AT A DISCOUNT]

2. The sum of all funding costs for the reference period, as determined under section 2 to this Schedule.

3. The sum of all amounts payable by or on behalf of owners of investment assets to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

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[Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]
[Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable by owners of investment assets for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[Note: Para. 5 is based on the definition of "additional funding charges".]

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of owners of investment assets during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the owners of investment assets during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

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3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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Concordance - summary to bill (April 15, 2017).pdf

CONCORDANCE

Blakes Discussion Document	Draft Bill – April 15, 2017 (numbers correspond to numbers in the draft, even though numbering in the draft is imperfect)
Article 1 – Purpose	Preamble s. 2 Purpose
Article 2 – Definitions	s. 1 Definitions
Article 3 – Transition Charges	
s. 3(1) Regulated Consumer Obligation to Pay a Transition Charge	s. 9x(1)
s. 3(2) Indebtedness of Regulated Consumers	s. 9x(4), (5)
s. 3(3) No set-off or Reduction	s. 23.1(4)
s. 3(4) Allocation of Regulated Consumer Payments	s. 14x(2)
s. 3(5) Transition Charges are Irrevocable	s.10x(1)
s. 3(6) True Up of Transition Charges	s. 11x(2)
Article 4 – Invoicing of Transition Charges	
s. 4(1) Inclusion of Transition Charges in Electricity Invoices	s. 13(2)
s. 4(2) Calculation of the Period Transition Charge	s. 11x(1), (2), Schedule 1
s. 4(3) Basis for Attributing Transition Charges	s. 11x(1)
s. 4(4) Notice of Transition Charges	s. 11(4)
s. 4(5) Adjustments	s. 10x(2)
s. 4(6) Successors of Electricity Distributors	s. 34, 37
s. 4(7) Appointment of an Alternative Servicer	s. 34, 37
s. 4(8) Absolute Assignees have Standing	To be addressed
s. 4(9) No Set-Off or Reduction	s. 23.1(4)
s. 4(10) Regulations	s. 100x
Article 5 - Collections and Remittances	
s. 5(1) Duty to Collect as Agent	s. 12(3)
s. 5(2) Segregation of Transition Charge Collections	s. 15x(1), (2)
s. 5(3) Electricity Distributor Remittances	s.15x(5)
s. 5(4) Duty to Collect Electricity Distributor Remittances	s. 12x(3.1)
s. 5(5) Segregation of Electricity Distributor Remittances	s. 12x(3.1)

s. 5(6) Servicer Remittances	s. 12x(4)
s. 5(7) Successors of Electricity Distributors	s. 34, 37
s. 5(8) IESO Successor	s. 34, 37
s. 5(9) Owners of Distribution Assets	s. 37
s. 5(10) Absolute Assignees have Standing	To be addressed
s. 5(11) No Set-off, etc.	s. 23.1(4)
s. 5(12) Sequestration	s. 35.2
s. 5(13) Regulations	s. 100x
Article 6 - The Regulatory Asset	
s. 6(1) Composition	s. 22(1) and 23.1
s. 6(2) Validity of Dispositions	s. 25(1) and s. 25(2)
s. 6(3) Perfection and Priority of Dispositions	s. 25(3) and s. 25(4)
s. 6(4) Validity of Pledges	s. 27(1) to s. 27(3)
s. 6(5) Perfection and Priority of Pledges	s. 27(6) to s. 27(10)
s. 6(6) Enforcement of Property Rights	s. 29
s. 6(7) Owners of a Specified Portion of the Regulatory Asset	s. 24
s. 6(8) Collective Action Required	s. 28
Article 7 – Establishment of the Fair Allocation Plan	
s. 7(1) Adoption of the Fair Allocation Plan	s. 8(1)
s. 7(2) Principles and Parameters	s. 8.1
s. 7(3) Attribution Methodology	s. 8.0.1
s. 7(4) Amendments of the Fair Allocation Plan	s. 8(2) s. 9x(2)
Article 8 – The IESO Funding Shortfall	
s. 8(1) Recording of IESO Funding Shortfall	s. 22.1(1)
s. 8(2) Adjustments	To be addressed
s. 8(3) Limitation on Additions	To be addressed
s. 8(4) Dispositions	s. 23 (1)
s. 8(5) No Continuing Interest in any Investment Interest	s. 23(2)3., s. 25(2)
s. 8(6) IESO Recoveries	See immediately above Part IV
Article 9 – The Financing Plan	
s. 9(1) Power to Prepare, Implement and Amend the Financing Plan	s. 11(1)
s. 9(2) Principles and Parameters of the Financing Plan	s. 12(1)
s. 9(3) OEB Approval	s. 26(2), see note p. 31
s. 9(4) Review of Financing Plan	To be addressed
s. 9(5) Replacement of the Financial	Definition of Financial Services Manager; to

Services Manager	be further addressed
s. 9(6) Obligation to Apply IESO Remittances	To be addressed
s. 9(7) Non-Recourse	s. 12(3)
s. 9(8) Incurrences are Binding	s. 12(4)
Article 10 – Compliance Matters	
s. 10(1) Right of the [OEB] to Inspect Books and Records	To be addressed
s. 10(2) OPG's Rate Settings	To be addressed
Article 11 – Undertaking of Her Majesty in right of Ontario	
s. 11(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections	s. 4(1)(a)
s. 11(2) Undertaking and Agreement	s. 4(1)(b)
s. 11(3) Successor IESO	s. 34
s. 11(4) Compensation for Failure	s. 4(3)
s. 11(5) No Wind-up of Financing Entity	s. 12(3)
s. 11(6) References to the Undertaking and Agreement	To be addressed
Article 12 – Regulations	s. 100x
Article 13- Miscellaneous	
s. 13(1) Choice of law	s. 37.1
s. 13(2) Conflict of law	s. 38
s. 13(3) No further acts or approvals required	s. 39
s. 13(4) Effect of invalidity after the Incurrence of any Funding Obligation	s. 1(6)
s. 13(5) Severability	s. 1(5)
Schedule 1 – Guidelines for Estimates	Regulation, if required
Schedule 2 – Requirements Applicable to Alternative Invoicing Agent / Alternative Collection Agent	Regulation
Schedule 3 – Principles and Parameters for Establishing the Financing Plan	s. 12(1), Regulation

Excerpt EA OEBA Consequential Amendments.pdf

EXCERPTS FROM THE ELECTRICITY ACT AND ONTARIO ENERGY BOARD ACT

RELATED TO CONSEQUENTIAL AMENDMENTS

Electricity Act, 1998

Purposes of *Electricity Act, 1998*

1. The purposes of this Act include the following:

(a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;

(a.1) to establish a mechanism for energy planning;

(b) to encourage electricity conservation and the efficient use of electricity in a manner consistent with the policies of the Government of Ontario;

(c) to facilitate load management in a manner consistent with the policies of the Government of Ontario;

(d) to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(e) to provide generators, retailers, market participants and consumers with non-discriminatory access to transmission and distribution systems in Ontario;

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(g.1) to facilitate the alteration of ownership structures of publicly-owned corporations that transmit, distribute or retail electricity;

(g.2) to facilitate the disposition, in whole or in part, of the Crown's interest in corporations that transmit, distribute or retail electricity, and to make the proceeds of any such disposition available to be appropriated for any Government of Ontario purpose;

(h) to ensure that Ontario Hydro's debt is repaid in a prudent manner and that the burden of debt repayment is fairly distributed;

(i) to facilitate the maintenance of a financially viable electricity industry; and

(j) to protect corridor land so that it remains available for uses that benefit the public, while recognizing the primacy of transmission uses. 2004, c. 23, Sched. A, s. 1; 2014, c. 7, Sched. 7, s. 1; 2015, c. 20, Sched. 9, s. 1; 2016, c. 10, Sched. 2, s. 1.

Objects of the IESO

6 (1) The objects of the IESO are,

(a) to exercise the powers and perform the duties assigned to it under this Act, the regulations, directions, the market rules and its licence;

(b) to enter into agreements with transmitters to give it authority to direct the operation of their transmission systems;

(c) to direct the operation and maintain the reliability of the IESO-controlled grid to promote the purposes of this Act;

(d) to participate in the development by any standards authority of criteria and standards relating to the reliability of the integrated power system;

(e) to establish and enforce criteria and standards relating to the reliability of the integrated power system;

(f) to work with the responsible authorities outside of Ontario to co-ordinate the IESO's activities with the activities of those authorities;

(g) to operate the IESO-administered markets to promote the purposes of this Act;

(h) to engage in activities related to contracting for the procurement of electricity supply, electricity capacity, electricity storage, transmission systems or any part of such systems and conservation resources;

(i) to engage in activities related to settlements, payments under a contract entered into under the authority of this Act and payments provided for under this Act or the *Ontario Energy Board Act, 1998*;

(j) to engage in activities in support of the goal of ensuring adequate, reliable and secure electricity supply and resources in Ontario;

(k) to forecast electricity demand and the adequacy and reliability of electricity resources for Ontario for the short term, medium term and long term;

(l) to conduct independent planning for electricity generation, demand management, conservation and transmission;

(m) to engage in activities to facilitate the diversification of sources of electricity supply by promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources;

(n) to engage in activities in support of system-wide goals for the amount of electricity to be produced from different energy sources;

(o) to engage in activities that facilitate load management;

(p) to engage in activities that promote electricity conservation and the efficient use of electricity;

(q) to assist the Board by facilitating stability in rates for certain types of consumers;

(r) to collect and make public information relating to the short term, medium term and long term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs; and

(s) to engage in such other objects as may be prescribed by the regulations. 2014, c. 7, Sched. 7, s. 3 (1); 2016, c. 10, Sched. 2, s. 3.

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, owning and operating generation facilities. 2002, c. 1, Sched. A, s. 11.

Status

(2) Ontario Power Generation Inc. and its subsidiaries are not agents of Her Majesty for any purpose, despite the *Crown Agency Act*. 2002, c. 1, Sched. A, s. 11.

Rights of the Minister

53.2 The Minister, on behalf of Her Majesty in right of Ontario, may acquire and hold shares of Ontario Power Generation Inc. 2002, c. 1, Sched. A, s. 11.

Corporations to hold shares

53.3 (1) The Lieutenant Governor in Council may cause corporations to be incorporated under the *Business Corporations Act* for the purpose of acquiring and holding shares in Ontario Power Generation Inc. 2002, c. 1, Sched. A, s. 11.

Same

(2) Shares in a corporation incorporated pursuant to subsection (1) may be acquired and held in the name of Her Majesty in right of Ontario by a member of the Executive Council designated by the Lieutenant Governor in Council. 2002, c. 1, Sched. A, s. 11.

Crown agent

(3) A corporation incorporated pursuant to subsection (1) is an agent of Her Majesty for all purposes. 2002, c. 1, Sched. A, s. 11.

Dividends paid to Crown agent

(4) If an agent of Her Majesty in right of Ontario is paid dividends in respect of shares of Ontario Power Generation Inc., the agent shall pay the dividends to the Financial Corporation, less any amount that it considers is required to pay obligations it has assumed under clause 122 (1) (a). 2002, c. 1, Sched. A, s. 11.

Reporting requirements

53.4 (1) Ontario Power Generation Inc. shall, within 90 days after the end of every fiscal year, submit to the Minister an annual report on its affairs during that fiscal year, signed by the chair of the board of directors. 2002, c. 1, Sched. A, s. 11.

Same

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 2002, c. 1, Sched. A, s. 11.

Same

(3) Ontario Power Generation Inc. may give its annual report to other persons before the Minister complies with subsection (2). 2002, c. 1, Sched. A, s. 11.

Additional reports and information

(4) Ontario Power Generation Inc. shall give such other reports and information to the Minister of Finance or to the Minister as each of them may require from time to time. 2002, c. 1, Sched. A, s. 11.

Residual power of the Crown

53.5 Nothing in this Part restricts the powers of Her Majesty in right of Ontario or any member of the Executive Council at common law or under any Act, whether as a shareholder or otherwise. 2002, c. 1, Sched. A, s. 11.

[. . .]

Payments in lieu of federal corporate tax

89 (1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 149 (1) of the *Income Tax Act* (Canada) from the payment of tax under that Act, it shall pay to the Financial Corporation in respect of each taxation year an amount equal to the amount of the tax that it would be liable to pay under that Act if it were a corporation to which that subsection did not apply. 1998, c. 15, Sched. A, s. 89 (1); 2002, c. 1, Sched. A, s. 15 (1); 2007, c. 7, Sched. 12, s. 2.

Corridor land

(1.1) The amount payable under subsection (1) by a person or entity from whom corridor land is transferred by section 114.2 shall be determined, for the taxation year in which the transfer occurs and for subsequent taxation years, as if the transfer did not occur. 2002, c. 1, Sched. A, s. 15 (2).

Payments to Minister of Finance

(2) After Part V is repealed under section 84.1, all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 89 (2); 2000, c. 42, s. 31.

Commencement of new taxation year

(3) A corporation that is required to make payments under this section shall be deemed, for the purposes of this section, to commence a new taxation year on the day this section comes into force.

Payments in lieu of provincial corporate tax

90 (1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 57 (1) of the *Corporations Tax Act* from the payment of tax under that Act for a taxation year that ends before January 1, 2009, it shall pay to the Financial Corporation in respect of each taxation year ending before that day an amount equal to the total amount of tax that it would be liable to pay under Parts II, II.1 and III of that Act for that year if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (3).

Same

(1.0.1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 27 (2) of the *Taxation Act, 2007* from the payment of tax under that Act for a taxation year that ends after December 31, 2008, it shall pay to the Financial Corporation in respect of each taxation year ending after that day an amount equal to the total amount of tax that it would be liable to pay under Divisions B, C and E of Part III of that Act for the taxation year if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (3).

Corridor land

(1.1) The amount payable under subsection (1) by a person or entity from whom corridor land is transferred by section 114.2 shall be determined, for the taxation year in which the transfer occurs and for subsequent taxation years, as if the transfer did not occur. 2002, c. 1, Sched. A, s. 16 (2).

Payments to Minister of Finance

(2) After Part V is repealed under section 84.1, all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 90 (2); 2000, c. 42, s. 32.

Commencement of new taxation year

(3) A corporation that is required to make payments under this section shall be deemed, for the purposes of this section, to commence a new taxation year on the day this section comes into force. 1998, c. 15, Sched. A, s. 90 (3).

Ontario Energy Board Act, 1998

1 (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

1.1 To promote the education of consumers.

2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.

4. To facilitate the implementation of a smart grid in Ontario.

5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1; 2015, c. 29, s. 7.

Licence conditions

70 (1) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. 1998, c. 15, Sched. B, s. 70 (1).

Approvals, etc., with or without holding hearing

(1.1) The Board may, with or without a hearing, grant an approval, consent or make a determination that may be required for any of the matters provided for in a licensee's licence. 2009, c. 12, Sched. D, s. 10.

Examples of conditions

(2) The conditions of a licence may include provisions,

(a) specifying the period of time during which the licence will be in effect;

(b) requiring the licensee to provide, in the manner and form determined by the Board, such information as the Board may require;

(c) requiring the licensee to enter into agreements with other persons on specified terms (including terms for a specified duration) approved by the Board relating to its trading or operations or for the connection to or use of any lines or plant owned or operated by the licensee or the other party to the agreement;

(d) governing the conduct of the licensee, including the conduct of,

(i) a transmitter or distributor as that conduct relates to its affiliates,

(ii) a distributor as that conduct relates to a retailer,

(ii.1) a distributor or suite meter provider as such conduct relates to,

(A) the disconnection of the supply of electricity to a consumer, including the manner in which and the time within which the disconnection takes place or is to take place, and with respect to a low-volume consumer, periods during which the disconnection may not take place,

(B) the manner, timing and form in which the notice under subsection 31 (2) of the *Electricity Act, 1998* is to be provided to the consumer, and

(C) subject to the regulations, the manner and circumstances in which security is to be provided or not to be provided by a consumer to a distributor or suite meter provider, including,

(1) the interest rate to be applied to amounts held on deposit and payable by the distributor or suite meter provider to the consumer for the amounts,

(2) the manner and time or times by which the amounts held on deposit may or must be paid or set-off against amounts otherwise due or payable by the consumer,

(3) the circumstances in which security need not be provided or in which specific arrangements in respect of security may or must be provided by the distributor or suite meter provider to the consumer, and

(4) such other matters as the Board may determine in respect of security deposits,

(iii) a retailer, and

(iv) a generator, retailer or person licensed to engage in an activity described in clause 57 (f) or an affiliate of that person as that conduct relates to the abuse or possible abuse of market power;

(d.1) governing conditions relating to any matter prescribed by regulation in respect of retailers of electricity in relation to the retailing of electricity, subject to any regulations made under this Act;

(e) specifying methods or techniques to be applied in determining the licensee's rates;

(f) requiring the licensee to maintain specified accounting records, prepare accounts according to specified principles and maintain organizational units or separate accounts for separate businesses in order to prohibit subsidies between separate businesses;

(g) specifying performance standards, targets and criteria;

(h) specifying connection or retailing obligations to enable reasonable demands for electricity to be met;

(i) specifying information reporting requirements relating to the source of electricity and emissions caused by the generation of electricity;

(j) requiring the licensee to expand or reinforce its transmission or distribution system in accordance with market rules in such a manner as the IESO or the Board may determine;

(k) requiring the licensee to enter into an agreement with the IESO that gives the IESO the authority to direct operations of the licensee's transmission system;

(l) REPEALED: 2016, c. 10, Sched. 2, s. 15.

(m) requiring licensees, where a directive has been issued under section 28.2, to implement such steps or such processes as the Board or the directive requires in order to address risks or liabilities associated with customer billing and payment cycles in respect of the cost of electricity at the retail and at the wholesale levels and risks or liabilities associated with non-payment or default by a consumer or retailer. 1998, c. 15, Sched. B, s. 70 (2); 2003, c. 3, s. 47 (1); 2004, c. 23, Sched. B, s. 11 (1-3); 2010, c. 8, s. 38 (10, 11); 2016, c. 10, Sched. 2, s. 15; 2017, c. 1, s. 2 (1).

Deemed conditions of licences, transmitters and distributors

(2.1) Every licence issued to a transmitter or distributor shall be deemed to contain the following conditions:

1. The licensee is required to provide, in accordance with such rules as may be prescribed by regulation and in the manner mandated by the market rules or by the Board, priority connection access to its transmission system or distribution system for renewable energy generation facilities that meet the requirements prescribed by regulation made under subsection 26 (1.1) of the *Electricity Act, 1998*.
2. The licensee is required to prepare plans, in the manner and at the times mandated by the Board or as prescribed by regulation and to file them with the Board for approval for,

i. the expansion or reinforcement of the licensee's transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and

ii. the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system.

3. The licensee is required, in accordance with a plan referred to in paragraph 2 that has been approved by the Board or in such other manner and at such other times as mandated by the Board or prescribed by regulation,

i. to expand or reinforce its transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and

ii. to make investments for the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system. 2009, c. 12, Sched. D, s. 10.

Deemed condition of licences, unit sub-meter provider, *Ontario Clean Energy Benefit Act, 2010*

(2.2) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Clean Energy Benefit Act, 2010* and the regulations made under it. 2010, c. 26, Sched. 13, s. 17 (2).

Deemed condition of licences, unit sub-meter provider, *Ontario Rebate for Electricity Consumers Act, 2016*

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Rebate for Electricity Consumers Act, 2016* and the regulations made under it. 2016, c. 19, s. 17 (2).

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment").

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with revenue certainty, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. It has been determined that the useful lives of many of the assets developed under the Green Generation Initiative will be in excess of the respective terms of their respective procurement contracts.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Regulated Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Regulated Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred to cover such a shortfall during any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in future periods. In order for IESO to obtain a reliable and committed source

of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services manager under the Financing Plan contemplated in this Act.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Regulated Consumers on an equitable and cost effective basis.

Article 2 – Definitions

In this Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of any Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including without limitation such amounts as may be prescribed.
>
> "Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.
>
> "Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Regulated Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Finance Charges for a Reference Period to Regulated Consumers.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period and minus [(c) the amounts by which amounts remitted by Electricity Distributors pursuant to Section 5(4) exceeded the corresponding amount of Transition Charges Actually paid by Regulated Consumers.][2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee), each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.

"Delegate" means any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act: ●[3].

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition (or, in the case of the IESO Funding Shortfall, a release by IESO of its right to recover such amount in order to enable an Absolute Assignee to recover such amount) of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest, in each case to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the

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[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[2] This is intended to pick up adjustments based on actual collection experience, changes in the Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc. The actual calculation needs work.

[3] Placeholder for delegation once deterermined.

Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.[4]

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, by an Alternative Collection Agent), by the Servicer or by a Retailer, in each case to a Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act.

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of any Absolute Assignee: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

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[4] Suggestion is that LDCs remit based on estimates and then true-up, based on current arrangements for remittances by LDCs to IESO. *

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means any entity established in accordance with the Financing Plan to be an Absolute Assignee and that is managed by the Financial Services Manager.[6]

"Financing Plan" means the written plan prepared by the Financial Services Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services Manager in accordance with Article 9 from time to time.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

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[5] There must only be one Financial Services Manager.

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month.To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount received by IESO in accordance with its right to recover IESO Funding Shortfalls pursuant to section 25.33 of the Electricity Act and Ontario Regulation 430/04, as amended, and "IESO Recoveries" means, collectively, all such amounts received by IESO.[7]

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Regulatory Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, minus (b) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (c) the IESO Recoveries received by IESO prior to the day.

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[7] IESO will be entitled to record the IESO Funding Shortfall amount in a variance account. The OEB will eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act , with an applicable OEB accounting order. See Article 8 for corresponding adjustments based on Dispositions. These will need to be tied together.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of any Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), and such other or different amounts as may be prescribed.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount (b) the True-Up Amount in respect of the applicable True-Up Period and (c) [an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).]

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional

amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province [as prescribed][8].

"Regulated Consumer Group" means, in relation to a Reference Period, the Regulated Consumers who receive Electricity Invoices during the Reference Period.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which Servicer deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the business day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

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[8] To be included in the legislation once settled.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

["Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.]

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last business day of any month].

"Transition Charge" means, the amount recoverable from a Regulated Consumer in respect of a Reference Period[9], being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[Note that this allocation will be based on the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** upon the collection of a Transition Charge paid by or on behalf of a Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.[10]

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[9] Note that Transition Charges will be calculated by reference to Funding Obligations and Finance Amounts incurred under the Financing Plan. The directive will be that no payment obligations will be incurred for payment before 2022, to accommodate the "Fair Adjustment".

[10] True-up calculation is under consideration. In this summary, a calculated true-up amount is contemplated to be included in the Period Finance Amount calculation, in order to achieve a sum certain and actionable debt. The suggestion is that the true-up mechanism be based generally on a calculation process to be described in the Regulation, which would require Transition Charges to be reviewed and adjusted semi-annually (or more frequently) to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Finance Amounts. It has been proposed that the scope of the true-up will exclude any 'leakage' at the Financing Entity Level (e.g., entity-level tax; litigation; losses) but will include shortfalls that are currently socialized through the LDC/IESO system. Note that the proposal

"True-Up Period" means, in relation to a Reference Period, the immediately preceding Reference Period.[11]

"Undertaking of Her Majesty in right of Ontario" means the undertaking of Her Majesty in right of Ontario given under Section 11(2).[12]

Article 3 – Transition Charges

(1) **Regulated Consumer Obligation to Pay a Transition Charge** – Each Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Regulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Regulated Consumers** – Until paid, a Transition Charge charged to a Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[13] debt obligation owing by the Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Regulated Consumer under the Electricity Invoice or otherwise.[14]

(3) **No Set-Off or Reduction** – A Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Regulated Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

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to include a section detailing the true-up mechanism (Oslers 3(6) has not been included here since the outcome of the calculation is already built into the Period Finance Amount concept.

[11] Timing of calculation under consideration, given that amount will need to be reflected in customer invoices.

[12] Under consideration.

[13] Determine if this is critical for rating and markets. Logistics under consideration.

[14] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges – [See True-Up Amount].

Article 4 – Invoicing of Transition Charges

(1) Inclusion of Transition Charges in Electricity Invoices – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice[15] issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Regulated Consumer.

(2) Calculation of the Period Finance Charge – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, the Financial Services Manager on behalf of each Absolute Assignee shall calculate the Period Finance Charge applicable to the Reference Period having regard to such amounts specified by the Servicer, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) Basis for Attributing Transition Charges – Not later than 25 days prior to the first day of a Reference Period, the OEB shall determine a [Fair Hydro Recovery Rate] (on a volumetric basis) on which Electricity Distributors will attribute Transition Charges to consumers under 4(4).

(4) Notice of Transition Charges – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any

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[15] Intention is to include bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors and to address the inclusion of Transition Charges in the paperwork from the IESO to the LDC in a manner that is consistent with the current process of how the IESO bills LDCs.

Alternative Servicer of the [Fair Hydro Recovery Rate] to be applied by the Electiricy Distributor to attribute Transition Charges to each Regulated Consumer who is served by the Electricity Distributor for inclusion in the Electricity Invoices to be issued to the Regulated Consumers.

(5) **Adjustments** – The amount of any Transition Charge charged to a Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, IESO shall perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4. Any Electricity Distributor that is replaced under this Section 4(7) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to IESO and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit IESO or a person designated by IESO to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(8) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(9) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(10) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Servicer, undertake commercially reasonable efforts to collect amounts owing by Regulated Consumers in respect of Transition Charges charged to such Regulated Consumers in Electricity Invoices issued by the

Electricity Distributor or if applicable such Alternative Collection Agent, all in accordance with the Regulations. [16]

(2) **Segregation of Transition Charge Collections** – If prescribed, an Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[17] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or a Pledgee.[18]

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all [Transition Charge Collections received by it from Regulated Consumers] [amounts invoiced to it by the IESO on account of Transition Charges][19] in respect of the related Reference Period to or to the account of Servicer or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – Servicer or if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, accept and undertake commercially reasonable efforts to collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Regulated Consumers that pay their Electricity Invoices directly to IESO, all in accordance with the Regulations.

(5) **Segregation of Electricity Distributor Remittances** – Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or any Pledgee.

(6) **Servicer Remittances** – On each Settlement Date[20], Servicer shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to

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[16] Note that the obligation to collect and remit the Transition Charge will be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]

[17] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[18] Consider whether there is a more efficient way to treat collections through the existing LDC/IESO processes. Intention is to provide scope in the Regulations.

[19] Dealer suggestion under consideration. Impact on LDCs and parallel commercial arrangements to be assessed.

[20] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successors** – IESO Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[21], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Regulated Consumers connected to such person's distribution system assets; (b) allocate partial payments by Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Regulated Consumer, any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[22]

(12) **Sequestration** – If any Electricity Distributor, Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of

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[21] This is in anticipation of a possible future restructuring of the distribution system.

[22] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall (i) order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable and (ii) appoint a receiver to take control of the amounts sequestered.[23]

(13) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset[24]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of a Regulatory Asset Owner to record its Investment Interest in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Regulated Consumer to pay the Transition Charges charged to the Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of Servicer or if applicable the Alternative

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[23] Consider adding or substituting this provision for a right to appoint a receiver.

[24] It is anticipated that Investment Interests will only be sold to Financing Entities controlled by OPG. Sales will occur on a negotiated basis, and deal-specific covenants will be included in transaction documents – to supplement these arrangements.

Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

e. the right to enforce the duties and obligations of Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

f. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

g. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

h. all Related Rights; and

i. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations have been paid in full.

(2) **Validity of Dispositions** – A Disposition by IESO of its right to recover all or any part of the IESO Funding Shortfall to an Absolute Assignee, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under IESO's right to recover the IESO Funding Shortfall or the Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of IESO's right to recover the IESO Funding Shortfall or an Absolute Assignee's right, title and interest in, to and under an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in IESO's right to recover the IESO Funding Shortfall or the

Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights to recover the IESO Funding Shortfall or under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – A Pledge by an Absolute Assignee may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest in respect of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[25] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner or Pledgee to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

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[25] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[26]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, by written declaration, designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with [the Regulations]**.**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Regulated Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Regulated Consumer in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to such Regulated Consumer over such Reference Period, other than in exceptional circumstances.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Regulated Consumer Group and any future Regulated Consumer Group at a particular time should not exceed the Estimated Future Green Transition

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26 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Regulated Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Regulated Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Regulated Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Regulated Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Regulated Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Regulated Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Finance Charges across the Regulated Consumers. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges.

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation, (b) comply with any restrictions or limitations specified with respect thereto in any Funding

Obligation, and (c) not impair any Regulatory Asset, outstanding Funding Obligations or any Transition Charges.[27]

Article 8 – The IESO Funding Shortfall

(1) Recording of IESO Funding Shortfall – Subject to 8(3), IESO will record any IESO Funding Shortfall [in its books] [in a variance account established in accordance with section 25.33 of the Electricity Act / Ontario Regulation 430/04, as amended].

(2) Adjustments – IESO will record it [its books][its variance account] all adjustments to the IESO Regulatory Asset Amount from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(3) Limitation on Additions – Subject to 8(3), IESO shall not record additions to the IESO Regulatory Asset Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(4) Dispositions – IESO may effect a Disposition of its right to recover all or any part of the IESO Regulatory Asset Amount to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (c) the Financial Services Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing Plan.

(5) No Continuing Interest in any Investment Interest – IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of, any IESO Regulatory Asset Amount that is subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

(6) IESO Recoveries – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) of any IESO Recoveries.

Article 9 – The Financing Plan

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services Manager shall be authorized to prepare, implement and amend a financing plan [for the Financing Entities] and propose the adoption of such financing plan as the Financing Plan for the purposes of this Act. [The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.]

[27] It is anticipated that the terms of any rated financing will restrict further issuances pending a RAC in relation to any changes to the FAP.

(2) Principles and Parameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions, having regard to the principles and parameters set forth in Schedule 3.

(3) OEB Approval – [Any Additional Funding Charge payable to the Financial Services Manager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.][28]

(4) Review of Financing Plan – The [OEB shall undertake an annual review of the records maintained by the Financial Services Manager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.] [29]

(5) Replacement of the Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Manager under the Financing Plan. If the Financial Services Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services Manager. [Any replacement financial services manager must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.]

(6) Obligation to Apply IESO Remittances – The Financial Services Manager shall ensure that amounts transferred to it [under Article 5, as agent for and on behalf of the Absolute Assignees], or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Manager, the OEB or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount.

(8) Incurrences are Binding – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner of incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

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[28] Under consideration.

[29] Under consideration.

[Article 10 – Compliance Matters[30]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][31]

Article 11 – Undertaking of the Her Majesty in right of Ontario[32]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – Her Majesty in right of Ontario shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

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[30] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[31] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[32] Under consideration, including the dealers' request for (1) a "servicer guarantee" (2) a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes and (3) in the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), a covenant by the Province to step in and payout the debt or to recover the debt from ratepayers as it becomes due, notwithstanding the intended Fair Adjustment.

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment, amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.[33]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

[33] Requested by Dealers. For discussion.

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[34]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by

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[34] OPG would like the specific amendments related to OPG to be included in the Bill.]

any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(4) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(5) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(6) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation);

(7) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use [diligent efforts to manage Finance Amounts to be borne by Ratepayers];

(8) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(9) [require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.]

(10) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(11) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(12) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(13) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(14) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(15) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(16) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(17) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(18) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(19) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(20) the basis on which any Pledge may be given or effected.

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]

- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]

- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The ~~imputed~~out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). ~~The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.~~

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative~~, which may be higher than prevailing market price for electricity. These differences~~. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with ~~long-term price~~revenue certainty ~~for electricity~~, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. ~~In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts.~~ It has been determined that the useful lives of many of the assets ~~encouraged by~~developed under the Green Generation Initiative will be ~~well~~ in excess of the respective terms of ~~the related~~their respective procurement contracts~~, and in many cases may extend over more than one generation of electricity consumers~~.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective ~~durations~~terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to ~~Retail~~Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such ~~Retail~~Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future ~~Retail~~Regulated Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the ~~Retail~~Regulated Consumers of a particular time period

should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Retail~~Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred ~~by IESO~~ to cover such a shortfall during ~~one~~any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in ~~one or more~~ future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on ~~Retail~~Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services ~~agent~~manager under the Financing Plan contemplated in this Act. ~~The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.~~

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Retail~~Regulated Consumers on an equitable and cost effective basis.

Article 2 ~~-~~ = Definitions

In this Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services ~~Agent~~Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period ~~in respect of an Absolute Assignee,~~ the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of ~~the~~any Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including ~~(without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the~~

~~Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan~~without limitation such amounts as may be prescribed.

~~"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1]~~

"Alternative ~~Collection Agent~~Servicer" means a person appointed under Section ~~5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners."Alternative Servicer" means a person appointed under Section~~ 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to ~~Retail~~Regulated Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"~~[2]~~[1] means the methodology specified in the Fair Allocation Plan for allocating the Period ~~Transition~~Finance Charges for a Reference Period to ~~individual Retail~~Regulated Consumers~~ of the applicable Retail Consumer Group based on its Allocation Factor~~.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services ~~Agent~~Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period~~.[3]~~ and minus [(c) the amounts by which amounts remitted by Electricity

~~[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.~~

~~[2]~~[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

Distributors pursuant to Section 5(4) exceeded the corresponding amount of Transition Charges Actually paid by Regulated Consumers.][2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) ~~and~~, each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means ~~the~~any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act; ●[3].

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition ~~of an Investment Interest~~(or, in the case of the IESO Funding Shortfall, a release by IESO of its right to recover such amount in order to enable an Absolute Assignee to recover such amount) of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest, in each case to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which ~~a Regulatory Asset Owner~~IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means~~, in respect of a Service Area, the~~ a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, ~~1998~~* ~~in respect of such Service Area,~~*1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to ~~IESO~~Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.[4]

"Electricity Invoice" means an invoice issued by ~~any of a~~an Electricity Distributor (or in its stead, by an Alternative ~~Servicer~~Collection Agent), by the Servicer or by a Retailer, in each case to a ~~Retail~~Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to ~~a distribution network in the~~such Electricity Distributor's ~~designated Service Area~~distribution system and in respect of applicable Transition Charges to be charged to the ~~Retail~~Regulated Consumer under this Act.

[32] This ~~would~~is intended to pick up adjustments based on actual collection experience, changes in the ~~retail consumer~~Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc. The actual calculation needs work.

[4] ~~Consider adding the Financial Services Agent and the Servicer as parties.~~

[3] Placeholder for delegation once deterermined.

[4] Suggestion is that LDCs remit based on estimates and then true-up, based on current arrangements for remittances by LDCs to IESO. *

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services ~~Agent~~Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to ~~any Retail Consumer Group~~Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to ~~Retail~~Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to ~~Retail~~Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of ~~the~~any Absolute Assignee: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services ~~Agent~~Manager" means OPG or, following any Replacement Event involving OPG, such other person ~~or persons~~ who may be appointed as the ~~Financial Services Agent~~financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

[5] ~~Discuss whether to accommodate multiple~~There must only be one Financial Services ~~Agents. MOE to consider~~Manager.

"Financing Entity" means ~~an~~any entity established in accordance with the Financing Plan to ~~acquire all or an interest in the Regulatory Asset as~~be an Absolute Assignee and ~~to enter into Funding Obligations to finance such acquisition under the Financing Plan~~that is managed by the Financial Services Manager.[6]

"Financing Plan" means the written plan prepared by the Financial Services ~~Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied,~~Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services ~~Agent~~Manager in ~~compliance~~accordance with Article 9 from time to time.

~~"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.~~

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

or in respect of derivatives; payment obligations owing to service providers, Financial Services ~~Agents~~Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.~~

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

~~"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.~~

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act*~~.~~ in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

~~"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.~~

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]~~; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount~~

[7] ~~This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.~~

~~of any subsequent shortfall for the month in which the inaccuracy is identified. .~~To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount ~~remitted to IESO (including~~received by IESO ~~retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b)~~in accordance with its right to recover IESO Funding Shortfalls pursuant to section 25.33 of the Electricity Act and Ontario Regulation 430/04, as amended, and "IESO Recoveries" means, collectively, all such amounts received by IESO.[7]

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO ~~Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest."IESO Retained~~Regulatory Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, ~~plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c~~minus (b) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (~~d~~c) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition~~, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document~~.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

[7] IESO will be entitled to record the IESO Funding Shortfall amount in a variance account. The OEB will eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act , with an applicable OEB accounting order. See Article 8 for corresponding adjustments based on Dispositions. These will need to be tied together.

~~"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.~~

~~"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.~~

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of any Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), and such other or different amounts as may be prescribed.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount ~~and~~ (b) the True-Up Amount in respect of the ~~immediately preceding Reference Period. "Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.~~ applicable True-Up Period and (c) [an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).]

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional

amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) ~~June~~October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

~~"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.~~

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province [as prescribed][8].

"Regulated Consumer Group" means, in relation to a Reference Period, the Regulated Consumers who receive Electricity Invoices during the Reference Period.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of ~~the IESO Retained Interest and~~ each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which ~~IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent~~Servicer deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means ~~each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b)~~ each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively ~~IESO and~~ each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such ~~Regulatory Asset~~Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to ~~IESO~~Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the ~~Business Day~~business day preceding each Settlement Date.

[8] To be included in the legislation once settled.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

~~"Retail Consumer" means:~~

~~(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and~~

~~(b) present and future Retailers who use Retailer Consolidated Billing,~~

~~and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.~~

~~"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.~~

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

[["Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.]]

~~"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.~~

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last ~~Business Day~~business day of any month].

"Transition Charge" means, ~~for a Retail~~the amount recoverable from a Regulated Consumer in respect of a Reference Period~~, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the~~

~~applicable Reference Period Length.~~[9], being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[Note that this allocation will be based on the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** upon the collection of a Transition Charge paid by or on behalf of a ~~Retail~~Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services ~~Agent~~Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, ~~minus (b) the Actual Finance Amount for such related True-Up Period,~~ plus (c) the Collected Amount Adjustment for such related True-Up Period.[10]

"True-Up Period" means, in relation to a Reference Period, the ~~period from and including the [30th] day~~ immediately preceding ~~the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the~~ Reference Period.[11]

"Undertaking of ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario" means the undertaking of ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario given under Section 11(2).[12]

Article 3 – Transition Charges

(1) **~~Retail~~Regulated Consumer Obligation to Pay a Transition Charge** – Each ~~Retail~~Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such ~~Retail~~Regulated Consumer by its Electricity Distributor

[9] Note that Transition Charges will be calculated by reference to Funding Obligations and Finance Amounts incurred under the Financing Plan. The directive will be that no payment obligations will be incurred for payment before 2022, to accommodate the "Fair Adjustment".

[10] True-up calculation is under consideration. In this summary, a calculated true-up amount is contemplated to be included in the Period Finance Amount calculation, in order to achieve a sum certain and actionable debt. The suggestion is that the true-up mechanism be based generally on a calculation process to be described in the Regulation, which would require Transition Charges to be reviewed and adjusted semi-annually (or more frequently) to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Finance Amounts. It has been proposed that the scope of the true-up will exclude any 'leakage' at the Financing Entity Level (e.g., entity-level tax; litigation; losses) but will include shortfalls that are currently socialized through the LDC/IESO system. Note that the proposal to include a section detailing the true-up mechanism (Oslers 3(6) has not been included here since the outcome of the calculation is already built into the Period Finance Amount concept.

[11] Timing of calculation under consideration, given that amount will need to be reflected in customer invoices.

[12] Under consideration.

or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) Indebtedness of ~~Retail~~Regulated Consumers – Until paid, a Transition Charge charged to a ~~Retail~~Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the ~~Retail~~Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[~~8~~13] debt obligation owing by the ~~Retail~~Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the ~~Retail~~Regulated Consumer under the Electricity Invoice or otherwise.[~~9~~14]

(3) No Set-Off or Reduction – A ~~Retail~~Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such ~~Retail~~Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) Allocation of ~~Retail~~Regulated Consumer Payments – If an Electricity Distributor receives a payment made by or on behalf of a ~~Retail~~Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations ~~incurred under the Financing Plan~~ (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether ~~or not~~ the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether ~~or not~~ the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges – [See True-Up Amount].

Article 4 – Invoicing of Transition Charges

[~~8~~13] Determine if this is critical for rating and markets. Logistics under consideration.

[~~9~~14] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Retail~~Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice[15] issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Retail~~Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Retail~~Regulated Consumer.

(2) **Calculation of the Period ~~Transition~~Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services ~~Agent~~Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period~~. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day~~. Not later than one month prior to the first day of a Reference Period, the ~~OEB~~Financial Services Manager on behalf of each Absolute Assignee shall calculate the Period ~~Transition~~Finance Charge applicable to the Reference Period ~~based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on~~having regard to such amounts specified by ~~IESO or Successor IESO~~the Servicer, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **~~Calculation and Attribution of~~Basis for Attributing Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall ~~apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group~~determine a [Fair Hydro Recovery Rate] (on a volumetric basis) on which Electricity Distributors will attribute Transition Charges to consumers under 4(4).

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the [Fair Hydro Recovery Rate] to be applied by the Electricy Distributor to attribute Transition Charges to ~~be specified~~each Regulated Consumer who is served by the Electricity Distributor for inclusion in the Electricity Invoices to be issued to ~~each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.~~the Regulated Consumers.

(5) **Adjustments** – The amount of any Transition Charge charged to a ~~Retail~~Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to

[15] Intention is to include bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors and to address the inclusion of Transition Charges in the paperwork from the IESO to the LDC in a manner that is consistent with the current process of how the IESO bills LDCs.

the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

~~(7)~~ ~~**IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.~~

(7) ~~(8)~~ **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, ~~the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to~~IESO shall perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article ~~4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor.~~ 4. Any Electricity Distributor that is replaced under this Section 4(~~8~~7) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to ~~the Alternative Servicer~~IESO and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit ~~the Alternative Servicer~~IESO or a person designated by IESO to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(8) ~~(9)~~ **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Retail~~Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(9) ~~(10)~~ **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(10) ~~(11)~~ **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to ~~Retail~~Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the ~~Regulatory Asset Owners~~Servicer, undertake ~~[diligent]~~[commercially reasonable~~]~~[10] efforts to collect amounts owing by ~~Retail~~Regulated Consumers in respect of Transition Charges charged to such ~~Retail~~Regulated

~~[10] Mirror collection "standard of care" under applicable legislation.~~

Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent~~.~~, all in accordance with the Regulations. [16]

(2) **Segregation of Transition Charge Collections** – ~~An~~If prescribed, an Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Retail~~Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.~~11~~[17] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners~~.~~ or a Pledgee.[18]

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all [Transition Charge Collections received by it from ~~Retail~~Regulated Consumers] [amounts invoiced to it by the IESO on account of Transition Charges][19] in respect of the related Reference Period to or to the account of ~~IESO~~Servicer or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – ~~IESO~~Servicer or if applicable any Alternative ~~Collection Agent~~Servicer shall, as an agent of the Regulatory Asset Owners, accept and undertake ~~[diligent]~~[commercially reasonable~~]~~ efforts to ~~accept and~~ collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Retail~~Regulated Consumers that pay their Electricity Invoices directly to IESO, all in accordance with the Regulations.~~12~~

(5) **Segregation of Electricity Distributor Remittances** – ~~IESO~~Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, ~~IESO~~Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or any Pledgee.

(6) **~~IESO~~Servicer Remittances** – On each Settlement Date~~13~~[20], ~~IESO and if applicable the Alternative Collection Agent~~Servicer shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~ to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month~~ and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date~~.

[16] Note that the obligation to collect and remit the Transition Charge will be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]

~~11~~[17] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[18] Consider whether there is a more efficient way to treat collections through the existing LDC/IESO processes. Intention is to provide scope in the Regulations.

[19] Dealer suggestion under consideration. Impact on LDCs and parallel commercial arrangements to be assessed.

~~12 Consider building this obligation into a deemed condition of licence for the IESO.~~

~~13~~[20] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO ~~Successor~~Successors** – IESO ~~Successor~~Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province~~14~~[21], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Retail~~Regulated Consumers ~~in its applicable service area, including all consumers~~ connected to ~~the electricity~~such person's distribution system assets ~~and taking electric delivery service located within such service area~~; (b) allocate partial payments by ~~Retail~~Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from ~~Retail~~Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article ~~5.~~5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

~~(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final~~

~~14~~[21] This is in anticipation of a possible future restructuring of the distribution system.

~~effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.~~

(11) ~~(12)~~ **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any ~~Retail~~Regulated Consumer, any Electricity Distributor, ~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, ~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[~~15~~22]

(12) ~~(13)~~ **Sequestration** – If any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall (i) order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable~~.~~[~~16~~] and (ii) appoint a receiver to take control of the amounts sequestered.[23]

(13) ~~(14)~~ **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to ~~IESO~~Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset[24]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of ~~IESO (i)~~a Regulatory Asset Owner to record its ~~IESO Retained~~Investment Interest in its accounts~~ in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b)~~;

[~~15~~22] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Retail~~Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[~~16~~23] Consider adding or substituting this provision for a right to appoint a receiver.

[24] It is anticipated that Investment Interests will only be sold to Financing Entities controlled by OPG. Sales will occur on a negotiated basis, and deal-specific covenants will be included in transaction documents – to supplement these arrangements.

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Retail~~Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each ~~Retail~~Regulated Consumer to pay the Transition Charges charged to the ~~Retail~~Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

~~**d.** the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;~~

d. ~~**e.**~~ the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of ~~IESO~~Servicer or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

e. ~~**f.**~~ the right to enforce the duties and obligations of ~~IESO~~Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

f. ~~**g.**~~ the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

g. ~~**h.**~~ all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

h. ~~**i.**~~ all Related Rights; and

i. ~~**j.**~~ all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and

notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations have been paid in full.

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a~~A Disposition ~~that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by~~by IESO of its right to recover all or any part of the IESO Funding Shortfall to an Absolute Assignee ~~made under the Financing Plan~~, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under ~~the applicable~~IESO's right to recover the IESO Funding Shortfall or the Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of ~~the Regulatory Asset Owner's applicable~~IESO's right to recover the IESO Funding Shortfall or an Absolute Assignee's right, title~~,~~ and interest in, to and under ~~the Regulatory Asset~~an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in IESO's right to recover the IESO Funding Shortfall or the Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights to recover the IESO Funding Shortfall or under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a~~A Pledge by an Absolute Assignee may be made to secure any ~~related~~ Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. ~~Other than as required by the Financing Plan, no~~No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest in respect of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[17][25] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a~~A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner or Pledgee to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~, in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18][26]

(1) Adoption of the Fair Allocation Plan – The Delegate may, ~~[~~by written declaration,~~]~~ designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair

[17][25] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

[18][26] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with ~~Section 7(4).~~[the Regulations].

(2) Principles and Parameters – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future ~~Retail Consumer Groups~~Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable ~~Retail~~Regulated Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular ~~Retail~~Regulated Consumer ~~Group~~ in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to ~~the Retail~~such Regulated Consumer ~~Group~~ over such Reference Period~~.~~, other than in exceptional circumstances.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a ~~Retail~~Regulated Consumer Group and any future ~~Retail~~Regulated Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future ~~Retail~~Regulated Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future ~~Retail~~Regulated Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future ~~Retail~~Regulated Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate ~~Retail~~Regulated Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such ~~Retail~~Regulated Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair

Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more ~~Retail~~Regulated Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period ~~Transition~~Finance Charges across the ~~Retail~~Regulated Consumers~~ of a particular Retail Consumer Group~~. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges.

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation~~ and~~, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation~~.~~, and (c) not impair any Regulatory Asset, outstanding Funding Obligations or any Transition Charges.[27]

Article 8 – The IESO ~~Retained Interest~~Funding Shortfall

(1) Recording of IESO Funding Shortfall – Subject to 8(3), IESO will record any IESO Funding Shortfall [in its books] [in a variance account established in accordance with section 25.33 of the Electricity Act / Ontario Regulation 430/04, as amended].

(2) ~~(1) Maintain Books of Account~~ ~~– IESO may maintain books of account to record the IESO Retained Interest~~**Adjustments** – IESO will record it [its books][its variance account] all adjustments to the IESO Regulatory Asset Amount ~~and all adjustments thereto~~ from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(3) ~~(2)~~ Limitation on Additions – Subject to 8(3), IESO shall not record additions to the IESO ~~Retained Interest~~ Regulatory Asset Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(4) ~~(3)~~ Dispositions – IESO may effect a Disposition of its right to recover all or any part of the IESO Regulatory Asset Amount to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (c) the Financial Services ~~Agent~~Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing

[27] It is anticipated that the terms of any rated financing will restrict further issuances pending a RAC in relation to any changes to the FAP.

Plan~~; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition~~.

(5) ~~(4)~~ **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in ~~any Investment Interest~~, or maintain any right to recover all or any part of, any IESO Regulatory Asset Amount that is subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party ~~and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement~~.

~~(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.~~

(6) IESO Recoveries – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) ~~available to~~of any IESO ~~under Section 5(6)(b)~~Recoveries.

Article 9 – The Financing Plan

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services ~~Agent~~Manager shall be authorized to prepare, implement and amend a financing plan [for the Financing ~~Plan. If the Financial Services Agent is unwilling or unable to prepare~~Entities] and propose the adoption of such financing plan as the Financing Plan~~, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.~~ for the purposes of this Act. [The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.]

(2) ~~Terms~~Principles and ~~Conditions~~Parameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions~~. The Financing Plan shall have~~, having regard to the principles and parameters set forth in Schedule ~~3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.~~3.

(3) OEB Approval – [Any Additional Funding Charge payable to ~~or for the benefit of~~the Financial Services Manager in respect of services provided by the Financial Services ~~Agent~~Manager (other than third party costs) shall be subject to review and approval by the OEB.][28]

(4) ~~OEB~~ Review of Financing Plan – The [OEB ~~[~~shall~~]~~ undertake an annual review of the records maintained by the Financial Services ~~Agent~~Manager for the purpose of

[28] Under consideration.

confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.][29]

(5) Replacement of the ~~Administrative Agent~~Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the ~~Administrative Agent~~Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services ~~Agent~~Manager under the Financing Plan. If the Financial Services ~~Agent~~Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services~~.~~ Manager. [Any replacement financial services manager must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.]

(6) Obligation to Apply IESO Remittances – The Financial Services ~~Agent~~Manager shall ensure that amounts transferred to it [under Article 5, as agent for and on behalf of the Absolute Assignees], or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services ~~Agent~~Manager, the OEB~~, the Province or the Lieutenant Governor in Council~~ or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. ~~[All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]~~

(8) Incurrences are Binding – ~~Notwithstanding anything to the contrary in this Act, each~~Each Disposition made to or by an Absolute Assignee ~~and~~, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding ~~for the purposes of this Act~~, including in determining the amount of related Transition Charges, ~~despite~~notwithstanding any ~~impairment or defect resulting from such failure~~defect in the manner of incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters~~19~~30

[29] Under consideration.

~~19~~30 As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services ~~Agent~~Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services ~~Agent~~Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.]~~20~~31

Article 11 – Undertaking of the ~~Lieutenant Governor in Council~~[21]Her Majesty in right of Ontario[32]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – ~~The [Lieutenant Governor in Council]~~Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of ~~Retail~~Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – ~~The [Lieutenant Governor in Council]~~Her Majesty in right of Ontario shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

~~20~~31 As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as ~~Administrative Agent~~Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

~~21~~32 Under consideration, including the dealers' request for (1) a "servicer guarantee" ~~and~~(2) a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes and (3) in the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), a covenant by the Province to step in and payout the debt or to recover the debt from ratepayers as it becomes due, notwithstanding the intended Fair Adjustment.

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor ~~IESO~~ shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article ~~11.[22]~~11.[33]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the ~~Lieutenant Governor in Council~~Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

[22][33] Requested by ~~Torys~~Dealers. For discussion.

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[2334]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article,

[2334] OPG would like the specific amendments related to OPG to be included in the Bill.]

Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(4) ~~(9)~~ consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(5) ~~(4)~~ if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable ~~Retail Consumer Group~~Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(6) ~~(5)~~ reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical ~~Retail~~Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation ~~having regard to the application of the Allocation Methodology~~);

(7) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use [diligent efforts to manage Finance Amounts to be borne by Ratepayers];

(8) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(9) [require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding

[24] ~~Awaiting input from Torys based on OPG mark-up of Financing Plan sections.~~

Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.]

(10) ~~**(6)**~~ incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(11) ~~(7)~~ the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(12) ~~(8)~~ the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(13) ~~(9)~~ the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(14) ~~(10)~~ the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(15) ~~(11)~~ the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(16) ~~(12)~~ the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(17) ~~(13)~~ the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(18) ~~(14)~~ the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(19) ~~(15)~~ describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(20) ~~(16)~~ the basis on which any Pledge may be given or effected.

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]
- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]
- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

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Total changes	752

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All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this

Attachments:

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Subject: Ontario Fair Hydro Plan
Date: Thursday, April 13, 2017 10:44:50

Hi Everyone,

This will be a meeting to discuss the Ontario Fair Hydro Plan (OFHP).

The meeting will be held at Blakes and the main contact on site will be Lindsay Dicks (416-863-4347 or Lindsay.Dicks@blakes.com). Please inform Lindsay if there will be additional people attending from your group because she will need to pass this information along to their security desk.

Please only forward this invitation to your respective teams if their participation is necessary for the facilitation of this meeting, as the boardroom has limited capacity.

Any materials available for this meeting will be provided in a future update.

Given that this meeting follows a holiday, if you are unable to attend in person or prefer to do so from your own office, please use the following conference call information:

Toll-free dial-in number: 1-866-633-1033
Local dial-in number: 416-212-8013
Conference ID: 3164921#

If there are any additional scheduling needs or updates, please contact Joseph Pau (416-326-1018 or Joseph.Pau@ontario.ca).

Thanks,

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Attachment 4: TOR_2528-#23107566-v13-_Fair_Hydro_Act_.docx
Attachment 5: TOR_2528-#23107566-vpdf-_Fair_Hydro_Act_.pdf

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

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Fair Hydro Act (April 15 2017) Consultationv4.pdf

This confidential draft document is provided for discussion purposes only. It should not be construed as representing a position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

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A proposal to create Legislation.

Intergenerational Fairness in Hydro Rates Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix including renewable energy, and to removing barriers to and promoting opportunities for renewable energy projects.

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing the generation of electrical energy and the production therefrom.

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating facilities in a manner that allocates the costs of and benefits from these investments fairly among present and future consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means…

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in renewable energy projects [which use cleaner sources of energy],

(b) removing barriers to and promoting opportunities for renewable energy projects, and

(c) promoting a green economy [including conservation and demand management]; ("French")

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"electricity vendor"[1] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"Fair Allocation Plan" means a plan prepared under section X; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. or such other entity as may be prescribed; ("French")

"Financing Plan" means a plan prepared under section X; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means [O. Reg. 95/05 definition];] ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")

"invoice amount" means the sum of the following amounts:

1. The commodity price of the electricity used during the invoice period.

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. Any adjustment required under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

[1] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a), or such shorter period as may be set out in a Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of the owner of an investment asset by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset; ("French")

[NOTE: CURRENT PROPOSAL IS THAT THE REGULATORY ASSET WILL REPRESENT THE RIGHT OF RECOVERY. UPON A TRANSFER OF AN INVESTMENT INTEREST, THE QUANTUM OF THE RIGHT OF RECOVERY FOR THE REGULATORY ASSET WILL BE REDUCED. THE TRANSFER OF AN INVESTMENT INTEREST WILL RESULT IN IESO RELINQISHING ANY INTEREST IN THE TRANSFERRED INVESTMENT INTEREST, AND WILL RESULT IN THE TRANSFEREE ACQUIRING THE RIGHT OF RECOVERY OF AN INTEREST IN THE CLEAN ENERGY ADJUSTMENTS DETERMINED BY REFERENCE TO FINANCE AMOUNTS INCURRED BY OR ON BEHALF OF THE TRANSFEREE.]

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

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(b) such other person as may be prescribed ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"weekday means [O. Reg. 95/05 definition]; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

    i. a dwelling,

    ii. a property within the meaning of the *Condominium Act, 1998*,

    iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

    iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

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Intention of the Legislature[2]

(5) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

2. (1) The purposes of this Act are,[3]

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy initiative that accrue over time and will continue to benefit present and future electricity consumers in the Province;

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[4] and

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

Crown bound

3. This Act binds the Crown.

[2] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[3] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.
[4] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

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Protection and guarantee of scheme
Prohibition

4. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an owner of an investment asset;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[5]

IESO obligations

(5) If the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

[5] Note to translator: See s. 9 of the Public Authorities Protection Act.

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PART II
FAIR ADJUSTMENT PERIOD

Application of Part

5. This Part applies in respect of the five year period beginning on May 1, 2017 and ending on April 30, 2022.

[NOTE: THIS IS A ROUGH ADAPTATION OF THE "FAIR ADJUSTMENT" CONCEPT. FOR YEARS 2 TO 5, THE LGIC WILL PASS A REGULATION TO LIMIT THE INCREASE TO REDUCED HYDRO BILLS TO REFLECT A FURTHER "FAIR ADJUSTMENT". THE SUM OF ALL FAIR ADJUSTMENTS WILL CORRESPOND TO THE SUM (TIME VALUE ADJUSTED) OF THE PAYMENTS BY PAST RATEPAYERS OF MORE THAN THEIR FAIR SHARE OF THE GREEN COSTS (I.E., AS A RESULT OF THE EXISTING AMORTIZATION RATE OF GREEN COSTS THROUGH THE GA CALCULATION). THE VALUE OF THOSE PAST OVER-PAYMENTS WILL BE A LIMIT ON THE TOTAL AMOUNT OF FAIR ADJUSTMENTS. THE CONCEPT IS MORE FLEXIBILE THAN THE SUGGESTION HERE, WHICH RELATES ONLY TO THE FIRST 5 YEARS – ALTHOUGH THAT IS CERTAINLY THE CURRENT FOCUS. THE IDEA FOR NOW IS THAT THE ACT WILL REDUCE HYDRO BILLS FOR THE FIRST YEAR, AND EACH OF THE FOLLOWING 4 YEARS BY REGULATION – IN AGGREGATE EQUAL TO THE PAST OVER-CHARGES. TO ENSURE THAT THE INCURRENCE OF FUNDING OBLIGATIONS AND CORRESPONDING FINANCE AMOUNTS DO NOT CONFLICT WITH THE FAIR ADJUSTMENT (AND REDUCED HYDRO RATES), THERE WILL BE A MORATORIUM ON CLEAN ENERGY ADJUSTMENTS DURING THE FIRST 5 YEARS (ON BOTH IESO CHARGE THROUGH RECOVERIES AND IN RESPECT OF FINANCE AMOUNTS PAYABLE DURING THESE FIRST 5 YEARS – PROVIDED THAT IF THE LGIC DOES NOT ULTIMATELY DETERMINE THAT A FAIR ADJUSTMENT WILL APPLY IN A YEAR, THE BALANCE, UNDER THE FAP, WILL BE RECOVERABLE BY WAY OF A PASS-THROUGH OF FINANCE AMOUNTS /IESO RECOVERIES. THE IDEA WILL BE THAT THE LGIC WILL DETERMINE THE AMOUNT OF A FAIR ADJUSTMENT PRIOR TO THE RELEVANT PERIOD TO WHICH IT APPLIES. NOTE THAT THE PAST-OVERPAYMENTS WILL BE FACTORED INTO THE FAP ON A GO FORWARD BASIS, IN ADDITION TO THE CONTINUING GREEN COSTS – AND AMORTIZED OVER THE LONGER PERIOD. THE FOLLOWING PROVISION ADDRESSES ONLY THE FIRST YEAR OF THE FAIR ADJUSTMENT.]

Determination of rates, first twelve months

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative consumer by applying the method set out in subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[Note: Query whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the follow method applies:[6]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. In determining the rates, the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends,

        A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

        B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

[6] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

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ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. On and after May 1, 2018, the Board shall determine the rate for electricity payable by a specified consumer in the following manner:

1. Determine the rate by applying the steps set out in section 6.

2. Adjust the rate determined under paragraph 1 for inflation in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT PERIOD

Application of Part

8x. This Part applies in respect of the period beginning on May 1, 2022 and ending on April 30, 2047.

[NOTE: CONSISTENT WITH THE EARLIER NOTE, THE MORATORIUM IS LIFTED IF THE LGIC DETERMINES THAT NO FAIR ADJUSTMENT WILL APPLY, IN WHICH CASE CEAs WILL APPLY DURING THE FIRST 5 YEARS. THE DIVISION OF TIME CONTEMPLATED IN THIS DRAFT IS MORE INFLEXIBLE THAN WE HAVE ENVISIONED]

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

[NOTE: MODIFY TO REFLECT THAT THE PAYMENT IS MADE TO AN EV, AS AGENT FOR THE INVESTMENT ASSET OWNERS]

Limitation

(1.1) No clean energy adjustment is payable by a specified consumer on a day before May 1, 2022. [NOTE: MODIFY TO REFLECT EARLIER NOTES]

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Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether payment of the amounts is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due;

(b) whether the payments relate to funding obligations that were incurred in a manner that did not comply with the Financing Plan; and [NOTE: UNDER CONSIDERATION. SEEMS OVERBROAD]

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to the investment asset owners in respect of their respective interests in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise. [NOTE: ENFORCEMENT WILL BE LIMITED UNDER THE ACT, SO THAT INVESTMENT ASSET OWNERS CAN'T SERVE NOTICES ON RATEPAYERS DIRECTLY, OTHER THAN THROUGH A SPECIFIED AGENT AND PROCESS – SEE BELOW]

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is an error in calculations made by the electricity vendor.

Determination of clean energy adjustment

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers. . [NOTE: THE AMOUNTS WILL BE CALCULATED AS FOLLOWS: (1) FSM (FOR ALL IAOs) WILL INFORM OEB OF PERIOD FINANCE AMOUNTS FOR THE REFERENCE PERIOD (IE ESTIMATE OF FAs PLUS PAST TRUE UP ALLOCATION) (2) OEB WILL ATTRIBUTE THAT AGGREGATE AMOUNT

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BASED ON RPP-LIKE RATE DETERMINATION FOR CUSTOMERS OF THE RELEVANT CLASSES (3) OEB WILL TELL EVs THE RATES APPLICABLE TO THEIR CUSTOMERS, SO THAT THE FULL AMOUNT IN (1) IS RECOVERED (BASED ON EXPECTED COLLECTION RATES AND NONE PAYMENTS)]

True up amount

(2) The Ontario Energy Board may adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination. [NOTE: THIS IS ONLY A PARTIAL DESCRIPTION OF THE TRUE UP. SEE EARLIER DRAFTING INSTRUCTION FOR SUGGESTED APPROACH – I.E., DESCRIBE BROADLY THE NATURE OF THE CALCULATION AND THEN SPECIFY THE CALCULATION IN A DETAILED CALCULATION TO BE INCLUDED IN A REGULATION]

Same, regulations

(3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment.

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period. [NOTE: WE ARE NOT SURE THERE IS A ROLE FOR IESO. WE THOUGHT THE PERIOD FINANCE AMOUNTS WOULD BE FORWARED BY FSM TO OEB DIRECTLY]

IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustments in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make reasonably diligent efforts to collect clean energy adjustments from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:

1. Amounts remitted from accounts established under section 31.

2. Payments made by specified consumers directly to the IESO as electricity vendor, in respect of clean energy adjustments.

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Deposit

(4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1). [NOTE: CONSIDER FEASIBILITY OF DAILY SEGREGATION/ REMITTANCES]

Same, held in trust

(2) The amounts collected are deemed to be held in trust for the investment asset owner.

IESO to remit

(5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations.

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall [in accordance with the regulations?] determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations.

Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under X.

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Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of clean energy adjustments.

2. Portions of payments by specified consumers that are allocated to clean energy adjustments under subsection 30 (2).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of clean energy adjustments to the IESO for the benefit of the investment asset owner in accordance with the regulations.

Payment re regulatory asset

(x) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the difference is payable to the IESO by the specified consumers.

[NOTE: REQUIRES FURTHER CONSIDERATION.]

PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

Fair Allocation Plan

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 as of a specified day among specified consumers for the purposes of this Act, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan to take effect on the specified day.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

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Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a specified day,

[NOTE: THE IDEA IS THAT THE EXPECTED FUTURE GREEN COSTS WILL BE INCLUDED AS COSTS, AND RATHER THAN AMORTIZING THEM BASED ON THE TERMS OF THE POWER CONTRACTS, THE COSTS WILL BE AMORTIZED AND PASSED THROUGH BASED ON A MORE ACCURATE AMORTIZATION SCHEDULE TIED MORE TO THE COSTS AND BENEFITS OF THE GREEN PLAN OVER THE NEXT 30 YEARS. IN ADDITION, TO THE EXTENT THAT THERE HAVE BEEN OVER-CHARGES (BASED ON THE SHORT AMORTIZATION OF GREEN COSTS) SINCE 2005, THOSE OVERAGES WILL BE ADDED TO THE AMOUNT OF THE FAP COSTS TO BE AMORTIZED OVER THE FUTURE – I.E., THE FUTURE GENERATIONS WOULD HAVE BENEFITED FROM AN ARTIFICALLY LOW SHARE OF THE COSTS SINCE THE RATEPAYERS FOR 2005 – 2017 PAID TOO MUCH, SO WE SHOULD BE ABLE TO ADD THOSE TO THE FUTURE GROUPS AND RECOGNIZE A FAIR ADJUSTMENT FOR CURRENT RATEPAYERS]

(a) the costs incurred by the IESO before that day or expected to be incurred by the IESO on or after that day in relation to,

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(ii) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before that day or expected to be incurred on or after that day. (“French”)

C.C.R.E. Draft

Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan, the Minister shall have regard to the following principles:

1. The amounts should not be allocated in respect of any period of time after April 30, 2047.

1.1 At no time should the Fair Allocation Plan impair any investment asset, outstanding funding obligation or clean energy adjustment.

2. The share of the amounts allocated to specified consumers who receive an invoice in respect of a reference period should be proportionate to a reasonable assessment of the benefits derived by those consumers during that reference period.

3. The specified consumers to whom an invoice is issued during a reference period should not bear an unreasonably disproportionate share of the amounts allocated.

4. Adjustments should be made over time if the Minister is of the opinion that specified consumers have paid more than is reasonably proportionate.

5. Allocation of amounts should be determined for each reference period.

6. A reasonable estimate of the rate of inflation should be applied [in accordance with the regulations?].

Compliance

8.2 The IESO and the Financial Services Manager shall not, at any time, exceed the limits set out in the applicable Fair Allocation Plan.

[NOTE: THIS IS TOO STRONG. THE IDEA IS THAT IESO'S RIGHT OF RECOVERY WILL BE LIMITED IN A REFERENCE PERIOD BY THE FAP AMOUNT FOR THE PERIOD, MINUS THE FINANCE AMOUNTS FOR THE PERIOD. IN THIS WAY, THE IESO WILL BE ENTITLED TO PASS-THROUGH RECOVERIES IN A WAY THAT AFFECTS THE HYDRO BILLS OF EACH REFERENCE PERIOD RATEPAYERS IN A WAY THAT TRACKS THE FAP. SIMILARLY, IF IESO HAS TRANSFERRED ITS RECOVERY RIGHTS TO A IAO, THEN THE RELATED CEAs FOR THAT IAO WILL BE INSIDE THE FAP – AGAIN, SO THAT THE RATEPAYERS OF THAT PERIOD DO NOT BEAR A DISPROPORTIONATE BURDEN FOR THOSE COSTS. THESE CONCEPTS ARE REFLECTED IN THE MECHANICS DEALING WITH IESO RECOVERIES AND PASSING THROUGH CEAs, AND SO THIS SECTION CAN PROBABLY BE REMOVED]

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FINANCING PLAN

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost-effective and consistent with the Fair Allocation Plan.

Amendments to approved plan

(2) The financial services manager may propose amendments to the Financing Plan at any time.

[NOTE: THE FINANCING PLAN IS SUPPOSED TO BE FLEXIBLE, UNLIKE THE FAP. FORMAL AMENDMENTS WOULD MAKE THIS TOO RIGID. THE FSM SHOULD KEEP RECORDS OF THE FP OVERTIME, SO THAT FUNDING DECISIONS CAN BE DETERMINED BASED ON THE PRINCIPLES AND THERE IS A MEASURE OF ACCOUNTABILITY FOR THE FSM, INSOFAR AS THE RECORD-KEEPING WILL ALLOW THE MINISTER TO DO A PERIODIC CHECK TO MAKE SURE THAT FUNDING OBLIGATIONS WERE INCURRED IN MATERIAL CONFORMITY WITH THE FSM'S EVOLVING FP. THE CONCEPT OF THE FP IS TO CREATE DISCIPLINE, THOUGHFULNESS AND SOME MEASURE OF ACCOUNTABILITY FOR FSM IN MAKING FINDING DECISIONS.]

Compliance with Plan

11.1 The Financial Services Manager shall comply with the Financing Plan.

[NOTE: PROBABLY TOO RIGID A STATEMENT – SEE ABOVE. ALSO, OPG SEEMS TO HAVE ACCOUNTING ISSUES WITH THIS SORT OF MANDATORY DIRECTION – NEED TO CONFIRM]

Contents of plan

12. (1) The Financing Plan shall be prepared in accordance with the regulations and shall include such matters as may be prescribed, which may include the following:

1. A description of one or more transfers that may be made in respect of the regulatory asset established under Part **.

2. A description of the basis upon which funding obligations may be incurred in a manner that is consistent with the applicable Fair Allocation Plan.

3. A description of the funding obligations mentioned in paragraph 2, which may include the following:

    i. Indebtedness.

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ii. Payment obligations arising under or in respect of derivatives.

iii. Payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies.

iv. Refinancing an existing funding obligation by applying the net proceeds obtained by incurring other funding obligations.

[NOTE: PRINCIPLES AND PARAMETERS ARE UNDER CONSIDERATION AND WILL BE INCLUDED IN THE REGULATION.]

Limitation

(1.1) The Financing Plan shall not provide for the payment of the clean energy adjustment by specified consumers before May 1, 2022. [NOTE: WOULD PREFER TO SAY (1) NO CEAs IN THE FIRST 5 YEARS UNTIL, FOR A YEAR, THE LGIC CONFIRMS THAT THERE WILL NOT BE A FAIR ADJUSTMENT FOR THAT YEAR. SEE MECHANICS, ABOVE.]

Special purpose financing entities

(2) If the Financial Services Manager is a prescribed entity, the Financing Plan may, in accordance with the regulations, provide for the establishment by that entity of one or more special purpose financing entities that may incur funding obligations.

[Note: I understand that OPG doesn't need authority to establish a SPV beyond existing OPG authority under the EA, but do you still want something like subs. (2) for an entity other than OPG? It almost makes it look like OPG is not authorized to do so, since the provision singles out prescribed entities. Need to consider further]

[NOTE: THIS CONCEPT SHOULD BE MOVED TO THE REGULATION]

Limit on liquidation, etc. of [special purpose funding entities]

(3) The Financing Plan shall not provide for a [special purpose funding entity] tbe be liquidated, dissolved or voluntarily wound-up until at least one year after all of the funding obligations the entity has incurred have been satisfied. [NOTE: MOVE TO THE REGULATION]

Prohibition

(3) The Financing Plan shall not provide for funding obligations to be incurred with any recourse to any assets of the electricity vendors, the IESO, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

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Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan that is made after the funding obligation has been incurred.

[Note: Consider Article 8 (9) entitled "incurrences are binding" -- I believe we have already stated in the Part dealing with the regulatory asset that the rights are enforceable etc. even if charges have been imposed in a manner that does not follow the Financing Plan. Is more drafting required?]

PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.

[Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall"?* Does that convey the right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount recovered in respect of a reference period may not exceed the amount by which the [fair allocation] in respect of a reference period exceeds the amount of the clean energy adjustment for the reference period. [NOTE: CONSIDER IF THIS SHOULD BE A MAXIMUM OR A MANDATORY FLOW-THROUGH. IF THE IESO RECOVERIES PLUS CEAs FOR A PERIOD ARE LESS THAN THE FAIR ALLOCATION FOR A PERIOD, THEN THE RATEPAYERS OF THE PERIOD WILL BENEFIT FROM A LESSER SHARE OF THE COSTS THAN WOULD BE INDICATED BY THE FAP]
2. No part of the funding shortfall shall be recovered before May 1, 2022. [NOTE: TOO RIGID. SEE CONCEPT OF FAIR ADJUSTMENT, ABOVE]

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books. [NOTE: THIS SHOULD ALSO INCLUDE ADJUSTMENTS WHEN THERE IS A TRANSFER OR RECOVERY – I.E., THE REGULATORY ASSET AMOUNT RECORDED SHOULD BE REDUCED]

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Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[Note: Should the value of any consideration received as part of a transfer be reflected in this section?]

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

[NOTE: FUNDING SHORTFALL DESCRIPTION MAY ALSO RELFECT ADJUSTMENT BASED ON ESTIMATE TO ACTUAL FROM EARLIER MONTH]

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

1. The prospective owner of the investment asset to be acquired through the transfer shall pay to the IESO an amount equal to all or part of the IESO funding shortfall. [NOTE: INVESTMENT ASSET TO BE BASED ON FACE VALUE SO THAT THE IESO RECOVERY IS DOLLAR-FOR-DOLLAR. THIS MEANS THAT ACCRUALS WILL BE NEEDED FOR INITIAL PERIOD, RATHER THAN THE TRUST BUYING INVESTMENT INTERESTS AT A DISCOUNT AND HOLDING BACK ISSUE PROCEEDS TO FUND THOSE AMOUNTS.]

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2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the AGGREGATE IESO funding shortfall in its books.

3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset

Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

[NOTE: DEEMING LANGUAGE TO ADDRESS TRANSFER AND CONVEYANCE IS UNDER CONSIDERATION.]

[NOTE: THE ASSET TRANSFERRED BY IESO WILL BE A RIGHT OF RECOVERY, BY REFERENCE TO CEAs. THE ASSET ACQUIRED WILL BE AN "INVESTMENT INTEREST", BEING A SHARE (THE TERMS AND ENTITLEMENTS OF WHICH WILL BE DETERMINED UNDER A COLLECTIVE RIGHTS AGREEMENT) OF THE RIGHTS AND RELATED PROCEEDS FROM THE RIGHT TO BILL, ETC., CEAs. THE SUM OF ALL INVESTMENT INTERESTS WILL BE THE "INVESTMENT ASSET".]

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

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5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(3) An investment asset is not affected by failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(4) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment asset owner or an owner of distribution system assets in the Province; [NOTE: IF THE MECHANICS FOR CASH FLOWS ADOPT THE PRE-EXISTING METHODS AND TERMS AMONG IESO, LDCs AND RATEPAYERS, THIS PROVISION WILL NEED TO RECOGNIZE THAT THOSE TERMS WILL PREVAIL AND NOT BE AFFECTED BY THE NEUTERING OF SET-OFF, ETC.]

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); [NOTE: CONSIDER IN CONTEXT OF FEDERAL BANKRUPTCY POWERS]

(c) by any affiliate or successor of a person mentioned in clause (a).

Transfer of investment asset

24. The investment asset owner may transfer all or a portion of its rights and interests in an investment asset to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

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Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer. [NOTE: ADDRESSES POSSIBLE RECHARACTERIZATION CONSIDERATIONS. MARKET WILL EXPECT TO SEE THIS GIVEN SECURITIZATION CONCEPTS IN PLAY.]

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.

Administration of investment asset

26. (1) The Financial Services Manager shall administer an investment asset on behalf of the owner of the investment asset. [NOTE: TO BE ELABORATED]

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager. [NOTE: TO BE ELABORATED]

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Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.

[Note: Additional content relating to the PPSA has not yet been addressed in any detail. Please review all subsections that contain the (x) below and advise what is needed. Some of this content was already covered by some of the numbered subsections in this draft.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

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Same

(x) A pledgee shall have a perfected security interest in a related investment interest, including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the investment interest and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx].

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

34. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

35.2 [Note: Still to be drafted:
If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect clean energy adjustments, defaults on any required remittance of Clean energy adjustment Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by a Regulatory Asset Owner or Pledgee and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the Clean energy adjustment Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Regulatory Asset Owner or Pledgee.] [Such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or other person or entity authorized to collect Clean energy adjustments, as applicable.]

Successors

37. [Note: Articles 4 (6) and (7) and Articles 5 (7) and (8) are rules about successors to distributors and the IESO being bound by specific requirements. Still to be drafted.]

Choice of law

37.1 The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

38. The provisions of this Act [and the regulations?] apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

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No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

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[7] FLS - see s. 51 of the Electricity Act, 1998

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.1) to enter into agreements or arrangements with [any special purpose financing entities established under (name of new Fair Hydro Act?)];

(q.2) to engage in activities related to making payments to and receiving payments from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required under that Act, and to engage in related settlement activities;

(q.3) to engage in activities related to the transfer of the regulatory asset created under [(name of new Fair Hydro Act?)], which activities may include,

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset to [any special purpose financing entities established under (name of new Fair Hydro Act?)];

(iii) transferring the regulatory asset to third parties;

(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];

201x. Subsection 53.1 (1) of the Act would be repealed and the following substituted:

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, the following:

1. Owning and operating generation facilities.

2. Establishing, operating and supervising the activities of [any special purpose financing entities established under (name of new Fair Hydro Act?)].

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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3. Providing financial and other support to the IESO in its activities under the [name of new Fair Hydro Act?].

4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.

5. Providing equity, not exceeding the prescribed amount, to support the financing capacity [any special purpose financing entities established under (name of new Fair Hydro Act?)].

[Note: Still to draft:
-for the new Fair Hydro Bill: *if OPG is the Financial Services Manager, it shall be required to provide an accounting of the amounts it charges the trust for the financing entity to the OEB 60 days in advance of the commencement of the fiscal year for the OPG trust/special purpose vehicle*]

Subsidiaries

(1.1) Ontario Power Generation Inc. may create one or more subsidiaries in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

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AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1) - instructions on pp. 8-9 of Rider instructions rec'd April 14th]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

[NOTE: CEAs WILL BE DETERMINED BASED ON AN ESTIMATE OF COSTS AND REPAYMENTS FOR AN UPCOMING PERIOD, AND BE TRUED UP TO ACTUAL COSTS AND REPYAMENTS IN THE NEXT FOLLOWING PERIOD. THESE MECHANICS CAN BE SEEN IN THE SUMMARY DOCUMENT – "PERIOD FINANCE AMOUNTS" AND SECONDARY DEFINITIONS. THIS FORMULAIC APPROACH IS PREFERRED TO ESTABLISH A SUM CERTAIN OF THE DEBT REPRESENTED BY THE CEAs, ONCE BILLED. IT MAY BE USEFUL TO CREATE A DEFINITION TO ENCOMPASS ALL CEAs FOR A PERIOD, SINCE A CEA IS THE AMOUNT BILLED TO A PARTICULAR CUSTOMER]

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by owners of an investment asset [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

[NOTE THAT SHOULD LIMIT CONCEPT OF RESERVE DEPOSITS AS INCURRENCES IF IT WOULD MEAN THAT THE PROCEEDS FROM A TRANSFER WOULD BE REDUCED FROM FACE VALUE WITH THE RESULT THAT IESO WOULD BE TRANSFERRING IAs AT A DISCOUNT]

2. The sum of all funding costs for the reference period, as determined under section 2 to this Schedule.

3. The sum of all amounts payable by or on behalf of owners of investment assets to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

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[Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]
[Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable by owners of investment assets for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[Note: Para. 5 is based on the definition of "additional funding charges".]

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of owners of investment assets during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the owners of investment assets during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

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3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Confidential Draft

Concordance - summary to bill (April 15, 2017).pdf

CONCORDANCE

Blakes Discussion Document	Draft Bill – April 15, 2017 (numbers correspond to numbers in the draft, even though numbering in the draft is imperfect)
Article 1 – Purpose	Preamble s. 2 Purpose
Article 2 – Definitions	s. 1 Definitions
Article 3 – Transition Charges	
s. 3(1) Regulated Consumer Obligation to Pay a Transition Charge	s. 9x(1)
s. 3(2) Indebtedness of Regulated Consumers	s. 9x(4), (5)
s. 3(3) No set-off or Reduction	s. 23.1(4)
s. 3(4) Allocation of Regulated Consumer Payments	s. 14x(2)
s. 3(5) Transition Charges are Irrevocable	s.10x(1)
s. 3(6) True Up of Transition Charges	s. 11x(2)
Article 4 – Invoicing of Transition Charges	
s. 4(1) Inclusion of Transition Charges in Electricity Invoices	s. 13(2)
s. 4(2) Calculation of the Period Transition Charge	s. 11x(1), (2), Schedule 1
s. 4(3) Basis for Attributing Transition Charges	s. 11x(1)
s. 4(4) Notice of Transition Charges	s. 11(4)
s. 4(5) Adjustments	s. 10x(2)
s. 4(6) Successors of Electricity Distributors	s. 34, 37
s. 4(7) Appointment of an Alternative Servicer	s. 34, 37
s. 4(8) Absolute Assignees have Standing	To be addressed
s. 4(9) No Set-Off or Reduction	s. 23.1(4)
s. 4(10) Regulations	s. 100x
Article 5 - Collections and Remittances	
s. 5(1) Duty to Collect as Agent	s. 12(3)
s. 5(2) Segregation of Transition Charge Collections	s. 15x(1), (2)
s. 5(3) Electricity Distributor Remittances	s.15x(5)
s. 5(4) Duty to Collect Electricity Distributor Remittances	s. 12x(3.1)
s. 5(5) Segregation of Electricity Distributor Remittances	s. 12x(3.1)

s. 5(6) Servicer Remittances	s. 12x(4)
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s. 5(8) IESO Successor	s. 34, 37
s. 5(9) Owners of Distribution Assets	s. 37
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s. 5(11) No Set-off, etc.	s. 23.1(4)
s. 5(12) Sequestration	s. 35.2
s. 5(13) Regulations	s. 100x
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s. 6(2) Validity of Dispositions	s. 25(1) and s. 25(2)
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s. 6(4) Validity of Pledges	s. 27(1) to s. 27(3)
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s. 6(6) Enforcement of Property Rights	s. 29
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s. 7(2) Principles and Parameters	s. 8.1
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Article 8 – The IESO Funding Shortfall	
s. 8(1) Recording of IESO Funding Shortfall	s. 22.1(1)
s. 8(2) Adjustments	To be addressed
s. 8(3) Limitation on Additions	To be addressed
s. 8(4) Dispositions	s. 23 (1)
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s. 9(1) Power to Prepare, Implement and Amend the Financing Plan	s. 11(1)
s. 9(2) Principles and Parameters of the Financing Plan	s. 12(1)
s. 9(3) OEB Approval	s. 26(2), see note p. 31
s. 9(4) Review of Financing Plan	To be addressed
s. 9(5) Replacement of the Financial	Definition of Financial Services Manager; to

Services Manager	be further addressed
s. 9(6) Obligation to Apply IESO Remittances	To be addressed
s. 9(7) Non-Recourse	s. 12(3)
s. 9(8) Incurrences are Binding	s. 12(4)
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s. 10(1) Right of the [OEB] to Inspect Books and Records	To be addressed
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Article 11 – Undertaking of Her Majesty in right of Ontario	
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s. 11(2) Undertaking and Agreement	s. 4(1)(b)
s. 11(3) Successor IESO	s. 34
s. 11(4) Compensation for Failure	s. 4(3)
s. 11(5) No Wind-up of Financing Entity	s. 12(3)
s. 11(6) References to the Undertaking and Agreement	To be addressed
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Schedule 2 – Requirements Applicable to Alternative Invoicing Agent / Alternative Collection Agent	Regulation
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Excerpt EA OEBA Consequential Amendments.pdf

EXCERPTS FROM THE ELECTRICITY ACT AND ONTARIO ENERGY BOARD ACT

RELATED TO CONSEQUENTIAL AMENDMENTS

Electricity Act, 1998

Purposes of *Electricity Act, 1998*

1. The purposes of this Act include the following:

(a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;

(a.1) to establish a mechanism for energy planning;

(b) to encourage electricity conservation and the efficient use of electricity in a manner consistent with the policies of the Government of Ontario;

(c) to facilitate load management in a manner consistent with the policies of the Government of Ontario;

(d) to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(e) to provide generators, retailers, market participants and consumers with non-discriminatory access to transmission and distribution systems in Ontario;

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(g.1) to facilitate the alteration of ownership structures of publicly-owned corporations that transmit, distribute or retail electricity;

(g.2) to facilitate the disposition, in whole or in part, of the Crown's interest in corporations that transmit, distribute or retail electricity, and to make the proceeds of any such disposition available to be appropriated for any Government of Ontario purpose;

(h) to ensure that Ontario Hydro's debt is repaid in a prudent manner and that the burden of debt repayment is fairly distributed;

(i) to facilitate the maintenance of a financially viable electricity industry; and

(j) to protect corridor land so that it remains available for uses that benefit the public, while recognizing the primacy of transmission uses. 2004, c. 23, Sched. A, s. 1; 2014, c. 7, Sched. 7, s. 1; 2015, c. 20, Sched. 9, s. 1; 2016, c. 10, Sched. 2, s. 1.

Objects of the IESO

6 (1) The objects of the IESO are,

(a) to exercise the powers and perform the duties assigned to it under this Act, the regulations, directions, the market rules and its licence;

(b) to enter into agreements with transmitters to give it authority to direct the operation of their transmission systems;

(c) to direct the operation and maintain the reliability of the IESO-controlled grid to promote the purposes of this Act;

(d) to participate in the development by any standards authority of criteria and standards relating to the reliability of the integrated power system;

(e) to establish and enforce criteria and standards relating to the reliability of the integrated power system;

(f) to work with the responsible authorities outside of Ontario to co-ordinate the IESO's activities with the activities of those authorities;

(g) to operate the IESO-administered markets to promote the purposes of this Act;

(h) to engage in activities related to contracting for the procurement of electricity supply, electricity capacity, electricity storage, transmission systems or any part of such systems and conservation resources;

(i) to engage in activities related to settlements, payments under a contract entered into under the authority of this Act and payments provided for under this Act or the *Ontario Energy Board Act, 1998*;

(j) to engage in activities in support of the goal of ensuring adequate, reliable and secure electricity supply and resources in Ontario;

(k) to forecast electricity demand and the adequacy and reliability of electricity resources for Ontario for the short term, medium term and long term;

(l) to conduct independent planning for electricity generation, demand management, conservation and transmission;

(m) to engage in activities to facilitate the diversification of sources of electricity supply by promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources;

(n) to engage in activities in support of system-wide goals for the amount of electricity to be produced from different energy sources;

(o) to engage in activities that facilitate load management;

(p) to engage in activities that promote electricity conservation and the efficient use of electricity;

(q) to assist the Board by facilitating stability in rates for certain types of consumers;

(r) to collect and make public information relating to the short term, medium term and long term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs; and

(s) to engage in such other objects as may be prescribed by the regulations. 2014, c. 7, Sched. 7, s. 3 (1); 2016, c. 10, Sched. 2, s. 3.

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, owning and operating generation facilities. 2002, c. 1, Sched. A, s. 11.

Status

(2) Ontario Power Generation Inc. and its subsidiaries are not agents of Her Majesty for any purpose, despite the *Crown Agency Act*. 2002, c. 1, Sched. A, s. 11.

Rights of the Minister

53.2 The Minister, on behalf of Her Majesty in right of Ontario, may acquire and hold shares of Ontario Power Generation Inc. 2002, c. 1, Sched. A, s. 11.

Corporations to hold shares

53.3 (1) The Lieutenant Governor in Council may cause corporations to be incorporated under the *Business Corporations Act* for the purpose of acquiring and holding shares in Ontario Power Generation Inc. 2002, c. 1, Sched. A, s. 11.

Same

(2) Shares in a corporation incorporated pursuant to subsection (1) may be acquired and held in the name of Her Majesty in right of Ontario by a member of the Executive Council designated by the Lieutenant Governor in Council. 2002, c. 1, Sched. A, s. 11.

Crown agent

(3) A corporation incorporated pursuant to subsection (1) is an agent of Her Majesty for all purposes. 2002, c. 1, Sched. A, s. 11.

Dividends paid to Crown agent

(4) If an agent of Her Majesty in right of Ontario is paid dividends in respect of shares of Ontario Power Generation Inc., the agent shall pay the dividends to the Financial Corporation, less any amount that it considers is required to pay obligations it has assumed under clause 122 (1) (a). 2002, c. 1, Sched. A, s. 11.

Reporting requirements

53.4 (1) Ontario Power Generation Inc. shall, within 90 days after the end of every fiscal year, submit to the Minister an annual report on its affairs during that fiscal year, signed by the chair of the board of directors. 2002, c. 1, Sched. A, s. 11.

Same

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 2002, c. 1, Sched. A, s. 11.

Same

(3) Ontario Power Generation Inc. may give its annual report to other persons before the Minister complies with subsection (2). 2002, c. 1, Sched. A, s. 11.

Additional reports and information

(4) Ontario Power Generation Inc. shall give such other reports and information to the Minister of Finance or to the Minister as each of them may require from time to time. 2002, c. 1, Sched. A, s. 11.

Residual power of the Crown

53.5 Nothing in this Part restricts the powers of Her Majesty in right of Ontario or any member of the Executive Council at common law or under any Act, whether as a shareholder or otherwise. 2002, c. 1, Sched. A, s. 11.

[. . .]

Payments in lieu of federal corporate tax

89 (1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 149 (1) of the *Income Tax Act* (Canada) from the payment of tax under that Act, it shall pay to the Financial Corporation in respect of each taxation year an amount equal to the amount of the tax that it would be liable to pay under that Act if it were a corporation to which that subsection did not apply. 1998, c. 15, Sched. A, s. 89 (1); 2002, c. 1, Sched. A, s. 15 (1); 2007, c. 7, Sched. 12, s. 2.

Corridor land

(1.1) The amount payable under subsection (1) by a person or entity from whom corridor land is transferred by section 114.2 shall be determined, for the taxation year in which the transfer occurs and for subsequent taxation years, as if the transfer did not occur. 2002, c. 1, Sched. A, s. 15 (2).

Payments to Minister of Finance

(2) After Part V is repealed under section 84.1, all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 89 (2); 2000, c. 42, s. 31.

Commencement of new taxation year

(3) A corporation that is required to make payments under this section shall be deemed, for the purposes of this section, to commence a new taxation year on the day this section comes into force.

Payments in lieu of provincial corporate tax

90 (1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 57 (1) of the *Corporations Tax Act* from the payment of tax under that Act for a taxation year that ends before January 1, 2009, it shall pay to the Financial Corporation in respect of each taxation year ending before that day an amount equal to the total amount of tax that it would be liable to pay under Parts II, II.1 and III of that Act for that year if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (3).

Same

(1.0.1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 27 (2) of the *Taxation Act, 2007* from the payment of tax under that Act for a taxation year that ends after December 31, 2008, it shall pay to the Financial Corporation in respect of each taxation year ending after that day an amount equal to the total amount of tax that it would be liable to pay under Divisions B, C and E of Part III of that Act for the taxation year if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (3).

Corridor land

(1.1) The amount payable under subsection (1) by a person or entity from whom corridor land is transferred by section 114.2 shall be determined, for the taxation year in which the transfer occurs and for subsequent taxation years, as if the transfer did not occur. 2002, c. 1, Sched. A, s. 16 (2).

Payments to Minister of Finance

(2) After Part V is repealed under section 84.1, all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 90 (2); 2000, c. 42, s. 32.

Commencement of new taxation year

(3) A corporation that is required to make payments under this section shall be deemed, for the purposes of this section, to commence a new taxation year on the day this section comes into force. 1998, c. 15, Sched. A, s. 90 (3).

Ontario Energy Board Act, 1998

1 (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

1.1 To promote the education of consumers.

2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.

4. To facilitate the implementation of a smart grid in Ontario.

5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1; 2015, c. 29, s. 7.

Licence conditions

70 (1) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. 1998, c. 15, Sched. B, s. 70 (1).

Approvals, etc., with or without holding hearing

(1.1) The Board may, with or without a hearing, grant an approval, consent or make a determination that may be required for any of the matters provided for in a licensee's licence. 2009, c. 12, Sched. D, s. 10.

Examples of conditions

(2) The conditions of a licence may include provisions,

(a) specifying the period of time during which the licence will be in effect;

(b) requiring the licensee to provide, in the manner and form determined by the Board, such information as the Board may require;

(c) requiring the licensee to enter into agreements with other persons on specified terms (including terms for a specified duration) approved by the Board relating to its trading or operations or for the connection to or use of any lines or plant owned or operated by the licensee or the other party to the agreement;

(d) governing the conduct of the licensee, including the conduct of,

(i) a transmitter or distributor as that conduct relates to its affiliates,

(ii) a distributor as that conduct relates to a retailer,

(ii.1) a distributor or suite meter provider as such conduct relates to,

(A) the disconnection of the supply of electricity to a consumer, including the manner in which and the time within which the disconnection takes place or is to take place, and with respect to a low-volume consumer, periods during which the disconnection may not take place,

(B) the manner, timing and form in which the notice under subsection 31 (2) of the *Electricity Act, 1998* is to be provided to the consumer, and

(C) subject to the regulations, the manner and circumstances in which security is to be provided or not to be provided by a consumer to a distributor or suite meter provider, including,

(1) the interest rate to be applied to amounts held on deposit and payable by the distributor or suite meter provider to the consumer for the amounts,

(2) the manner and time or times by which the amounts held on deposit may or must be paid or set-off against amounts otherwise due or payable by the consumer,

(3) the circumstances in which security need not be provided or in which specific arrangements in respect of security may or must be provided by the distributor or suite meter provider to the consumer, and

(4) such other matters as the Board may determine in respect of security deposits,

(iii) a retailer, and

(iv) a generator, retailer or person licensed to engage in an activity described in clause 57 (f) or an affiliate of that person as that conduct relates to the abuse or possible abuse of market power;

(d.1) governing conditions relating to any matter prescribed by regulation in respect of retailers of electricity in relation to the retailing of electricity, subject to any regulations made under this Act;

(e) specifying methods or techniques to be applied in determining the licensee's rates;

(f) requiring the licensee to maintain specified accounting records, prepare accounts according to specified principles and maintain organizational units or separate accounts for separate businesses in order to prohibit subsidies between separate businesses;

(g) specifying performance standards, targets and criteria;

(h) specifying connection or retailing obligations to enable reasonable demands for electricity to be met;

(i) specifying information reporting requirements relating to the source of electricity and emissions caused by the generation of electricity;

(j) requiring the licensee to expand or reinforce its transmission or distribution system in accordance with market rules in such a manner as the IESO or the Board may determine;

(k) requiring the licensee to enter into an agreement with the IESO that gives the IESO the authority to direct operations of the licensee's transmission system;

(l) REPEALED: 2016, c. 10, Sched. 2, s. 15.

(m) requiring licensees, where a directive has been issued under section 28.2, to implement such steps or such processes as the Board or the directive requires in order to address risks or liabilities associated with customer billing and payment cycles in respect of the cost of electricity at the retail and at the wholesale levels and risks or liabilities associated with non-payment or default by a consumer or retailer. 1998, c. 15, Sched. B, s. 70 (2); 2003, c. 3, s. 47 (1); 2004, c. 23, Sched. B, s. 11 (1-3); 2010, c. 8, s. 38 (10, 11); 2016, c. 10, Sched. 2, s. 15; 2017, c. 1, s. 2 (1).

Deemed conditions of licences, transmitters and distributors

(2.1) Every licence issued to a transmitter or distributor shall be deemed to contain the following conditions:

1. The licensee is required to provide, in accordance with such rules as may be prescribed by regulation and in the manner mandated by the market rules or by the Board, priority connection access to its transmission system or distribution system for renewable energy generation facilities that meet the requirements prescribed by regulation made under subsection 26 (1.1) of the *Electricity Act, 1998*.
2. The licensee is required to prepare plans, in the manner and at the times mandated by the Board or as prescribed by regulation and to file them with the Board for approval for,

i. the expansion or reinforcement of the licensee's transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and

ii. the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system.

3. The licensee is required, in accordance with a plan referred to in paragraph 2 that has been approved by the Board or in such other manner and at such other times as mandated by the Board or prescribed by regulation,

i. to expand or reinforce its transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and

ii. to make investments for the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system. 2009, c. 12, Sched. D, s. 10.

Deemed condition of licences, unit sub-meter provider, *Ontario Clean Energy Benefit Act, 2010*

(2.2) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Clean Energy Benefit Act, 2010* and the regulations made under it. 2010, c. 26, Sched. 13, s. 17 (2).

Deemed condition of licences, unit sub-meter provider, *Ontario Rebate for Electricity Consumers Act, 2016*

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Rebate for Electricity Consumers Act, 2016* and the regulations made under it. 2016, c. 19, s. 17 (2).

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment").

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with revenue certainty, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. It has been determined that the useful lives of many of the assets developed under the Green Generation Initiative will be in excess of the respective terms of their respective procurement contracts.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Regulated Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Regulated Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred to cover such a shortfall during any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in future periods. In order for IESO to obtain a reliable and committed source

of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services manager under the Financing Plan contemplated in this Act.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Regulated Consumers on an equitable and cost effective basis.

Article 2 – Definitions

In this Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of any Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including without limitation such amounts as may be prescribed.
>
> "Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.
>
> "Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Regulated Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Finance Charges for a Reference Period to Regulated Consumers.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period and minus [(c) the amounts by which amounts remitted by Electricity Distributors pursuant to Section 5(4) exceeded the corresponding amount of Transition Charges Actually paid by Regulated Consumers.][2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee), each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.

"Delegate" means any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act: ●[3].

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition (or, in the case of the IESO Funding Shortfall, a release by IESO of its right to recover such amount in order to enable an Absolute Assignee to recover such amount) of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest, in each case to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the

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[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[2] This is intended to pick up adjustments based on actual collection experience, changes in the Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc. The actual calculation needs work.

[3] Placeholder for delegation once deterermined.

Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.[4]

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, by an Alternative Collection Agent), by the Servicer or by a Retailer, in each case to a Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act.

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of any Absolute Assignee: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

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[4] Suggestion is that LDCs remit based on estimates and then true-up, based on current arrangements for remittances by LDCs to IESO. *

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means any entity established in accordance with the Financing Plan to be an Absolute Assignee and that is managed by the Financial Services Manager.[6]

"Financing Plan" means the written plan prepared by the Financial Services Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services Manager in accordance with Article 9 from time to time.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

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[5] There must only be one Financial Services Manager.

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month.To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount received by IESO in accordance with its right to recover IESO Funding Shortfalls pursuant to section 25.33 of the Electricity Act and Ontario Regulation 430/04, as amended, and "IESO Recoveries" means, collectively, all such amounts received by IESO.[7]

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Regulatory Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, minus (b) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (c) the IESO Recoveries received by IESO prior to the day.

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[7] IESO will be entitled to record the IESO Funding Shortfall amount in a variance account. The OEB will eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act , with an applicable OEB accounting order. See Article 8 for corresponding adjustments based on Dispositions. These will need to be tied together.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of any Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), and such other or different amounts as may be prescribed.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount (b) the True-Up Amount in respect of the applicable True-Up Period and (c) [an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).]

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional

amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province [as prescribed][8].

"Regulated Consumer Group" means, in relation to a Reference Period, the Regulated Consumers who receive Electricity Invoices during the Reference Period.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which Servicer deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the business day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

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[8] To be included in the legislation once settled.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

["Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.]

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last business day of any month].

"Transition Charge" means, the amount recoverable from a Regulated Consumer in respect of a Reference Period[9], being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[Note that this allocation will be based on the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** upon the collection of a Transition Charge paid by or on behalf of a Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.[10]

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[9] Note that Transition Charges will be calculated by reference to Funding Obligations and Finance Amounts incurred under the Financing Plan. The directive will be that no payment obligations will be incurred for payment before 2022, to accommodate the "Fair Adjustment".

[10] True-up calculation is under consideration. In this summary, a calculated true-up amount is contemplated to be included in the Period Finance Amount calculation, in order to achieve a sum certain and actionable debt. The suggestion is that the true-up mechanism be based generally on a calculation process to be described in the Regulation, which would require Transition Charges to be reviewed and adjusted semi-annually (or more frequently) to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Finance Amounts. It has been proposed that the scope of the true-up will exclude any 'leakage' at the Financing Entity Level (e.g., entity-level tax; litigation; losses) but will include shortfalls that are currently socialized through the LDC/IESO system. Note that the proposal

"True-Up Period" means, in relation to a Reference Period, the immediately preceding Reference Period.[11]

"Undertaking of Her Majesty in right of Ontario" means the undertaking of Her Majesty in right of Ontario given under Section 11(2).[12]

Article 3 – Transition Charges

(1) **Regulated Consumer Obligation to Pay a Transition Charge** – Each Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Regulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Regulated Consumers** – Until paid, a Transition Charge charged to a Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[13] debt obligation owing by the Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Regulated Consumer under the Electricity Invoice or otherwise.[14]

(3) **No Set-Off or Reduction** – A Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Regulated Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

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to include a section detailing the true-up mechanism (Oslers 3(6) has not been included here since the outcome of the calculation is already built into the Period Finance Amount concept.

[11] Timing of calculation under consideration, given that amount will need to be reflected in customer invoices.

[12] Under consideration.

[13] Determine if this is critical for rating and markets. Logistics under consideration.

[14] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges – [See True-Up Amount].

Article 4 – Invoicing of Transition Charges

(1) Inclusion of Transition Charges in Electricity Invoices – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice[15] issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Regulated Consumer.

(2) Calculation of the Period Finance Charge – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, the Financial Services Manager on behalf of each Absolute Assignee shall calculate the Period Finance Charge applicable to the Reference Period having regard to such amounts specified by the Servicer, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) Basis for Attributing Transition Charges – Not later than 25 days prior to the first day of a Reference Period, the OEB shall determine a [Fair Hydro Recovery Rate] (on a volumetric basis) on which Electricity Distributors will attribute Transition Charges to consumers under 4(4).

(4) Notice of Transition Charges – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any

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[15] Intention is to include bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors and to address the inclusion of Transition Charges in the paperwork from the IESO to the LDC in a manner that is consistent with the current process of how the IESO bills LDCs.

Alternative Servicer of the [Fair Hydro Recovery Rate] to be applied by the Electiricy Distributor to attribute Transition Charges to each Regulated Consumer who is served by the Electricity Distributor for inclusion in the Electricity Invoices to be issued to the Regulated Consumers.

(5) **Adjustments** – The amount of any Transition Charge charged to a Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, IESO shall perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4. Any Electricity Distributor that is replaced under this Section 4(7) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to IESO and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit IESO or a person designated by IESO to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(8) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(9) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(10) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Servicer, undertake commercially reasonable efforts to collect amounts owing by Regulated Consumers in respect of Transition Charges charged to such Regulated Consumers in Electricity Invoices issued by the

Electricity Distributor or if applicable such Alternative Collection Agent, all in accordance with the Regulations. [16]

(2) **Segregation of Transition Charge Collections** – If prescribed, an Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[17] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or a Pledgee.[18]

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all [Transition Charge Collections received by it from Regulated Consumers] [amounts invoiced to it by the IESO on account of Transition Charges][19] in respect of the related Reference Period to or to the account of Servicer or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – Servicer or if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, accept and undertake commercially reasonable efforts to collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Regulated Consumers that pay their Electricity Invoices directly to IESO, all in accordance with the Regulations.

(5) **Segregation of Electricity Distributor Remittances** – Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or any Pledgee.

(6) **Servicer Remittances** – On each Settlement Date[20], Servicer shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to

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[16] Note that the obligation to collect and remit the Transition Charge will be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]

[17] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[18] Consider whether there is a more efficient way to treat collections through the existing LDC/IESO processes. Intention is to provide scope in the Regulations.

[19] Dealer suggestion under consideration. Impact on LDCs and parallel commercial arrangements to be assessed.

[20] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successors** – IESO Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[21], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Regulated Consumers connected to such person's distribution system assets; (b) allocate partial payments by Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Regulated Consumer, any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[22]

(12) **Sequestration** – If any Electricity Distributor, Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of

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[21] This is in anticipation of a possible future restructuring of the distribution system.

[22] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall (i) order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable and (ii) appoint a receiver to take control of the amounts sequestered.[23]

(13) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset[24]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of a Regulatory Asset Owner to record its Investment Interest in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Regulated Consumer to pay the Transition Charges charged to the Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of Servicer or if applicable the Alternative

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[23] Consider adding or substituting this provision for a right to appoint a receiver.

[24] It is anticipated that Investment Interests will only be sold to Financing Entities controlled by OPG. Sales will occur on a negotiated basis, and deal-specific covenants will be included in transaction documents – to supplement these arrangements.

Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

e. the right to enforce the duties and obligations of Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

f. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

g. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

h. all Related Rights; and

i. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations have been paid in full.

(2) **Validity of Dispositions** – A Disposition by IESO of its right to recover all or any part of the IESO Funding Shortfall to an Absolute Assignee, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under IESO's right to recover the IESO Funding Shortfall or the Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of IESO's right to recover the IESO Funding Shortfall or an Absolute Assignee's right, title and interest in, to and under an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in IESO's right to recover the IESO Funding Shortfall or the

Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights to recover the IESO Funding Shortfall or under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – A Pledge by an Absolute Assignee may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest in respect of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[25] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner or Pledgee to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

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[25] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[26]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, by written declaration, designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with [the Regulations]**.**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Regulated Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Regulated Consumer in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to such Regulated Consumer over such Reference Period, other than in exceptional circumstances.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Regulated Consumer Group and any future Regulated Consumer Group at a particular time should not exceed the Estimated Future Green Transition

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26 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Regulated Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Regulated Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Regulated Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Regulated Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Regulated Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Regulated Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Finance Charges across the Regulated Consumers. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges.

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation, (b) comply with any restrictions or limitations specified with respect thereto in any Funding

Obligation, and (c) not impair any Regulatory Asset, outstanding Funding Obligations or any Transition Charges.[27]

Article 8 – The IESO Funding Shortfall

(1) Recording of IESO Funding Shortfall – Subject to 8(3), IESO will record any IESO Funding Shortfall [in its books] [in a variance account established in accordance with section 25.33 of the Electricity Act / Ontario Regulation 430/04, as amended].

(2) Adjustments – IESO will record it [its books][its variance account] all adjustments to the IESO Regulatory Asset Amount from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(3) Limitation on Additions – Subject to 8(3), IESO shall not record additions to the IESO Regulatory Asset Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(4) Dispositions – IESO may effect a Disposition of its right to recover all or any part of the IESO Regulatory Asset Amount to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (c) the Financial Services Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing Plan.

(5) No Continuing Interest in any Investment Interest – IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of, any IESO Regulatory Asset Amount that is subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

(6) IESO Recoveries – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) of any IESO Recoveries.

Article 9 – The Financing Plan

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services Manager shall be authorized to prepare, implement and amend a financing plan [for the Financing Entities] and propose the adoption of such financing plan as the Financing Plan for the purposes of this Act. [The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.]

[27] It is anticipated that the terms of any rated financing will restrict further issuances pending a RAC in relation to any changes to the FAP.

(2) Principles and Parameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions, having regard to the principles and parameters set forth in Schedule 3.

(3) OEB Approval – [Any Additional Funding Charge payable to the Financial Services Manager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.][28]

(4) Review of Financing Plan – The [OEB shall undertake an annual review of the records maintained by the Financial Services Manager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.] [29]

(5) Replacement of the Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Manager under the Financing Plan. If the Financial Services Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services Manager. [Any replacement financial services manager must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.]

(6) Obligation to Apply IESO Remittances – The Financial Services Manager shall ensure that amounts transferred to it [under Article 5, as agent for and on behalf of the Absolute Assignees], or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Manager, the OEB or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount.

(8) Incurrences are Binding – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner of incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

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[28] Under consideration.

[29] Under consideration.

[Article 10 – Compliance Matters[30]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][31]

Article 11 – Undertaking of the Her Majesty in right of Ontario[32]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – Her Majesty in right of Ontario shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

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[30] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[31] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[32] Under consideration, including the dealers' request for (1) a "servicer guarantee" (2) a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes and (3) in the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), a covenant by the Province to step in and payout the debt or to recover the debt from ratepayers as it becomes due, notwithstanding the intended Fair Adjustment.

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment, amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.[33]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

[33] Requested by Dealers. For discussion.

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[34]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by

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[34] OPG would like the specific amendments related to OPG to be included in the Bill.]

any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(4) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(5) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(6) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation);

(7) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use [diligent efforts to manage Finance Amounts to be borne by Ratepayers];

(8) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(9) [require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.]

(10) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(11) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(12) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(13) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(14) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(15) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(16) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(17) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(18) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(19) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(20) the basis on which any Pledge may be given or effected.

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]

- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]

- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The ~~imputed~~out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). ~~The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.~~

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative~~, which may be higher than prevailing market price for electricity. These differences~~. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with ~~long-term price~~revenue certainty ~~for electricity~~, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. ~~In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts.~~ It has been determined that the useful lives of many of the assets ~~encouraged by~~developed under the Green Generation Initiative will be ~~well~~ in excess of the respective terms of ~~the related~~their respective procurement contracts~~, and in many cases may extend over more than one generation of electricity consumers~~.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective ~~durations~~terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to ~~Retail~~Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such ~~Retail~~Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future ~~Retail~~Regulated Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the ~~Retail~~Regulated Consumers of a particular time period

should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Retail~~Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred ~~by IESO~~ to cover such a shortfall during ~~one~~any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in ~~one or more~~ future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on ~~Retail~~Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services ~~agent~~manager under the Financing Plan contemplated in this Act. ~~The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.~~

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Retail~~Regulated Consumers on an equitable and cost effective basis.

Article 2 ~~-~~ = Definitions

In this Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services ~~Agent~~Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period ~~in respect of an Absolute Assignee,~~ the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of ~~the~~any Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including ~~(without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the~~

~~Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan~~without limitation such amounts as may be prescribed.

~~"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1]~~

"Alternative ~~Collection Agent~~Servicer" means a person appointed under Section ~~5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners."Alternative Servicer" means a person appointed under Section~~ 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to ~~Retail~~Regulated Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"~~[2]~~[1] means the methodology specified in the Fair Allocation Plan for allocating the Period ~~Transition~~Finance Charges for a Reference Period to ~~individual Retail~~Regulated Consumers~~ of the applicable Retail Consumer Group based on its Allocation Factor~~.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services ~~Agent~~Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period~~.[3]~~ and minus [(c) the amounts by which amounts remitted by Electricity

~~[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.~~

~~[2]~~[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

Distributors pursuant to Section 5(4) exceeded the corresponding amount of Transition Charges Actually paid by Regulated Consumers.][2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) ~~and~~, each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means ~~the~~any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act; ●[3].

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition ~~of an Investment Interest~~(or, in the case of the IESO Funding Shortfall, a release by IESO of its right to recover such amount in order to enable an Absolute Assignee to recover such amount) of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest, in each case to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which ~~a Regulatory Asset Owner~~IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means~~, in respect of a Service Area, the~~ a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, ~~1998~~* ~~in respect of such Service Area,~~*1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to ~~IESO~~Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.[4]

"Electricity Invoice" means an invoice issued by ~~any of a~~an Electricity Distributor (or in its stead, by an Alternative ~~Servicer~~Collection Agent), by the Servicer or by a Retailer, in each case to a ~~Retail~~Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to ~~a distribution network in the~~such Electricity Distributor's ~~designated Service Area~~distribution system and in respect of applicable Transition Charges to be charged to the ~~Retail~~Regulated Consumer under this Act.

[32] This ~~would~~is intended to pick up adjustments based on actual collection experience, changes in the ~~retail consumer~~Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc. The actual calculation needs work.

[4] ~~Consider adding the Financial Services Agent and the Servicer as parties.~~

[3] Placeholder for delegation once deterermined.

[4] Suggestion is that LDCs remit based on estimates and then true-up, based on current arrangements for remittances by LDCs to IESO. *

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services ~~Agent~~Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to ~~any Retail Consumer Group~~Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to ~~Retail~~Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to ~~Retail~~Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of ~~the~~any Absolute Assignee: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services ~~Agent~~Manager" means OPG or, following any Replacement Event involving OPG, such other person ~~or persons~~ who may be appointed as the ~~Financial Services Agent~~financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

[5] ~~Discuss whether to accommodate multiple~~There must only be one Financial Services ~~Agents. MOE to consider~~Manager.

"Financing Entity" means ~~an~~any entity established in accordance with the Financing Plan to ~~acquire all or an interest in the Regulatory Asset as~~be an Absolute Assignee and ~~to enter into Funding Obligations to finance such acquisition under the Financing Plan~~that is managed by the Financial Services Manager.[6]

"Financing Plan" means the written plan prepared by the Financial Services ~~Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied,~~Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services ~~Agent~~Manager in ~~compliance~~accordance with Article 9 from time to time.

~~"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.~~

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

or in respect of derivatives; payment obligations owing to service providers, Financial Services ~~Agents~~Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.~~

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

~~"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.~~

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act*~~.~~ in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

~~"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.~~

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]~~; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount~~

[7] ~~This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.~~

~~of any subsequent shortfall for the month in which the inaccuracy is identified. .~~To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount ~~remitted to IESO (including~~received by IESO ~~retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b)~~in accordance with its right to recover IESO Funding Shortfalls pursuant to section 25.33 of the Electricity Act and Ontario Regulation 430/04, as amended, and "IESO Recoveries" means, collectively, all such amounts received by IESO.[7]

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO ~~Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest."IESO Retained~~Regulatory Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, ~~plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c~~minus (b) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (~~d~~c) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition~~, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document~~.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

[7] IESO will be entitled to record the IESO Funding Shortfall amount in a variance account. The OEB will eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act , with an applicable OEB accounting order. See Article 8 for corresponding adjustments based on Dispositions. These will need to be tied together.

~~"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.~~

~~"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.~~

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of any Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), and such other or different amounts as may be prescribed.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount ~~and~~ (b) the True-Up Amount in respect of the ~~immediately preceding Reference Period. "Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.~~ applicable True-Up Period and (c) [an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).]

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional

amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) ~~June~~October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

~~"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.~~

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province [as prescribed][8].

"Regulated Consumer Group" means, in relation to a Reference Period, the Regulated Consumers who receive Electricity Invoices during the Reference Period.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of ~~the IESO Retained Interest and~~ each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which ~~IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent~~Servicer deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means ~~each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b)~~ each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively ~~IESO and~~ each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such ~~Regulatory Asset~~Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to ~~IESO~~Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the ~~Business Day~~business day preceding each Settlement Date.

[8] To be included in the legislation once settled.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

~~"Retail Consumer" means:~~

~~(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and~~

~~(b) present and future Retailers who use Retailer Consolidated Billing,~~

~~and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.~~

~~"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.~~

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

[["Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.]]

~~"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.~~

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last ~~Business Day~~business day of any month].

"Transition Charge" means, ~~for a Retail~~the amount recoverable from a Regulated Consumer in respect of a Reference Period~~, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the~~

~~applicable Reference Period Length.~~[9], being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[Note that this allocation will be based on the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** upon the collection of a Transition Charge paid by or on behalf of a ~~Retail~~Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services ~~Agent~~Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, ~~minus (b) the Actual Finance Amount for such related True-Up Period,~~ plus (c) the Collected Amount Adjustment for such related True-Up Period.[10]

"True-Up Period" means, in relation to a Reference Period, the ~~period from and including the [30th] day~~ immediately preceding ~~the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the~~ Reference Period.[11]

"Undertaking of ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario" means the undertaking of ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario given under Section 11(2).[12]

Article 3 – Transition Charges

(1) **~~Retail~~Regulated Consumer Obligation to Pay a Transition Charge** – Each ~~Retail~~Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such ~~Retail~~Regulated Consumer by its Electricity Distributor

[9] Note that Transition Charges will be calculated by reference to Funding Obligations and Finance Amounts incurred under the Financing Plan. The directive will be that no payment obligations will be incurred for payment before 2022, to accommodate the "Fair Adjustment".

[10] True-up calculation is under consideration. In this summary, a calculated true-up amount is contemplated to be included in the Period Finance Amount calculation, in order to achieve a sum certain and actionable debt. The suggestion is that the true-up mechanism be based generally on a calculation process to be described in the Regulation, which would require Transition Charges to be reviewed and adjusted semi-annually (or more frequently) to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Finance Amounts. It has been proposed that the scope of the true-up will exclude any 'leakage' at the Financing Entity Level (e.g., entity-level tax; litigation; losses) but will include shortfalls that are currently socialized through the LDC/IESO system. Note that the proposal to include a section detailing the true-up mechanism (Oslers 3(6) has not been included here since the outcome of the calculation is already built into the Period Finance Amount concept.

[11] Timing of calculation under consideration, given that amount will need to be reflected in customer invoices.

[12] Under consideration.

or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) Indebtedness of ~~Retail~~Regulated Consumers – Until paid, a Transition Charge charged to a ~~Retail~~Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the ~~Retail~~Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[~~8~~13] debt obligation owing by the ~~Retail~~Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the ~~Retail~~Regulated Consumer under the Electricity Invoice or otherwise.[~~9~~14]

(3) No Set-Off or Reduction – A ~~Retail~~Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such ~~Retail~~Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) Allocation of ~~Retail~~Regulated Consumer Payments – If an Electricity Distributor receives a payment made by or on behalf of a ~~Retail~~Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations ~~incurred under the Financing Plan~~ (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether ~~or not~~ the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether ~~or not~~ the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges – [See True-Up Amount].

Article 4 – Invoicing of Transition Charges

[~~8~~13] Determine if this is critical for rating and markets. Logistics under consideration.

[~~9~~14] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Retail~~Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice[15] issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Retail~~Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Retail~~Regulated Consumer.

(2) **Calculation of the Period ~~Transition~~Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services ~~Agent~~Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period~~. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day~~. Not later than one month prior to the first day of a Reference Period, the ~~OEB~~Financial Services Manager on behalf of each Absolute Assignee shall calculate the Period ~~Transition~~Finance Charge applicable to the Reference Period ~~based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on~~having regard to such amounts specified by ~~IESO or Successor IESO~~the Servicer, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **~~Calculation and Attribution of~~Basis for Attributing Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall ~~apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group~~determine a [Fair Hydro Recovery Rate] (on a volumetric basis) on which Electricity Distributors will attribute Transition Charges to consumers under 4(4).

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the [Fair Hydro Recovery Rate] to be applied by the Electricy Distributor to attribute Transition Charges to ~~be specified~~each Regulated Consumer who is served by the Electricity Distributor for inclusion in the Electricity Invoices to be issued to ~~each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.~~the Regulated Consumers.

(5) **Adjustments** – The amount of any Transition Charge charged to a ~~Retail~~Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to

[15] Intention is to include bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors and to address the inclusion of Transition Charges in the paperwork from the IESO to the LDC in a manner that is consistent with the current process of how the IESO bills LDCs.

the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

~~(7)~~ ~~**IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.~~

(7) ~~(8)~~ **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, ~~the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to~~IESO shall perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article ~~4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor.~~ 4. Any Electricity Distributor that is replaced under this Section 4(~~8~~7) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to ~~the Alternative Servicer~~IESO and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit ~~the Alternative Servicer~~IESO or a person designated by IESO to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(8) ~~(9)~~ **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Retail~~Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(9) ~~(10)~~ **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(10) ~~(11)~~ **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to ~~Retail~~Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the ~~Regulatory Asset Owners~~Servicer, undertake ~~[diligent]~~[commercially reasonable~~]~~[10] efforts to collect amounts owing by ~~Retail~~Regulated Consumers in respect of Transition Charges charged to such ~~Retail~~Regulated

~~[10] Mirror collection "standard of care" under applicable legislation.~~

Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent~~.~~, all in accordance with the Regulations. [16]

(2) **Segregation of Transition Charge Collections** – ~~An~~If prescribed, an Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Retail~~Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.~~11~~[17] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners~~.~~ or a Pledgee.[18]

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all [Transition Charge Collections received by it from ~~Retail~~Regulated Consumers] [amounts invoiced to it by the IESO on account of Transition Charges][19] in respect of the related Reference Period to or to the account of ~~IESO~~Servicer or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – ~~IESO~~Servicer or if applicable any Alternative ~~Collection Agent~~Servicer shall, as an agent of the Regulatory Asset Owners, accept and undertake ~~[diligent]~~[commercially reasonable~~]~~ efforts to ~~accept and~~ collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Retail~~Regulated Consumers that pay their Electricity Invoices directly to IESO, all in accordance with the Regulations.~~12~~

(5) **Segregation of Electricity Distributor Remittances** – ~~IESO~~Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, ~~IESO~~Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or any Pledgee.

(6) **~~IESO~~Servicer Remittances** – On each Settlement Date~~13~~[20], ~~IESO and if applicable the Alternative Collection Agent~~Servicer shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~ to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month~~ and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date~~.

[16] Note that the obligation to collect and remit the Transition Charge will be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]

~~11~~[17] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[18] Consider whether there is a more efficient way to treat collections through the existing LDC/IESO processes. Intention is to provide scope in the Regulations.

[19] Dealer suggestion under consideration. Impact on LDCs and parallel commercial arrangements to be assessed.

~~12 Consider building this obligation into a deemed condition of licence for the IESO.~~

~~13~~[20] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO ~~Successor~~Successors** – IESO ~~Successor~~Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province~~14~~[21], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Retail~~Regulated Consumers ~~in its applicable service area, including all consumers~~ connected to ~~the electricity~~such person's distribution system assets ~~and taking electric delivery service located within such service area~~; (b) allocate partial payments by ~~Retail~~Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from ~~Retail~~Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article ~~5.~~5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

~~(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final~~

~~14~~[21] This is in anticipation of a possible future restructuring of the distribution system.

~~effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.~~

(11) ~~(12)~~ **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any ~~Retail~~Regulated Consumer, any Electricity Distributor, ~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, ~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[~~15~~22]

(12) ~~(13)~~ **Sequestration** – If any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall (i) order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable~~.~~[~~16~~] and (ii) appoint a receiver to take control of the amounts sequestered.[23]

(13) ~~(14)~~ **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to ~~IESO~~Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset[24]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of ~~IESO (i)~~a Regulatory Asset Owner to record its ~~IESO Retained~~Investment Interest in its accounts~~ in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b)~~;

[~~15~~22] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Retail~~Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[~~16~~23] Consider adding or substituting this provision for a right to appoint a receiver.

[24] It is anticipated that Investment Interests will only be sold to Financing Entities controlled by OPG. Sales will occur on a negotiated basis, and deal-specific covenants will be included in transaction documents – to supplement these arrangements.

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Retail~~Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each ~~Retail~~Regulated Consumer to pay the Transition Charges charged to the ~~Retail~~Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

~~**d.** the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;~~

d. ~~**e.**~~ the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of ~~IESO~~Servicer or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

e. ~~**f.**~~ the right to enforce the duties and obligations of ~~IESO~~Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

f. ~~**g.**~~ the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

g. ~~**h.**~~ all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

h. ~~**i.**~~ all Related Rights; and

i. ~~**j.**~~ all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and

notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations have been paid in full.

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a~~A Disposition ~~that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by~~by IESO of its right to recover all or any part of the IESO Funding Shortfall to an Absolute Assignee ~~made under the Financing Plan~~, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under ~~the applicable~~IESO's right to recover the IESO Funding Shortfall or the Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of ~~the Regulatory Asset Owner's applicable~~IESO's right to recover the IESO Funding Shortfall or an Absolute Assignee's right, title~~,~~ and interest in, to and under ~~the Regulatory Asset~~an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in IESO's right to recover the IESO Funding Shortfall or the Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights to recover the IESO Funding Shortfall or under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a~~A Pledge by an Absolute Assignee may be made to secure any ~~related~~ Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. ~~Other than as required by the Financing Plan, no~~No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest in respect of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[17][25] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a~~A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner or Pledgee to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~, in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18][26]

(1) Adoption of the Fair Allocation Plan – The Delegate may, ~~[~~by written declaration,~~]~~ designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair

[17][25] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

[18][26] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with ~~Section 7(4).~~[the Regulations].

(2) Principles and Parameters – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future ~~Retail Consumer Groups~~Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable ~~Retail~~Regulated Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular ~~Retail~~Regulated Consumer ~~Group~~ in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to ~~the Retail~~such Regulated Consumer ~~Group~~ over such Reference Period~~.~~, other than in exceptional circumstances.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a ~~Retail~~Regulated Consumer Group and any future ~~Retail~~Regulated Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future ~~Retail~~Regulated Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future ~~Retail~~Regulated Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future ~~Retail~~Regulated Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate ~~Retail~~Regulated Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such ~~Retail~~Regulated Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair

Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more ~~Retail~~Regulated Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period ~~Transition~~Finance Charges across the ~~Retail~~Regulated Consumers~~ of a particular Retail Consumer Group~~. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges.

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation~~ and~~, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation~~.~~, and (c) not impair any Regulatory Asset, outstanding Funding Obligations or any Transition Charges.[27]

Article 8 – The IESO ~~Retained Interest~~Funding Shortfall

(1) Recording of IESO Funding Shortfall – Subject to 8(3), IESO will record any IESO Funding Shortfall [in its books] [in a variance account established in accordance with section 25.33 of the Electricity Act / Ontario Regulation 430/04, as amended].

(2) ~~(1) Maintain Books of Account~~ ~~– IESO may maintain books of account to record the IESO Retained Interest~~**Adjustments** – IESO will record it [its books][its variance account] all adjustments to the IESO Regulatory Asset Amount ~~and all adjustments thereto~~ from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(3) ~~(2)~~ Limitation on Additions – Subject to 8(3), IESO shall not record additions to the IESO ~~Retained Interest~~ Regulatory Asset Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(4) ~~(3)~~ Dispositions – IESO may effect a Disposition of its right to recover all or any part of the IESO Regulatory Asset Amount to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (c) the Financial Services ~~Agent~~Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing

[27] It is anticipated that the terms of any rated financing will restrict further issuances pending a RAC in relation to any changes to the FAP.

Plan~~; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition~~.

(5) ~~(4)~~ **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in ~~any Investment Interest~~, or maintain any right to recover all or any part of, any IESO Regulatory Asset Amount that is subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party ~~and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement~~.

~~(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.~~

(6) IESO Recoveries – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) ~~available to~~of any IESO ~~under Section 5(6)(b)~~Recoveries.

Article 9 – The Financing Plan

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services ~~Agent~~Manager shall be authorized to prepare, implement and amend a financing plan [for the Financing ~~Plan. If the Financial Services Agent is unwilling or unable to prepare~~Entities] and propose the adoption of such financing plan as the Financing Plan~~, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.~~ for the purposes of this Act. [The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.]

(2) ~~Terms~~Principles and ~~Conditions~~Parameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions~~. The Financing Plan shall have~~, having regard to the principles and parameters set forth in Schedule ~~3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.~~3.

(3) OEB Approval – [Any Additional Funding Charge payable to ~~or for the benefit of~~the Financial Services Manager in respect of services provided by the Financial Services ~~Agent~~Manager (other than third party costs) shall be subject to review and approval by the OEB.][28]

(4) ~~OEB~~ Review of Financing Plan – The [OEB ~~[~~shall~~]~~ undertake an annual review of the records maintained by the Financial Services ~~Agent~~Manager for the purpose of

[28] Under consideration.

confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.][29]

(5) Replacement of the ~~Administrative Agent~~Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the ~~Administrative Agent~~Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services ~~Agent~~Manager under the Financing Plan. If the Financial Services ~~Agent~~Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services~~.~~ Manager. [Any replacement financial services manager must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.]

(6) Obligation to Apply IESO Remittances – The Financial Services ~~Agent~~Manager shall ensure that amounts transferred to it [under Article 5, as agent for and on behalf of the Absolute Assignees], or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services ~~Agent~~Manager, the OEB~~, the Province or the Lieutenant Governor in Council~~ or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. ~~[All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]~~

(8) Incurrences are Binding – ~~Notwithstanding anything to the contrary in this Act, each~~Each Disposition made to or by an Absolute Assignee ~~and~~, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding ~~for the purposes of this Act~~, including in determining the amount of related Transition Charges, ~~despite~~notwithstanding any ~~impairment or defect resulting from such failure~~defect in the manner of incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters~~19~~30

[29] Under consideration.

~~19~~30 As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services ~~Agent~~Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services ~~Agent~~Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.]~~20~~31

Article 11 – Undertaking of the ~~Lieutenant Governor in Council~~[21]Her Majesty in right of Ontario[32]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – ~~The [Lieutenant Governor in Council]~~Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of ~~Retail~~Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – ~~The [Lieutenant Governor in Council]~~Her Majesty in right of Ontario shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

~~20~~31 As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as ~~Administrative Agent~~Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

~~21~~32 Under consideration, including the dealers' request for (1) a "servicer guarantee" ~~and~~(2) a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes and (3) in the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), a covenant by the Province to step in and payout the debt or to recover the debt from ratepayers as it becomes due, notwithstanding the intended Fair Adjustment.

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor ~~IESO~~ shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article ~~11.[22]~~11.[33]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the ~~Lieutenant Governor in Council~~Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

[22][33] Requested by ~~Torys~~Dealers. For discussion.

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[2334]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article,

[2334] OPG would like the specific amendments related to OPG to be included in the Bill.]

Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(4) ~~(9)~~ consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(5) ~~(4)~~ if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable ~~Retail Consumer Group~~Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(6) ~~(5)~~ reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical ~~Retail~~Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation ~~having regard to the application of the Allocation Methodology~~);

(7) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use [diligent efforts to manage Finance Amounts to be borne by Ratepayers];

(8) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(9) [require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding

[24] ~~Awaiting input from Torys based on OPG mark-up of Financing Plan sections.~~

Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.]

(10) ~~**(6)**~~ incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(11) ~~(7)~~ the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(12) ~~(8)~~ the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(13) ~~(9)~~ the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(14) ~~(10)~~ the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(15) ~~(11)~~ the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(16) ~~(12)~~ the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(17) ~~(13)~~ the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(18) ~~(14)~~ the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(19) ~~(15)~~ describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(20) ~~(16)~~ the basis on which any Pledge may be given or effected.

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]
- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]
- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

Document comparison by Workshare Compare on Friday, April 14, 2017 8:53:18 AM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23107566/9
Description	TOR_2528-#23107566-v9-"Fair_Hydro_Act"
Document 2 ID	PowerDocs://TOR_2528/23107566/13
Description	TOR_2528-#23107566-v13-"Fair_Hydro_Act"
Rendering set	Standard

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

Statistics:	
	Count
Insertions	371
Deletions	369
Moved from	6
Moved to	6
Style change	0
Format changed	0
Total changes	752

Ontario’s 2017 LTEP.rtf

From: Donaldson, Mark (TBS) []
To: Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Suzie Gignac [suzie.r.gignac@ca.ey.com]; Blake Langill [blake.w.langill@ca.ey.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Ontario's 2017 LTEP
Date: Friday, November 03, 2017 09:30:47

Hi Lee Anne,

Not sure if you've seen this already, but I've included a link to the recently released Long Term Energy Plan. Chapter 1 will be of the most interest.

https://www.ontario.ca/document/2017-long-term-energy-plan

Cheers,
Mark

Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]; Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]
CC: Hosick, Sarah (TBS) (Sarah.Hosick@ontario.ca) [Sarah.Hosick@ontario.ca]
Subject: Potential discussion with FAO (request for availability confirmation - May 17, after 2 pm)
Date: Tuesday, May 16, 2017 13:31:04

Kim/Michel,

I understand that a call/meeting is being contemplated for tomorrow afternoon with staff from the FAO to discuss accounting for the FHP. The primary purpose for the meeting is to help the FAO staff to better understand the accounting elements of the GA Refinancing structure to help them as they finalize a report on the topic.

I have been asked to confirm your availability for a 1 hour meeting/call tomorrow afternoon after 2 pm.

Thanks in advance.

Nadine

Provincial Protection Agreement - Dealer Comments.rtf

From: Milligan, Peter [PMilligan@osler.com]
To: Ramchandani, Rima [rramchandani@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Hill, Krista [khill@torys.com]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; Feldman, Michael [mfeldman@torys.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]
CC: He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Sebastiano, Rocco [RSebastiano@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Smith, Elliot [ESmith@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Emes, Aaron [aemes@torys.com]
Subject: Provincial Protection Agreement - Dealer Comments
Date: Friday, September 15, 2017 12:10:42
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201710178265667~201709151610550000~Z~C0A2C29579C2FEF2ED979E3B24EA00A1
View the original item

All,

We (Osler and the dealers) have discussed the several drafts of the Provincial Protections and Assurances Term Sheet that were circulated yesterday. Below are the issues the dealers wou

Attachments:

image002.gif (1 KB)
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201710178265667~201709151610550000~Z~C0A2C29579C2FEF2ED979E3B24EA00A1&AttachmentId=1image002.gif

image003.gif (1 KB)
https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201710178265667~201709151610550000~Z~C0A2C29579C2FEF2ED979E3B24EA00A1&AttachmentId=2image003.gif

QUESTIONS_ RFS Complex Accounting Services - RFS Number TBS-OTB-OPCD-16.rtf

From: Foster, Rob A [RAFoster@kpmg.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
CC: Picard, Michel [mpicard@kpmg.ca]
Subject: QUESTIONS: RFS Complex Accounting Services - RFS Number TBS-OTB-OPCD-16
Date: Wednesday, August 03, 2016 14:38:05

Shyrose,

On behalf of Michel Picard, Lead Partner, please find attached our questions regarding **RFS number TBS-OTB-OPCD-16**.

1. Can you provide clarification on the following wording. On page 22 of the RFS where there is mention of "One (1) Senior **Accountant** shall provide 250 working days…" in all other instances the reference is to a "Senior **Advisor**". Should we use "Advisor" going forward?

2. With respect to pricing, the pricing schedule to the RFP specifically notes the following: "One (1) Senior Accountant shall provide 250 working days of effort over the term of the agreement. The consultant shall provide all deliverable as described in Section 1.5 Client Requirements." Elsewhere in the tender the Province requests a team of resources.

Could the Province please clarify how the Pricing schedule should be completed, and if a team of resources is provided, how the 250 days should be allocated?

3. Section 1.3, Background Information, specifies with respect to qualifications and experience of Vendor personnel to undertake the specified deliverables, that the Province requires:

A professional accounting license with knowledge and experience with in providing advice to large public sector organizations related to:

a. Public Sector Accounting Board (PSAB) and government not-for-profit (GNFP) standards for accounting and financial reporting as established by the Canadian Institute of Chartered Accountants
b. International Public Sector Accounting Standards Board (IPSASB) standards
c. International Financial Reporting Standards (IFRS) and US GAAP, including their application to public sector organizations (GBEs and OGOs).

Could the Province please clarify if this knowledge and experience is to be evaluated for each team member resource, or at the firm level?

Thank you,

Rob

Rob Foster, PMP
Senior Proposal Adviser
National Sales & Marketing

KPMG Management Services LP
777 Dunsmuir Street
Vancouver, British Columbia V7Y 1K3
T 604 691 3018
F 604 691 3031
rafoster@kpmg.ca

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- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

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Question re_ PS 3420.rtf

From: Petsche, Nadine (TBS) []
To: Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Question re: PS 3420
Date: Monday, April 17, 2017 19:28:07

Suzie/Lee Anne,

For our next call, we would appreciate your thoughts on the potential application of PS 3420, Inter-entity Transactions, to the transaction envisioned between the IESO and OPG. As you know, the discussion continues to focus on rate-regulated accounting for IESO and recognition of an intangible asset for OPG; however, we thought it would be prudent to consider other relevant accounting standards and their potential impact on the overall accounting treatment on the Province's CFS.

Thanks.

Nadine

Questions.rtf

From: Virani, Shyrose (TBS) []
To: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'mpicard@kpmg.ca' [mpicard@kpmg.ca]; Church, Bailey J (bchurch@kpmg.ca) [bchurch@kpmg.ca]
Subject: Questions
Date: Thursday, January 11, 2018 10:33:05

Upon arrival, please call Shyrose Virani at 416-325-1448 to gain the entry into our building

From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Friday, December 22, 2017 1:34 PM
To: Church, Bailey J <bchurch@kpmg.ca<mailto:bchurch@kpmg.ca>>
Cc: Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Subject: RE: Questions

Hi Bailey,

Hope all is well ... the calculations outlined below are consistent with what we are carrying/forecasting. On the latter question, the answer is yes, the 53.55% should be referenced as common shares.

Hope this helps. Let me know if you want to have a check-in around mid-January to discuss any outstanding items and confirm a timeframe to bring this home.

Much appreciated ... happy holidays!
Mark

Mark Donaldson, CPA, CMA
Director, Accounting Policy and Financial Reporting Office of the Provincial Controller Division, Treasury Board Secretariat
7 Queen's Park Cres, 2nd Floor
Toronto, Ontario
M7A 1Y7
(416) 325-8027

From: Church, Bailey J [mailto:bchurch@kpmg.ca]
Sent: December 19, 2017 4:16 PM
To: Donaldson, Mark (TBS)
Cc: Picard, Michel
Subject: RE: Questions

Hi Mark

Thanks very much for sharing this additional information for our H1 analysis. I just wanted to clarify the document that you provided which outlined the percentage of share ownership for the Province in H1. Based on our calculations, we estimate the Province's ownership interest at 47.3% at March 31st 2018 after distributions for the long term incentive plan, the

Power Workers Union, and potential distributions to First Nation's from the Province's holdings. We have made a number of assumptions for 2019 regarding incentive plan distributions, which would bring the ownership percentage to 42.2%. Does this match your understanding of the Province's position, or are there alternative assumptions we should reflect? The document "Institutional Share Ownership and 3Q17 Buyers/Sellers" references the top 20 institutional investors as having a 53.55% of the shares. Should this be read as 53.55% of total publically owned common shares?

[cid:image001.png@01D38967.B6CB4D10]

Many thanks

Bailey

From: Picard, Michel
Sent: Wednesday, November 29, 2017 6:23 PM
To: Church, Bailey J <bchurch@kpmg.ca<mailto:bchurch@kpmg.ca>>
Subject: FW: Questions

From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Wednesday, November 29, 2017 5:23 PM
To: Picard, Michel <mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca<mailto:Sarah.Hosick@ontario.ca>>
Subject: FW: Questions

Hi Michel,

Attached are several documents which should help to clarify some of the points discussed at our last meeting w.r.t. Hydro One control assessment. If there's any follow-up required, happy to assist.

Regards,
Mark

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Director, Accounting Policy and Financial Reporting Office of the Provincial Controller Division, Treasury Board Secretariat
7 Queen's Park Cres, 2nd Floor
Toronto, Ontario
M7A 1Y7

416-325-8027

From: Katona, Keley (MOF)
Sent: November 27, 2017 1:59 PM
To: Veinot, Cindy (TBS)
Cc: Nelms, Scott (MOF); Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: FW: Questions

Hi Cindy,

We now have answers and supporting material to the questions below.

Please let us know if you have any questions.

Thanks,
Keley

From: Veinot, Cindy (TBS)
Sent: October 13, 2017 12:33 PM
To: Nelms, Scott (MOF); Katona, Keley (MOF)
Cc: Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: FW: Questions

Scott and Keley - please see below for the questions from KPMG re: the control analysis they are completing for Hydro One.

Thx

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: October 11, 2017 3:25 PM
To: Veinot, Cindy (TBS)
Cc: Church, Bailey J
Subject: Questions

Hi Cindy,

Subsequent to our call of last Thursday, we have the following questions for you.

Questions to be asked of H1 by the Province

1. KPMG would like to obtain a listing of major Hydro One common shareholders. Could investor relations please provide a listing of the top 20 common shareholders? See attached.
2. What process is followed by investor relations to verify that no investor other than the Province of Ontario accumulates a common share position in excess of 10%? Hydro One does not track ownership levels

Questions for the Province

3. During our Thursday meeting we had discussed the question of when voting rights would be granted on common shares provided to First Nations. First Nations in Ontario will obtain up to 15 million common shares directly from the Province's existing share ownership, subject to an agreement in principle pending ratification by affected First Nations. We understand that the share purchases will be financed by loans from the Province, for which the underlying Hydro One shares will serve as collateral. We would like to clarify if the First Nations receive full voting rights on the common shares at the time of transfer, or only upon repayment of the loan from the Province.

Voting rights are immediate, and are not linked to repayment of the loan.

4. Are there any further documents which support the Province's role in establishing the mission of Hydro One prior to the IPO, beyond what is established in the Electricity Act? What do the constating documents include?

We have attached the articles of incorporation and bylaws. Torys has advised that OBCA corporations do not typically include a mission statement in these documents however in Hydro One's case, the Governance Agreement includes key provisions regarding how the company is governed and is relevant. As well, the initial board of directors (which sets strategy and continues to have the same composition today) was appointed by the Province.

Torys has also dug up some previous notes that were developed at the time of the IPO to advise on accounting/consolidation/control in case its helpful, and are happy to help if there's any follow ups on these items.

Best regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600
Toronto, Ontario, M5H 2S5
T 416 777 8414
M 416 560 2569
mpicard@kpmg.ca<mailto:mpicard@kpmg.ca>
LinkedIn<https://urldefense.proofpoint.com/v2/url?u=https-3A__www.linkedin.com_in_michel-2Dpicard-2D8b3b942b-3FauthType-3DNAME-5FSEARCH-26authToken-3DoVKr-26locale-3Den-5FUS-26trk-3Dtyah-26trkInfo-3DclickedVertical-253Amynetwork-252CclickedEntityId-253A107441415-252CauthType-253ANAME-5FSEARCH-252Cidx-253A1-2D1-2D1-252CtarId-253A1478640064654-252Ctas-253Amichel-2520pi&d=DwMFAg&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODm

w&m=w5dA2gwxJa-s_2LLO6fJAsHQI1ytX-_MZP8LjG2buOM&s=sar5sNPbm4HgAphLZc-WGpHzYmAhEA2yH3xAyYfJvkc&e=>

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Questions.rtf

From: Virani, Shyrose (TBS) []
To: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'mpicard@kpmg.ca' [mpicard@kpmg.ca]; Church, Bailey J (bchurch@kpmg.ca) [bchurch@kpmg.ca]
Subject: Questions
Date: Thursday, January 11, 2018 10:19:53

From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Friday, December 22, 2017 1:34 PM
To: Church, Bailey J <bchurch@kpmg.ca<mailto:bchurch@kpmg.ca>>
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Partner, Accounting Advisory Services

KPMG LLP

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_MZP8LjG2buOM&s=sar5sNPbm4HgAphLZc-WGpHzYmAhEA2yH3xAyYfJvkc&e=>

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RE_ _Fair_ Legislation (Discussion Draft).rtf

From: Veinot, Cindy (TBS) []
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]
Subject: RE: "Fair" Legislation (Discussion Draft)
Date: Monday, April 10, 2017 08:20:33
Attachment 1: image001.gif
Attachment 2: image002.jpg

Hi Carolyn – I'll call into the meeting this morning – I have a conflict mid day that I'm not going to be able to move, but hopefully we will have dealt with the main issue by then. I'm going to see if Nadine can attend in person.

Cindy

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-10-17 7:01 AM
To: Hume, Steen (ENERGY); Nelms, Scott (MOF); Cox, Hilary (ENERGY); Veinot, Cindy (TBS)
Subject: Fw: "Fair" Legislation (Discussion Draft)

Fyi

From: Feldman, Michael <mfeldman@torys.com>

Sent: Sunday, April 9, 2017 10:08 PM

To: 'ASHBOURNE, STEPHEN'

Cc: JACKSON, ADAM; Peter Hamilton (PHamilton@stikeman.com); LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; MCAULEY Tyler -LAWDIV; WILSON, JUDY; STOKES, BRYSON; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Mansoori, Nina; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Watson, Gwen; Rehob, James (ENERGY); Alan Hibben; Shear, Dan (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); O'Brian, Adam; Fitzpatrick, Michael F.; STOKES, BRYSON; VINER, JON; Feldman, Michael

Subject: RE: "Fair" Legislation (Discussion Draft)

Stephen,

I am attaching our revised version of the draft legislation, together with a blackline against the last version that you circulated to this group. It is being circulated to OPG at the same time as everyone else and so remains subject to their comments. Also, this draft reflects input that we received from the Dealers and their counsel although they too will be receiving our revised draft without having seen an earlier version.

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: April-07-17 1:22 AM
To: Feldman, Michael <mfeldman@torys.com>
Cc: JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; 'Shear, Dan (ENERGY)' <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; VINER, JON <JON.VINER@blakes.com>
Subject: "Fair" Legislation (Discussion Draft)

Thanks for your comments, Michael. The attached version picks up many of your, Peter's and H&W's comments. In some cases it defers consideration, pending dealer input (such as your suggestion of tracking individual, standalone Regulatory Assets per transaction; delinking the investors from the LDCs, in favour of having IESO be the main servicer; and deleting some of the US precedent language). The regulatory input included in your mark-up was particularly helpful, although not easily dealt with tonight without the Province's input, so many of those points have simply been brought forward with additional footnotes for now. The manner and extent of delegations (primarily the Financing Plan and the Fair Allocation Plan), the nature of OEB review and regulatory

actions, the scope of the undertaking and other similar issues, are still under consideration by MOE. Your comments to the effect that nothing can affect a funding obligation once incurred were referenced, as I think that is a pervasive and correct idea. The ultimate location of provisions (Part of the Electricity Act; new Act; Regulations) is still under consideration – for now it's all in this document to facilitate this group review. Finally, there are a number of "validity" type points, which arose in your mark-up and which we are still thinking about. We can discuss those further in the morning. Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

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From: Feldman, Michael [mailto:mfeldman@torys.com]
Sent: Thursday, April 06, 2017 4:26 PM
To: ASHBOURNE, STEPHEN
Cc: JACKSON, ADAM; Peter Hamilton (PHamilton@stikeman.com); LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; MCAULEY Tyler -LAWDIV; WILSON, JUDY; STOKES, BRYSON; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Mansoori, Nina; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Feldman, Michael; Watson, Gwen; James.Rehob@ontario.ca; Alan Hibben; 'Shear, Dan (ENERGY)'; Carolyn.Calwell@ontario.ca; O'Brian, Adam; Fitzpatrick, Michael F.
Subject: Torys Comments on Blakes Draft Legislation

All,

I am attaching our comments on the last version of the draft legislation sent to us by Blakes. Both a clean and blacklined version are attached.

This is being distributed to OPG at the same time as everyone else and so remains subject to their comments as this is very much a work in process.

We also just received comments from Hunton & Williams but in the interests of time we have not been able to include those in our mark up, but expect to be in a position to raise any of their big issues at our meeting tomorrow. Also, I will send their comments separately to Blakes.

Regards,

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

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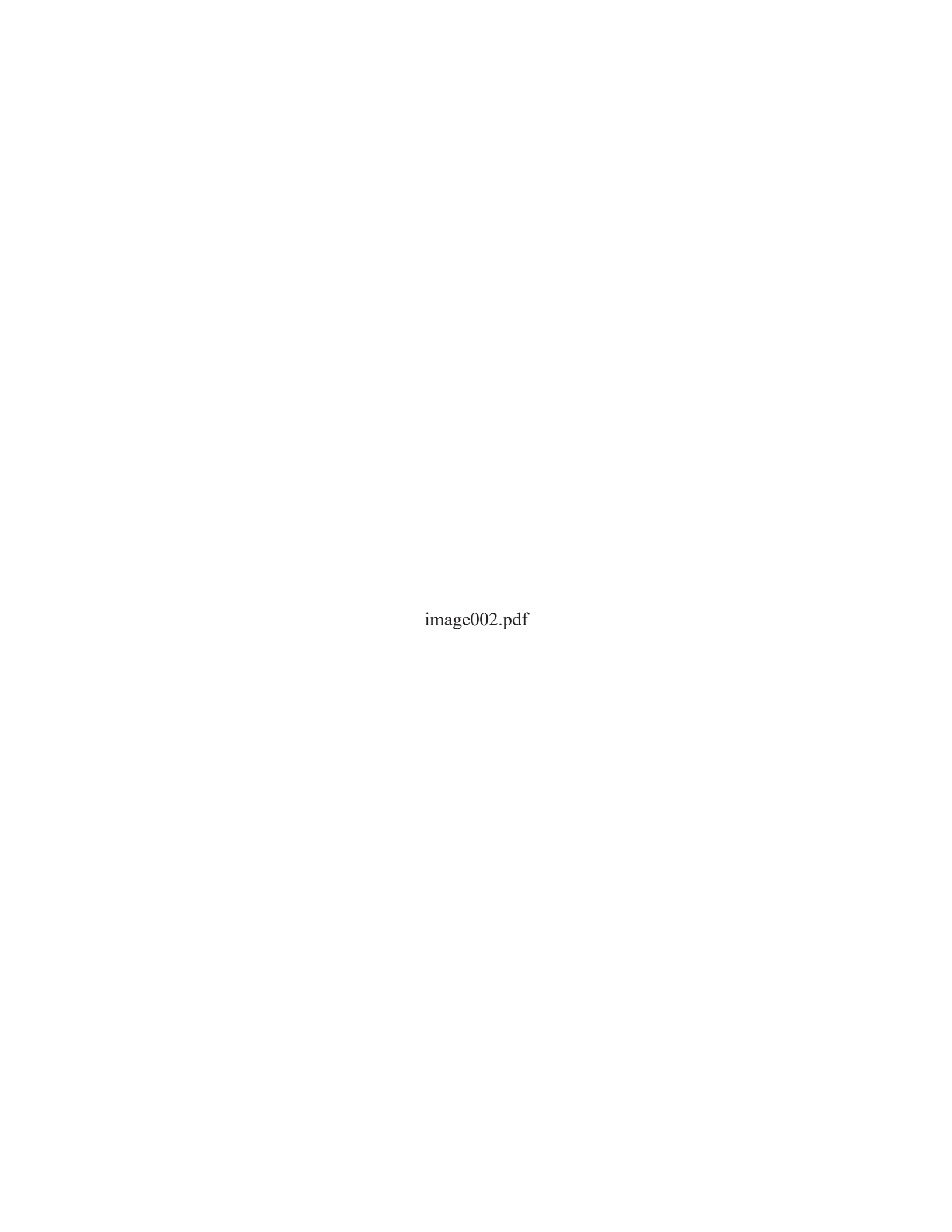
Blakes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TORYS
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please see attached Triton invoice.rtf

From: Danyluk, Kerry (CA - Toronto) [kdanyluk@deloitte.ca]
To: Virani, Shyrose (TBS) [Shyrose.Virani@ontario.ca]
Subject: please see attached Triton invoice
Date: Monday, January 30, 2017 15:30:17
Attachment 1: TritonCanadaInc Invoice_1415833.pdf

Based on this, my security request was completed in November.

Regards,
Kerry

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Triton Canada Inc
2235 Sheppard Ave East, Suite 1503
Toronto, Ontario
M2J 5B5

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Date	Sale No.
2016-11-16	1415833

Sold To
Kerry Anne Danyluk

Description	Qty	Rate	Amount
Name Based Criminal Record Check	1	$14.95	$14.95
HST (ON) on sales		13%	$1.94
		Total	$16.89

GST/HST No. 821604451RT0001

psab response_.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: psab response?
Date: Thursday, November 30, 2017 09:04:37

Here is what I am running by opg – any thoughts on approach before I do that? Need more detail on opg accounting or leave for another discussion ? Thx

Would it be the IESO or would it be OPG that would ultimately go to the Ontario Energy Board to recover these costs?

As per the legislation, OPG provides the clean energy adjustment recoverable for a specific period to the OEB who establishes the rate for specified consumers.

If it is the IESO, my understanding is the OFHPA creates the deferral and variance account that enables the IESO to recover costs from future rates. If it is OPG, would they already have a deferral and variance account to house these costs until it is recovered? Or does the legislation apply to OPG as well?

Parts of the legislation do apply to OPG. The IESO has the original right to recover from future rates. This creates the regulatory asset, like the fair hydro predecessor – RPP or . The IESO right to recover and any obligations will be transferred to the financing entity. While the financing entity is better able to speak to their accounting than I am, my understanding is they will have a variance account which will be consolidated into OPG and then the provincial books.

Finally, when it comes time to recover those costs, would it go through the OEB prudence review or is that not necessary as a result of the OFHPA legislation?

The OFHPA legislation covers the OEB oversight. Note – can we be more specific here?

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

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question (_).rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel (mpicard@kpmg.ca) [mpicard@kpmg.ca]
Subject: question (***)
Date: Thursday, February 16, 2017 12:05:18

Michel,

Cindy has asked me to enquire/confirm the accounting treatment for the deferred amount in the event that a portion of the deferred amount might be assessed as being an ‘unconstitutional tax’ under Eurig.

I thought that it should not have an impact, as long as the total deferred amount would be recovered through future rates, the fiscal impact should be as envisioned?

Thanks in advance.

Nadine

quick conversation at some point_.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]
Subject: quick conversation at some point?
Date: Tuesday, July 25, 2017 15:08:21

Let me know what timing works

Kimberly Marshall | VP, Corporate Services & CFO

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RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Smith, Elliot [ESmith@osler.com]
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Feldman, Michael [mfeldman@torys.com]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; Peter Hamilton (PHamilton@stikeman.com) [PHamilton@stikeman.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; MCAULEY Tyler -LAWDIV [tyler.mcauley@opg.com]; WILSON, JUDY [JUDY.WILSON@blakes.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Keizer, Charles [ckeizer@torys.com]; Myers, Jonathan [jmyers@torys.com]; Emes, Aaron [aemes@torys.com]; Mansoori, Nina [nmansoori@torys.com]; Wortsman, Jerald [jwortsman@torys.com]; Bomhof, Scott [sbomhof@torys.com]; Estey, Bill [bestey@torys.com]; Watson, Gwen [gwatson@torys.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Alan Hibben [alan.hibben@rogers.com]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; O'Brian, Adam [aobrian@hunton.com]; Fitzpatrick, Michael F. [MFitzpatrick@hunton.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; VINER, JON [JON.VINER@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Sebastiano, Rocco [RSebastiano@osler.com]; Michael.Boll@ieso.ca [Michael.Boll@ieso.ca]; GZacher@stikeman.com [GZacher@stikeman.com]; aobrian@hunton.com [aobrian@hunton.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hilloowala, Maharukh [Maharukh.Hilloowala@tdsecurities.com]; Wolff, Michael [Michael.Wolff@tdsecurities.com]; Holloway, Harold [Harold.Holloway@tdsecurities.com]; Akman, Steven [Steven.Akman@tdsecurities.com]; Manii, David [david.manii@tdsecurities.com]; Nevison, Gary [Gary.Nevison@tdsecurities.com]
CC: Niehaus, Katrina [Katrina.Niehaus@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Alvi, Shariq [Shariq.Alvi@cibc.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Fullerton, Rick [RFullerton@osler.com]; Collins, Patrick J [Patrick.Collins@gs.com]; Mullen, Max M. [Max.Mullen@gs.com]; Delaney, Brian [Brian.Delaney@gs.com]; Hong, Yoomin [yoomin.hong@gs.com]; Raman, Akila [Akila.Raman@gs.com]; Fullerton, Rick [RFullerton@osler.com]; Smith, Elliot [ESmith@osler.com]; King, Richard [rking@osler.com]; Innes, Michael [MInnes@osler.com]; Milligan, Peter [PMilligan@osler.com]
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Tuesday, April 11, 2017 13:19:05
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Stephen,

This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will n

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RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Smith, Elliot [ESmith@osler.com]
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Feldman, Michael [mfeldman@torys.com]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; Peter Hamilton (PHamilton@stikeman.com) [PHamilton@stikeman.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; MCAULEY Tyler -LAWDIV [tyler.mcauley@opg.com]; WILSON, JUDY [JUDY.WILSON@blakes.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Keizer, Charles [ckeizer@torys.com]; Myers, Jonathan [jmyers@torys.com]; Emes, Aaron [aemes@torys.com]; Mansoori, Nina [nmansoori@torys.com]; Wortsman, Jerald [jwortsman@torys.com]; Bomhof, Scott [sbomhof@torys.com]; Estey, Bill [bestey@torys.com]; Watson, Gwen [gwatson@torys.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Alan Hibben [alan.hibben@rogers.com]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; O'Brian, Adam [aobrian@hunton.com]; Fitzpatrick, Michael F. [MFitzpatrick@hunton.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; VINER, JON [JON.VINER@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Sebastiano, Rocco [RSebastiano@osler.com]; Michael.Boll@ieso.ca [Michael.Boll@ieso.ca]; GZacher@stikeman.com [GZacher@stikeman.com]; aobrian@hunton.com [aobrian@hunton.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hilloowala, Maharukh [Maharukh.Hilloowala@tdsecurities.com]; Wolff, Michael [Michael.Wolff@tdsecurities.com]; Holloway, Harold [Harold.Holloway@tdsecurities.com]; Akman, Steven [Steven.Akman@tdsecurities.com]; Manii, David [david.manii@tdsecurities.com]; Nevison, Gary [Gary.Nevison@tdsecurities.com]
CC: Niehaus, Katrina [Katrina.Niehaus@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Alvi, Shariq [Shariq.Alvi@cibc.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Fullerton, Rick [RFullerton@osler.com]; Collins, Patrick J [Patrick.Collins@gs.com]; Mullen, Max M. [Max.Mullen@gs.com]; Delaney, Brian [Brian.Delaney@gs.com]; Hong, Yoomin [yoomin.hong@gs.com]; Raman, Akila [Akila.Raman@gs.com]; Fullerton, Rick [RFullerton@osler.com]; Smith, Elliot [ESmith@osler.com]; King, Richard [rking@osler.com]; Innes, Michael [MInnes@osler.com]; Milligan, Peter [PMilligan@osler.com]
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Tuesday, April 11, 2017 13:19:05
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Stephen,

This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will n

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RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Peter Hamilton [PHamilton@stikeman.com]
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Feldman, Michael [mfeldman@torys.com]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; MCAULEY Tyler -LAWDIV [tyler.mcauley@opg.com]; WILSON, JUDY [JUDY.WILSON@blakes.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Keizer, Charles [ckeizer@torys.com]; Myers, Jonathan [jmyers@torys.com]; Emes, Aaron [aemes@torys.com]; Mansoori, Nina [nmansoori@torys.com]; Wortsman, Jerald [jwortsman@torys.com]; Bomhof, Scott [sbomhof@torys.com]; Estey, Bill [bestey@torys.com]; Watson, Gwen [gwatson@torys.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Alan Hibben [alan.hibben@rogers.com]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; O'Brian, Adam [aobrian@hunton.com]; Fitzpatrick, Michael F. [MFitzpatrick@hunton.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; VINER, JON [JON.VINER@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; ESmith@osler.com [ESmith@osler.com]; RSebastiano@osler.com [RSebastiano@osler.com]; Michael.Boll@ieso.ca [Michael.Boll@ieso.ca]; Glenn Zacher [GZacher@stikeman.com]; aobrian@hunton.com [aobrian@hunton.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hilloowala, Maharukh [Maharukh.Hilloowala@tdsecurities.com]; Wolff, Michael [Michael.Wolff@tdsecurities.com]; Holloway, Harold [Harold.Holloway@tdsecurities.com]; Akman, Steven [Steven.Akman@tdsecurities.com]; Manii, David [david.manii@tdsecurities.com]; Nevison, Gary [Gary.Nevison@tdsecurities.com]
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Tuesday, April 11, 2017 16:04:25
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View the original item

Please see attached IESO/Stikemans comments.

Peter Hamilton
Tel : (416) 869-5564
<mailto:phamilton@stikeman.com> phamilton@stikeman.com

STIKEMAN ELLIOTT LLP Barristers &

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https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1A2976F1FBFAADB4AAB6FBC22FB1A95001110000ctsbigdcapmvs01&SavesetId=201706308855571~201704112004470000~Z~D12D904B82A0F1F638990F8456DCD981&AttachmentId=3WSComparison__6707378_1-_6707378_3.pdf

RE_ .rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE:
Date: Thursday, April 06, 2017 14:57:16
Attachment 1: image001.gif

Hi Nadine,

I have received the updated time for the call. I have a conflict, but either Blake or Suzie will be able to listen in. I would like to chat for a few minutes. I have a call that ends around 4PM. Can I try you then?

Regards,

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Thursday, April 06, 2017 12:22 PM
To: Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Virani, Shyrose (TBS) <Shyrose.Virani@ontario.ca>
Subject: RE:

Hi Lee Anne.

Just wondering what time might work for you to talk?

Thanks.

Nadine

From: Petsche, Nadine (TBS)
Sent: April-05-17 4:23 PM
To: Lee Anne Probert
Cc: Virani, Shyrose (TBS)
Subject: RE:

Hi Lee Anne. The meeting has now been deferred until Friday afternoon. I will forward a copy of the invite. We can chat tomorrow. N

From: Petsche, Nadine (TBS)
Sent: April 5, 2017 4:01 PM
To: Lee Anne Probert
Subject: Re:

Hi Lee Anne. Sorry that I haven't been available. My afternoon is pretty crammed. There is a call tomorrow morning that I will forward to you so that you can call in (for observation purposes). N

From: Lee Anne Probert

Sent: Wednesday, April 5, 2017 3:09 PM

To: Petsche, Nadine (TBS)

Subject:

Hi Nadine,

Wondering if you have a couple of minutes to chat.

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Ernst & Young Tower, 222 Bay Street, P. O. Box 251, Toronto, ON M5K 1J7, Canada

Office: 416 943 3554 | Cell: 416 888 6997 | leeanne.probert@ca.ey.com

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RE_ 3rd Item for Review.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]
Subject: RE: 3rd Item for Review
Date: Wednesday, December 07, 2016 17:08:43
Attachment 1: @

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Hi Nadine:

Feel free to send it to both of us and we will coordinate to review it.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E

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RE_ 3rd Item for Review.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]
Subject: RE: 3rd Item for Review
Date: Wednesday, December 07, 2016 17:08:43
Attachment 1: image001.gif

Hi Nadine:

Feel free to send it to both of us and we will coordinate to review it.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, December 07, 2016 4:04 PM
To: Blake Langill <blake.w.langill@ca.ey.com>
Cc: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: 3rd Item for Review

Blake,

Just wanted to let you know that there's a third item that we would appreciated your firm's feedback on. It is quite time sensitive and we would like to share our preliminary analysis. Please advise as to process. Shall I send our draft analysis to Suzie directly?

Also, just a reminder to send the engagement template when you get a chance.

Regards,

Nadine

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RE_ Are you available for a quick discussion_.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: Are you available for a quick discussion?
Date: Friday, March 09, 2018 13:42:20

Yes have a meeting at 1 – at Clarkson call 9058556168

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

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From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: March 09, 2018 12:42 PM
To: Kim Marshall
Subject: Are you available for a quick discussion?

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RE_ Call re Delivery of Reference Documentation to Province.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
CC: Sawwaf, Khareem (ENERGY) [Khareem.Sawwaf@ontario.ca]; Huang, Jackson (MEDG/MRIS) [Jackson.Huang@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Lightbody, Ava (ENERGY) [Ava.Lightbody@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; VINER, JON [JON.VINER@blakes.com]
Subject: RE: Call re Delivery of Reference Documentation to Province
Date: Monday, January 08, 2018 14:49:54

Tomorrow morning is fine for me. Thanks Toby.

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
Sent: Monday, January 08, 2018 1:23 PM
To: 'Thouin, Alena (ENERGY)'; Tobias P. Whitfield (MOF); Mike Manning; Malle Hanslep (MOF); ASHBOURNE, STEPHEN; Anna Strathy; Ronald Kwan; Tim Christie (ENERGY); Veinot, Cindy (TBS); Mark Donaldson (MOF)
Cc: Sawwaf, Khareem (ENERGY); Huang, Jackson (MEDG/MRIS); Daniel Cayley (ENERGY); Lightbody, Ava (ENERGY); James Rehob (ENERGY)
Subject: RE: Call re Delivery of Reference Documentation to Province

Likewise

Thanks

Ken k

From: Thouin, Alena (ENERGY) [mailto:Alena.Thouin@ontario.ca]
Sent: Monday, January 08, 2018 12:41 PM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>
Cc: Sawwaf, Khareem (ENERGY) <Khareem.Sawwaf@ontario.ca>; Huang, Jackson (MEDG/MRIS) <Jackson.Huang@ontario.ca>; Daniel Cayley (ENERGY) <Daniel.Cayley@ontario.ca>; Lightbody, Ava (ENERGY) <Ava.Lightbody@ontario.ca>; James Rehob (ENERGY) <James.Rehob@ontario.ca>
Subject: RE: Call re Delivery of Reference Documentation to Province

We can make ourselves available.

Alena Thouin

Deputy Director, Legal Services Branch
Ministries of Energy / Infrastructure / Economic Development & Growth /

Research, Innovation & Science / Accessibility
56 Wellesley St. W. 18th Floor, Toronto, ON M7A 2E7
Tel: 416-325-1834 **Email:** alena.thouin@ontario.ca

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_____
From: Whitfield, Tobias P. (MOF)
Sent: January 8, 2018 12:36 PM
To: Kandeepan, Ken (OFA); Manning, Mike (OFA); Thouin, Alena (ENERGY); Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; Strathy, Anna (OFA); Kwan, Ronald (OFA); Christie, Tim (ENERGY)
Cc: Sawwaf, Khareem (ENERGY); Huang, Jackson (MEDG/MRIS); Cayley, Daniel (ENERGY); Lightbody, Ava (ENERGY)
Subject: RE: Call re Delivery of Reference Documentation to Province

We were wondering if this group might be available to discuss the documents that we received from OPG on Friday, perhaps at 9:30 or 10 am tomorrow morning?

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

-----Original Appointment-----
From: Whitfield, Tobias P. (MOF)
Sent: January 5, 2018 10:44 AM

To: Whitfield, Tobias P. (MOF); 'Ken Kandeepan'; Manning, Mike (OFA); Thouin, Alena (ENERGY); Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; Strathy, Anna (OFA); Kwan, Ronald (OFA); Christie, Tim (ENERGY)
Cc: Jack, Shannon (TBS); Veinot, Cindy (TBS); Sawwaf, Khareem (ENERGY); Huang, Jackson (MEDG/MRIS); Cayley, Daniel (ENERGY); Lightbody, Ava (ENERGY)
Subject: Call re Delivery of Reference Documentation to Province
When: January 5, 2018 3:00 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Telephone

Please see below teleconference information for call at 3.

Number: 416-212-8012

Toll Free: 1-866-633-0848

Participant Passcode: 5801207#

From: Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]

Sent: January 5, 2018 10:18 AM

To: Manning, Mike (OFA); Thouin, Alena (ENERGY); Whitfield, Tobias P. (MOF); Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; Strathy, Anna (OFA); Kwan, Ronald (OFA); Christie, Tim (ENERGY)

Cc: Jack, Shannon (TBS); Veinot, Cindy (TBS)

Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

As I discussed with Malle, Cindy's participation on this call will be quite value-added, she is available at 3PM if that works for everyone else. If so can someone pls send out a tele conference invite.

Thanks

Ken k

-----Original Message-----

From: Mike Manning

Sent: Friday, January 05, 2018 10:08 AM

To: 'Thouin, Alena (ENERGY)' <Alena.Thouin@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>

Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

Around as well.

Mike

-----Original Message-----

From: Thouin, Alena (ENERGY) [mailto:Alena.Thouin@ontario.ca]

Sent: Friday, January 05, 2018 10:03 AM

To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>

Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

I am available as well.

After 11:30

Adding our Energy policy counterparts.

Alena Thouin

Deputy Director, Legal Services Branch

Ministries of Energy / Infrastructure / Economic Development & Growth /

Research, Innovation & Science / Accessibility

56 Wellesley St. W. 18th Floor, Toronto, ON M7A 2E7

Tel: 416-325-1834 Email: alena.thouin@ontario.ca

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-----Original Message-----

From: Whitfield, Tobias P. (MOF)

Sent: January 5, 2018 9:35 AM

To: Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; Manning, Mike (OFA); Kandeepan, Ken (OFA); Strathy, Anna (OFA); Kwan, Ronald (OFA)

Cc: Thouin, Alena (ENERGY)

Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

I am available any time this morning.

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

-----Original Message-----

From: Hanslep, Malle (MOF)

Sent: January 5, 2018 9:32 AM

To: ASHBOURNE, STEPHEN; Manning, Mike (OFA); Kandeepan, Ken (OFA); Strathy, Anna (OFA); Kwan, Ronald (OFA)

Cc: Thouin, Alena (ENERGY); Whitfield, Tobias P. (MOF)

Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

All, Should we have a call to discuss the approach here? I am also available this morning. Maybe someone from Energy policy on it as well. Perhaps Alena can advise.

-----Original Message-----

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

Sent: January-05-18 9:29 AM

To: Hanslep, Malle (MOF); Manning, Mike (OFA); Kandeepan, Ken (OFA); Strathy, Anna (OFA); Kwan, Ronald (OFA)

Cc: Thouin, Alena (ENERGY); Whitfield, Tobias P. (MOF)

Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

Thanks for the update, Malle.

I'm not sure how this materiality discussion will relate to the Province commenting on the OM. The base form of the OM was not envisioned as of December 20th, and so it is unclear to me that the material effect discussion is relevant for that purpose.

I have been expecting that the Province would be quite involved in the production of the OM, and not just for information purposes.

To illustrate the sorts of items I would anticipate being relevant to the Province in reviewing the OM, I attach a partial mark-up of the Nov 17th OM (the only one we ever saw) to show how (among other things) the narratives included at that time were not aligned with the legislation. The partial mark-up is a comparison to the version circulated by Alena that included James Rehob's comments. Also, as you know, the Change of Law terms were substantially settled after November 17th, and so those portions of the OM will also be quite different.

Generally, the sorts of things I think the Province may be concerned about in reviewing the OM will include:

(a) ensuring that the description of the Protection Agreement is accurate and does not overstate the Province's obligations,

(b) ensuring that the limitations contemplated in s. 40 of OFHPA and s.19 of the General Regulation have been observed,

(c) eliminating any implied/moral undertakings by the Province to bondholders,

(d) scrutinizing any "risk factors", particularly as they might relate to the context in which Protection Events may arise,

(e) confirming any disclosures regarding the Province's (Ministers') roles, including in setting the "fair allocation amount", accepting the "Financing Plan" provided to the Minister of Energy, etc.,

(f) ensuring that any description of the Crown, Crown immunity, the OFHPA, the regulations made under it, the OIC, the authority of the LGIC, the provisions of the Electricity Act and related regulations and processes, the Financing Plan, the electricity market regulatory infrastructure and other relevant legal principles and contexts are all properly and accurately described (recognizing the risk that any statement may be attributed to the Province based on its close proximity to the program, and could become consequential in any future legal process that seeks to interpret the statute),

(g) scrutinizing disclosures that could later become evidence in any legal proceeding that would challenge the validity of the OFHPA and related laws,

(h) confirming any "electricity market" disclosures that could impact on underlying considerations, such as the potential for and impact of off-grid migration and by-pass risks, and

(i) the propriety of disclosures regarding matters that could impact on the pricing or rating of the issued bonds.

(This list was previously included in my November 22nd due diligence note to the Province's lawyer team.)

In addition, the Province will need to confirm how James Rehob's earlier comments have been reflected in the OM.

Given all this and the offering timing described by Torys, I think it makes sense to insist on getting the OM now and confirming with OPG that the Province will be taking a careful look at the document, which will take some time (at least 5 business days), and so that could impact the overall timing.

I will be tied up from 930 to 1030, but then free until 1145.

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP

199 Bay Street, Suite 4000, Toronto ON M5L 1A9

Tel: 416-863-2400 Fax: 416-863-2653

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-----Original Message-----

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]

Sent: Friday, January 05, 2018 8:49 AM

To: Manning, Mike (OFA); Kandeepan, Ken (OFA); Strathy, Anna (OFA); Kwan, Ronald (OFA)

Cc: Thouin, Alena (ENERGY); Whitfield, Tobias P. (MOF); ASHBOURNE, STEPHEN

Subject: FW: EXTERNAL – Delivery of Reference Documentation to Province

As you know prior to the warehouse closing we were sent informally drafts of the reference documents as they developed. Since Dec 20th we have received no further drafts of these documents. I don't understand whether it is OPG's plan that they send final transactions documents today (10 days before) and then the Province has the right to object based on the parameters of "material effect" as defined in the Process Agreement. A draft of the investor presentation was circulated to the Province and some comments were being collected yesterday by Energy and the OFA.

""“Material Effect” means a material adverse effect on the obligations or the rights of the Province under the Limited Guarantee, the Change of Law Protection Agreement or this Agreement that relates to, and in each case, differs in any material respect from the terms or conditions applicable to any other Transaction Document that forms part of the Reference Documentation at the relevant time, the following: (i) the timing of or circumstances under which related payments would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization) that, in each case, is inconsistent with the Fair Allocation Amount; (ii) the appointment, obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Financing Entity or the Financing Entity Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province as a Specified Creditor; (v) the payment provisions and associated priorities set forth in the Trust Indenture; (vi) compliance by the FSM with the then applicable Financing Plan; (vii) compliance by the FSM or the Financing Entity with the Act or the General Regulation; or (viii) the Province’s rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation."

Thanks,

Malle

-----Original Message-----

From: Hanslep, Malle (MOF)

Sent: January-05-18 8:40 AM

To: Ramchandani, Rima; Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA); Thouin, Alena (ENERGY); McLean, David (MOF); Strathy, Anna (OFA); Tekle, Jonathan (MOF); Kwan, Ronald (OFA); Hume, Steen (ENERGY); Christie, Tim (ENERGY)

Cc: LEE John -TREASURY; 'WONG Leslie -LAWDIV'; 'RYFA Ken -TREASURY'; 'LADAK Lubna -TREASURY'; 'LAURETA LAPIRA May -TREASURY'; Mansoori, Nina; Saulnier, Brett; Ramchandani, Rima

Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

Hi Rima,

I have a further question for clarification and perhaps it would make sense to have a call this morning. As you know we have not seen any further drafts of these documents since before the warehouse closing. Have all of these transaction documents now been done in final form? What is their status?

Thanks,

Malle

-----Original Message-----

From: Hanslep, Malle (MOF)

Sent: January-04-18 4:11 PM

To: Ramchandani, Rima; Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Strathy,

Anna (OFA); Thouin, Alena (ENERGY); McLean, David (MOF); Strathy, Anna (OFA); Tekle, Jonathan (MOF); Kwan, Ronald (OFA); Hume, Steen (ENERGY); Christie, Tim (ENERGY)

Cc: LEE John -TREASURY; 'WONG Leslie -LAWDIV'; 'RYFA Ken -TREASURY'; 'LADAK Lubna -TREASURY'; 'LAURETA LAPIRA May -TREASURY'; Mansoori, Nina; Saulnier, Brett; Ramchandani, Rima

Subject: Re: EXTERNAL – Delivery of Reference Documentation to Province

Hi Rima

Thanks for the update. I think it would be helpful if you included Toby, Alena and myself on the email where you attach the documents in order to save time. Also it would be helpful if you include track changes versions as you suggest.

Thanks

Malle

Sent from my BlackBerry 10 smartphone on the Rogers network.

Original Message

From: Ramchandani, Rima

Sent: Thursday, January 4, 2018 15:17

To: Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA); Thouin, Alena (ENERGY); Hanslep, Malle (MOF); McLean, David (MOF); Strathy, Anna (OFA); Tekle, Jonathan (MOF); Kwan, Ronald (OFA); Hume, Steen (ENERGY); Christie, Tim (ENERGY)

Cc: LEE John -TREASURY; 'WONG Leslie -LAWDIV'; 'RYFA Ken -TREASURY'; 'LADAK Lubna -TREASURY'; 'LAURETA LAPIRA May -TREASURY'; Mansoori, Nina; Saulnier, Brett; Ramchandani, Rima

Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

Hi Malle, Alena and Toby, Happy New Year to all of you. John forwarded the email below and attached and asked that I connect with you and provide an update. I have included the business folks on this email to make sure we are all on the same page. As John notes below, we had been working towards being in a position to commence marketing for the term deal on January 15th but if marketing is pushed to January 22 or later, then a waiver of the 10 business day requirement should not be necessary. I will let our respective clients advise us on that point and we can come back to the logistics/process for obtaining a waiver should we need one.

We are planning on delivering the following additional reference documentation to the Province tomorrow:

(1) Supplemental Indenture for the Series 2018-1 Term Notes

(2) Supplemental Indenture for the Series 2018-1 Subordinated Term Notes

(3) Supplemental Indenture for the Series 2018-1 Junior Subordinated Term Notes

(4) Agency Agreement

(5) Offering Memorandum (including the investor presentation attached as an exhibit to the OM)

(6) Term Sheet supplementing the Offering Memorandum

As you may recall, under the change of law process agreement, all deliveries are required to be made by mail, fax or delivered by hand to each of the Ministers and Deputy Ministers of the MOF and the MOE. To comply with the agreement, we plan on hand delivering the above documents to each of the Ministers and Deputy Ministers tomorrow. We can also email all of these documents to all of you and anyone else you would like us to send these to (in addition to Scott Thompson, Gadi Mayman, Anna Strathy, David McLean, Jonathan Tekle, Mike Manning and Ken Kandeepan -- as requested in Ken's email below). I believe that earlier drafts of all of the term supplemental indentures and the agency agreement were previously circulated to you -- for ease of reference, please let us know if it would be helpful for us to include blacklines to the last versions we sent to you in the email.

Let us know if you agree with the above approach, and feel free to reach out if you have any questions or would like to discuss.

Malle, you had also asked about delivery of the documents from the warehouse closing -- closing books are in progress and we expect to have those ready for circulation next week. Again, in order to comply with the change of law process agreement, the electronic closing books will be delivered to the Ministers and Deputy Ministers of each of the MOF and MOE, but we are happy to also send a copy to others on your instruction.

Thanks,

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

Torys LLP

79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

-----Original Message-----

From: LEE John -TREASURY

Sent: Thursday, January 04, 2018 12:18 PM

To: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>

Cc: WONG Leslie -LAWDIV <leslie.wong@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; David McLean (MOF) <David.McLean@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>

Subject: RE: EXTERNAL – RE: Waiver Process

Ken/Steen:

We are operating under the assumption that it was the Province desire to execute the term deal as early as possible in 2018 which would involve a launch on the 15th. If the preference is now to adhere to the 10 business day requirement and not waive it we are happy to do so and commence marketing later in the month on the 22nd.

Please advise and we will adjust the work plan accordingly.

John

-----Original Message-----

From: Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]

Sent: Thursday, January 04, 2018 9:36 AM

To: LEE John -TREASURY <john.s.lee@opg.com>

Cc: WONG Leslie -LAWDIV <leslie.wong@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; David McLean (MOF) <David.McLean@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>

Subject: EXTERNAL – RE: Waiver Process

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

Hi John

I spoke to our DM's office and Scott's email is Scott.Thompson@ontario.ca, As required by the Process Agreement between the Province and OPG, pls forward the documents pertaining to the upcoming term deal by email to Scott with a cc to the following:

Gadi Mayman, Anna Strathy, David McLean (cc'ed above), Jonathan Tekle (also cc'ed above), Mike and myself.

Given that the Process Agreement requires OPG to also provide the same documents to MOE, I am cc'ing Steen and Tim so that they can inform their DM's Office as well.

With regard to the waiver, pls see Malle's comments below, it would also be useful if OPG were to provide a rationale as to why waiving the 10 business days requirement which may allow for term debt issuance in mid-January by the Trust is more beneficial than issuance either later in the same month or early February.

Thanks

Ken k

-----Original Message-----

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]

Sent: Wednesday, January 03, 2018 8:45 PM

To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; LEE John -TREASURY <john.s.lee@opg.com>

Cc: WONG Leslie -LAWDIV <leslie.wong@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>

Subject: Re: Waiver Process

It would be very helpful if OPG and Torys could provide to us a timetable and schedule for delivery of reference documents that are being prepared and when do we expect to get them and when is the proposed issuance. On that basis we can review the timing and determine whether a waiver will be necessary and if it is how it might be processed. Unfortunately we haven't received any updates or draft documents since the closing of the warehouse deal. Also is there a plan for distributing to the Province the documents from the warehouse closing?

Thanks

Malle

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Ken Kandeepan

Sent: Wednesday, January 3, 2018 20:04

To: LEE John -TREASURY

Cc: WONG Leslie -LAWDIV; LADAK Lubna -TREASURY; LAURETA LAPIRA May

-TREASURY; RYFA Ken -TREASURY; Manning, Mike (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)

Subject: Re: Waiver Process

Thanks, didn't realize that all waivers have to be signed by the respective ministers, which as you know is difficult on an operational basis.

I am cc'ing our legal counsel to see if they have any suggestions.

Ken k

On Jan 3, 2018, at 5:57 PM, LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>> wrote:

Ken:

Given the importance of the Protection agreement and the desire to follow it to the "letter" ……see Torys comments below. Have you made provisions on the Province side to operationalize the delegation of waivers and amendments to facilitate the request. If not then the debt issuance date will get pushed out by the full 10 days.

Please advise.

John

From: Ramchandani, Rima [mailto:rramchandani@torys.com]

Sent: Wednesday, January 03, 2018 5:38 PM

To: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>

Cc: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; LADAK Lubna -TREASURY <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com<mailto:may.lapira@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; GO Matthew -TREASURY <matthew.go@opg.com<mailto:matthew.go@opg.com>>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com<mailto:j.hahnparker@opg.com>>

Subject: RE: EXTERNAL – RE: Diligence Questions

I should add that the waiver of the 10 BD requirement needs to be executed in writing by the Province (which means we will need signatures from each Minister). Will that be achievable? If not, perhaps we can proceed on the basis of an email waiver with the waiver signed by the Ministers to follow as soon as possible. Sorry but it is going to be a pain in the butt navigating through this agreement … hopefully the Province will realize that and agree to make some amendments!

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

From: Ramchandani, Rima

Sent: January-03-18 5:32 PM

To: 'LEE John -TREASURY' <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>

Cc: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; LADAK Lubna -TREASURY <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com<mailto:may.lapira@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; GO Matthew -TREASURY <matthew.go@opg.com<mailto:matthew.go@opg.com>>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com<mailto:j.hahnparker@opg.com>>

Subject: RE: EXTERNAL – RE: Diligence Questions

OK. I assume the DM of Finance will sign off on behalf of the Minister of Finance. But what about the Minister of Energy? The agreement requires notices to both Ministers on behalf of the Province and I recall on the warehouse closing, we had to wait for a representative from each Ministry to sign off.

Rima

Rima Ramchandani

P. 416.865.7666

From: LEE John -TREASURY [mailto:john.s.lee@opg.com]

Sent: January-03-18 5:24 PM

To: Ramchandani, Rima
<rramchandani@torys.com<mailto:rramchandani@torys.com>>

Cc: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; LADAK Lubna -TREASURY <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com<mailto:may.lapira@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; GO Matthew -TREASURY <matthew.go@opg.com<mailto:matthew.go@opg.com>>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com<mailto:j.hahnparker@opg.com>>

Subject: RE: EXTERNAL – RE: Diligence Questions

I was speaking to Ken Kandeepan on the process this afternoon and he indicated to me that we should send the documents and the waiver request to the Deputy Minister of Finance with a cc. Gadi. Ken was going to send along the contact info for the DM of Finance and also alert their Office of the inbound email so they would not be surprised.

John

_____

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RE_ Change of Law Protection Agreement and Change of Law Process Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Zahid, Usman (OFA) [Usman.Zahid@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; McKinlay, Tom (ENERGY) [Tom.McKinlay2@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Gavaris, Hresa (OFA) [Hresa.Gavaris@ofina.on.ca]; John Psinas (John.Psinas@ofina.on.ca) [John.Psinas@ofina.on.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]
CC: ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com) [STEPHEN.ASHBOURNE@blakes.com]
Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement
Date: Wednesday, November 15, 2017 11:01:24
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.gif

Hi – Sorry I just saw that Steve had already sent this out to the group so can ignore my attachments.

From: Hanslep, Malle (MOF)
Sent: November 15, 2017 9:27 AM
To: Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Strathy, Anna (OFA) (Anna.Strathy@ofina.on.ca); Veinot, Cindy (TBS); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA) (Carlos.Yep@ofina.on.ca); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Usman Zahid (Usman.Zahid@ofina.on.ca); Hirani, Anis (OFA) (Anis.Hirani@ofina.on.ca); Kim, John (OFA); McKinlay, Tom (ENERGY); Thouin, Alena (ENERGY); Gavaris, Hresa (OFA); John Psinas (John.Psinas@ofina.on.ca); Hume, Steen (ENERGY); Cayley, Daniel (ENERGY)
Cc: ASHBOURNE, STEPHEN (STEPHEN.ASHBOURNE@blakes.com)
Subject: FW: Change of Law Protection Agreement and Change of Law Process Agreement

Hi all,

These revisions were sent out by Steve last evening. Please review to ensure all the comments at the meeting yesterday were captured. Also, please review s. 4.01 in particular as based on discussions with Steve last evening the language was modified a bit to change it so the Province may disagree with the amount for the protection agreement maximum proposed by OPG on reasons related to the inconsistencies or

inaccuracies as opposed to agreeing as opposed to confirming agreement. Please let us know if you have comments on this. Thanks.

Malle

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: November 14, 2017 8:30 PM
To: Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
Cc: Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Thursday, November 09, 2017 2:11 AM
To: Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca;

Alena.Thouin@ontario.ca
Cc: Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have.

The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

Rocco Sebastiano
Partner

416.862.5859

DIRECT

416.862.6666

FACSIMILE

rsebastiano@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: November-02-17 9:02 PM
To: Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
Cc: Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

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

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

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

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 4000, Toronto ON M5L 1A9
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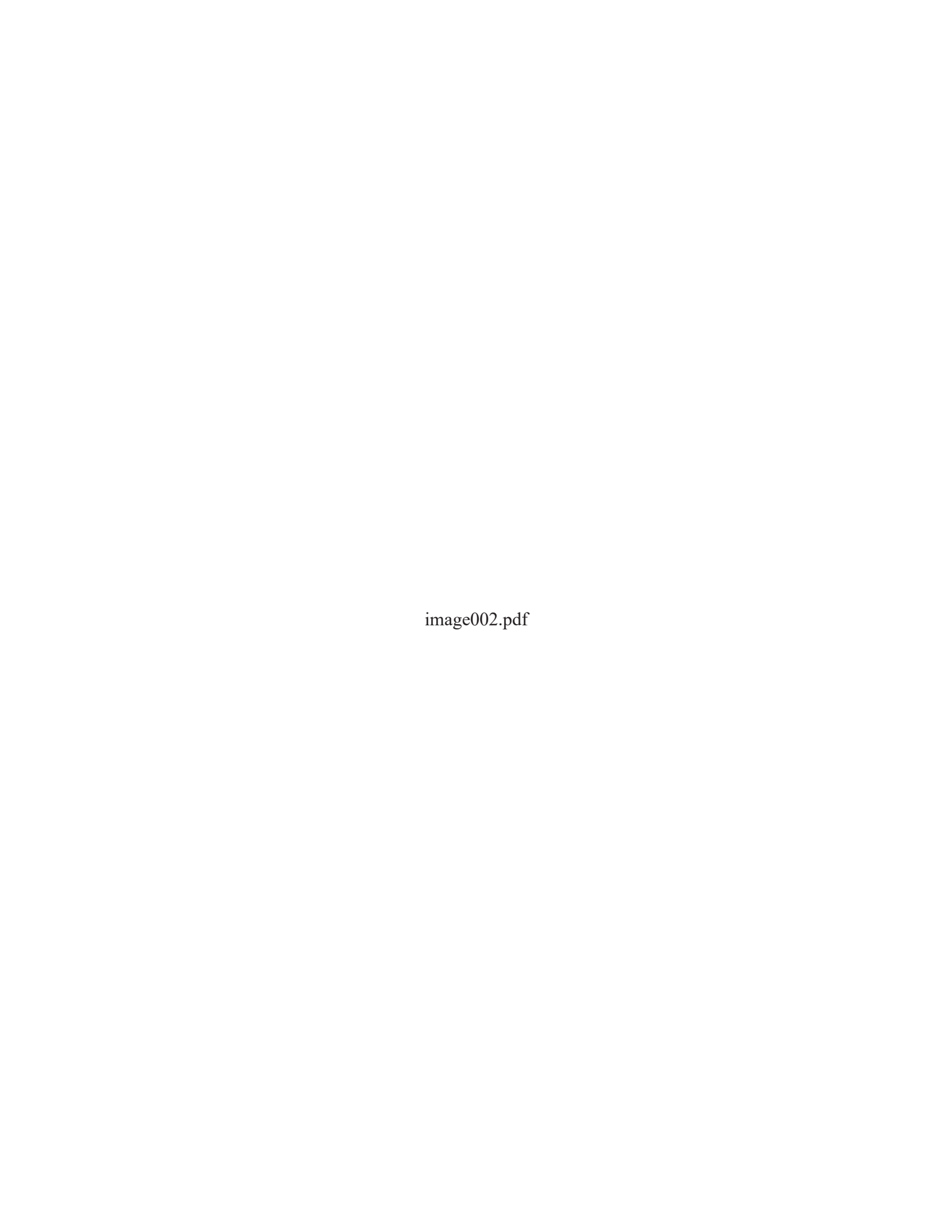
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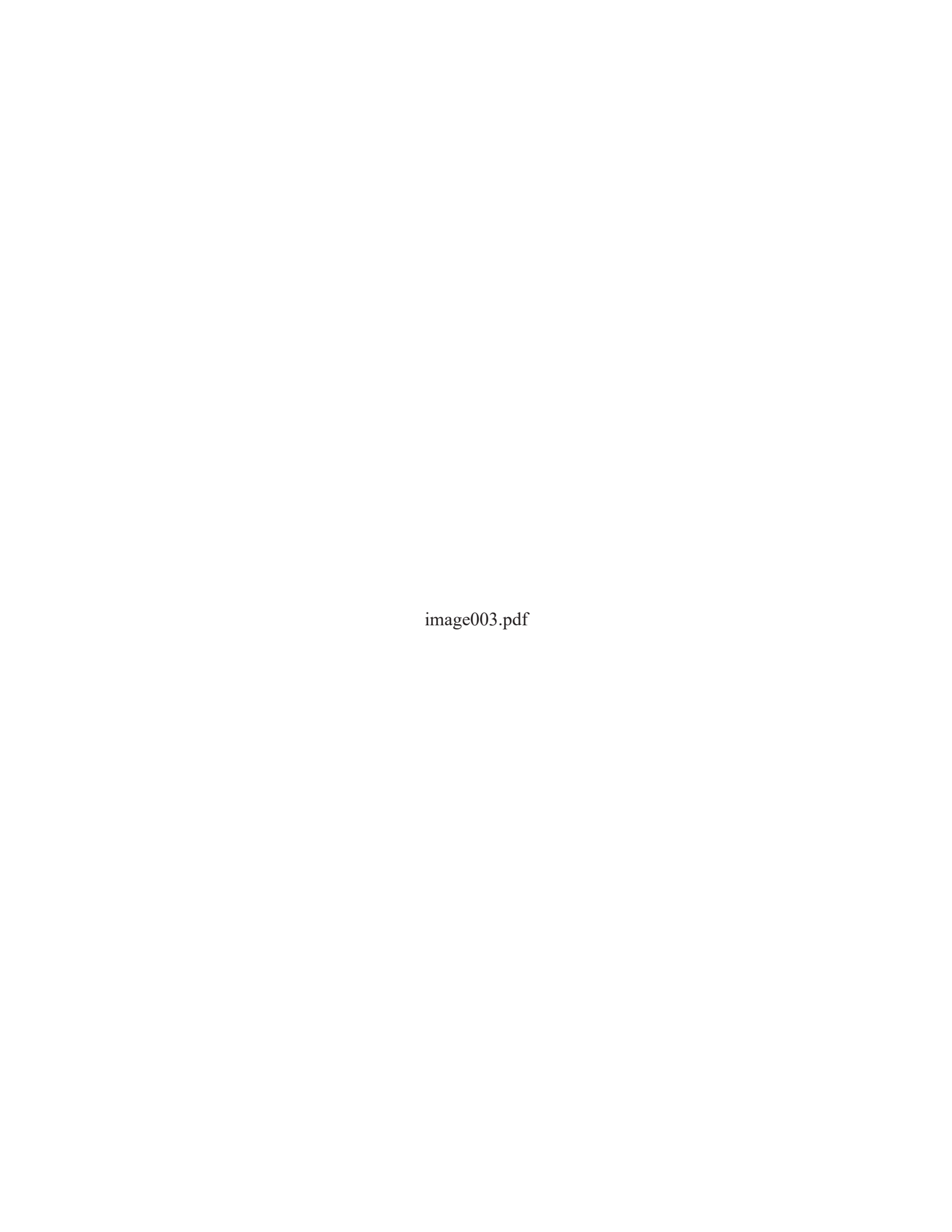
image003.pdf

Blakes

RE_ Change of Law Protection Agreement and Change of Law Process Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Zahid, Usman (OFA) [Usman.Zahid@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Gavaris, Hresa (OFA) [Hresa.Gavaris@ofina.on.ca]; John Psinas [John.Psinas@ofina.on.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]
CC: 'stephen.ashbourne@blakes.com' [stephen.ashbourne@blakes.com]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]
Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement
Date: Thursday, November 09, 2017 11:21:43
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.gif

Also, I notice that there is reference in the Process Agreement's changes to the Province's indemnity agreement in favour of OPG dated June 1, 2017. Could Energy circulate that agreement to the group? Thank you.

Malle

From: Whitfield, Tobias P. (MOF)
Sent: November 9, 2017 10:16 AM
To: Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Gavaris, Hresa (OFA); John Psinas; Hume, Steen (ENERGY); Nelms, Scott (MOF)
Cc: 'stephen.ashbourne@blakes.com'; Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG)
Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement

I was mistaken in my first email – the comments attached in my earlier email are consolidated comments from the Dealer's Counsel AND OPG's counsel (Osler's and Tory's).

Best,

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Whitfield, Tobias P. (MOF)
Sent: November 9, 2017 10:04 AM
To: Strathy, Anna (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Veinot, Cindy (TBS); Manning, Mike (OFA); Kwan, Ronald (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Cengarle, John (MOF); Katona, Keley (MOF); Donaldson, Mark (TBS); Zahid, Usman (OFA); Hirani, Anis (OFA); Kim, John (OFA); Gavaris, Hresa (OFA); 'John Psinas'; Hume, Steen (ENERGY); Nelms, Scott (MOF)
Cc: 'stephen.ashbourne@blakes.com'; Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG)
Subject: FW: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached the Dealer's Counsel's comments on the Change of Law Protection Agreement and the Change of Law Process Agreement. Note that we have not yet received comments from OPG and these are only the Dealer's comments.

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: November 9, 2017 2:11 AM
To: Ramchandani, Rima; ASHBOURNE, STEPHEN; JON.VINER@blakes.com; JA.PRESTAGE@blakes.com; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
Cc: Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement

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The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

Rocco Sebastiano
Partner

416.862.5859

DIRECT

416.862.6666

FACSIMILE

rsebastiano@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: November-02-17 9:02 PM
To: Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
Cc: Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

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

circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

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

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

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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199 Bay Street, Suite 4000, Toronto ON M5L 1A9
Tel: 416-863-2400 Fax: 416-863-2653
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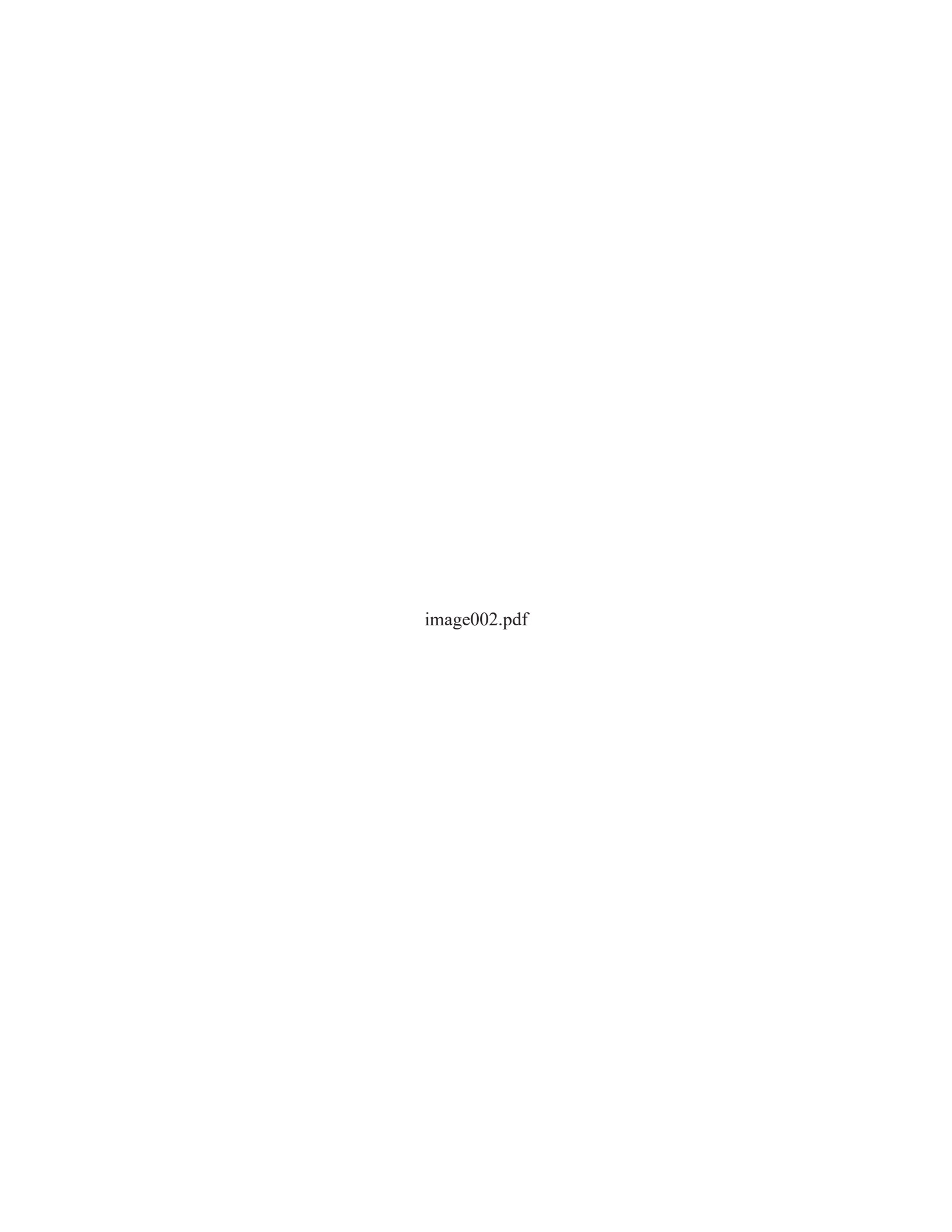
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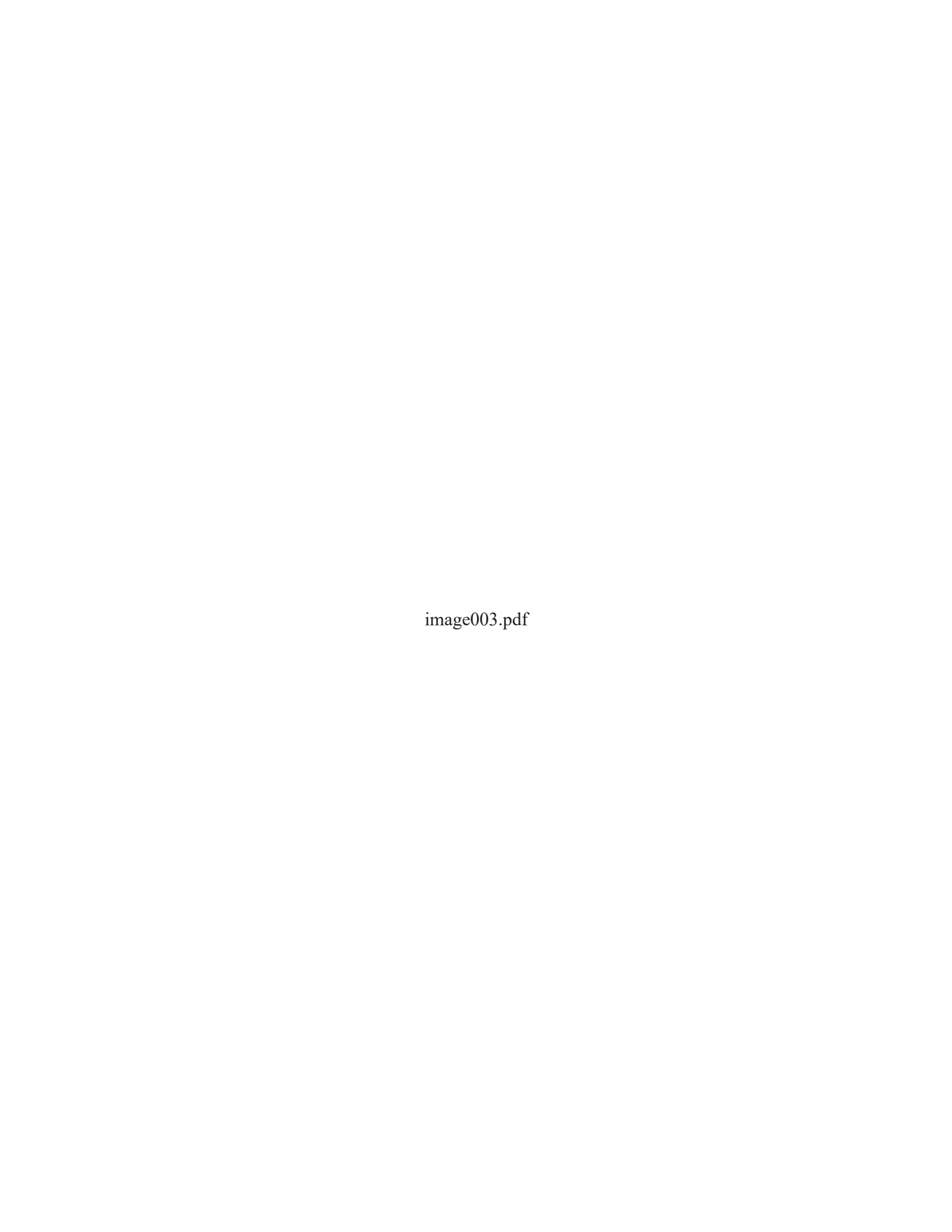
image003.pdf

Blakes

RE_ Change of Law Protection Agreement and Change of Law Process Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]
CC: Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]
Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement
Date: Friday, November 17, 2017 10:33:38
Attachment 1: image001.jpg
Attachment 2: image002.gif
Attachment 3: image003.gif
Attachment 4: image004.gif

Hi Ken,

Yes this is one of the issues, i.e. where the obligation to provide notice and information to the province would be found. However, we reviewed the master trust indenture further last night. There are some other issues as well as under the trust indenture s. 11.01 the Issuer and the Indenture Trustee have the ability to make a number of types of amendments without the consent of specified creditors including to add to the covenants of the Issuer or to surrender any right or power conferred upon the Issuer for the benefit of debtholders and also to enable the Issuer to file a registration statement for the offering of securities in the U.S. etc.. S. 11.02 provides for the making of a range of amendments with consent of debtholders. This is why Blakes specified these sections in their email to Torys as not all amendments are sent to the specified creditors. I think it would be worthwhile to have a further internal call with Blakes later this morning so that we have a full understanding of the implications of this issue.

If the Province is paying under the limited guarantee in the protection agreement, the Province would be paying in accordance with the terms and conditions of the agreements and obligations that the financing entity has entered into. If the Province determines that it is appropriate to directly assume the debt and obligations and obtains authority and approvals to do so and elects its option to do so, then upon direct assumption of the debt and derivatives, there would an opportunity for the terms be varied to be under the Province's ISDA's.

Thanks,

Malle

From: Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
Sent: November 17, 2017 8:49 AM
To: Hanslep, Malle (MOF)
Cc: Mayman, Gadi (OFA); Manning, Mike (OFA); Kwan, Ronald (OFA); Veinot, Cindy (TBS); Donaldson, Mark (TBS); Nelms, Scott (MOF); Katona, Keley (MOF); Kim, John (OFA); Hume, Steen (ENERGY)
Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement

Hi Malle

As per our discussion last evening, I understood that the compromise position re the amendments issue was for the Province to be designated as a “specified creditor” thus be informed of any amendments 10 business days prior. The sticking point, as I understand it was our preference that these requirements be part of the Indenture Trust agreement while Tory’s/Osler suggested that it be part of the Protection Agreement.

So the question is if we accept the Tory’s/Osler position does the Province’s risk increase materially, if not then we can proceed with their suggestion, especially since the Trustee is a party to the Protection Agreement.

I don’t believe there any accounting implication from either approach though leave that to Cindy and Mark.

Steve also raises the issue of other Program Agreements presumably referring to agreements for derivatives. I am not too fussed about these, since any derivative arrangement that we will be taking on if the Protection Agreement comes into force will be under our ISDA. Maybe Mike may have something to add to this.

Thanks

Ken k

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Thursday, November 16, 2017 8:37 PM
To: Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Scott Nelms (ENERGY) <Scott.Nelms@ontario.ca>; Keley Katona (ENERGY) <Keley.Katona@ontario.ca>; John Kim <John.Kim@ofina.on.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>
Subject: FW: Change of Law Protection Agreement and Change of Law Process Agreement

Hopefully I have captured everyone who is usually copied on these.

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: November-16-17 8:29 PM
To: 'ASHBOURNE, STEPHEN'; Feldman, Michael; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin; Sebastiano, Rocco; Ramchandani, Rima; VINER, JON; PRESTAGE, JA; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); McKinlay, Tom (MAG); Thouin, Alena (ENERGY)
Cc: Mansoori, Nina
Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement

All – please find attached consolidated comments from OPG and the Dealers on the Change of Law Agreements. Please note that the attached remains subject to the review of the working group. There are a few drafting points to confirm amongst the lawyers but please let us know if there are any remaining business points to be discussed on these documents tomorrow. Many thanks,

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com[torys.com]

[torys.com]

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: November-14-17 8:30 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Ramchandani, Rima <rramchandani@torys.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
Cc: Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; 'Benaiah, Ian' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Conner, Robbin <Robbin.Conner@gs.com>
Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find attached revised versions of the Protection and Process Agreements. The blacklines show changes to the November 2nd (Province/Blakes) and November 8th (OPG/Dealers/Osler/Torys) circulated versions. In the interest of time, these versions are being circulated at the same time to the Province and so remain subject to comment. Please let us know if you have any comments or concerns. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Thursday, November 09, 2017 2:11 AM
To: Ramchandani, Rima; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
Cc: Feldman, Michael; Mansoori, Nina; Saulnier, Brett; 'WONG Leslie -LAWDIV'; LEE John -TREASURY; RYFA Ken -TREASURY; Milligan, Peter; Fullerton, Rick; 'Persaud, Donnie - Debt Capital Markets'; Adalja, Sunil; Maciel, Andrew; 'Benaiah, Ian'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; Niehaus, Katrina; Delaney, Brian; Conner, Robbin
Subject: RE: Change of Law Protection Agreement and Change of Law Process Agreement

Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have.

The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco

Rocco Sebastiano
Partner

416.862.5859

DIRECT

416.862.6666

FACSIMILE

rsebastiano@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

[osler.com]

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: November-02-17 9:02 PM
To: Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Hill, Krista <khill@torys.com>
Cc: Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca) <Malle.Hanslep@ontario.ca>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; tom.mckinlay@ontario.ca; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca) <Alena.Thouin@ontario.ca>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to

on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

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

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

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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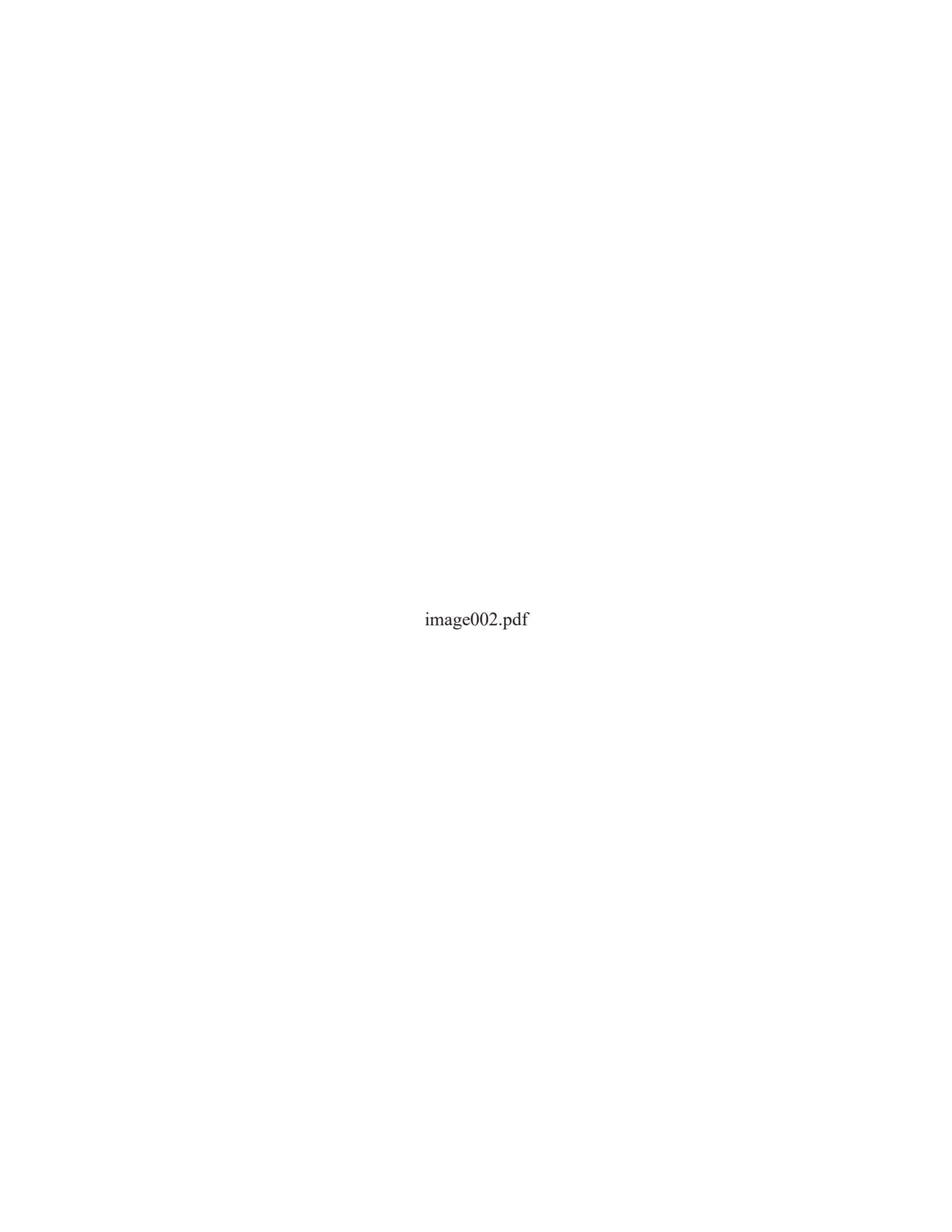
LLP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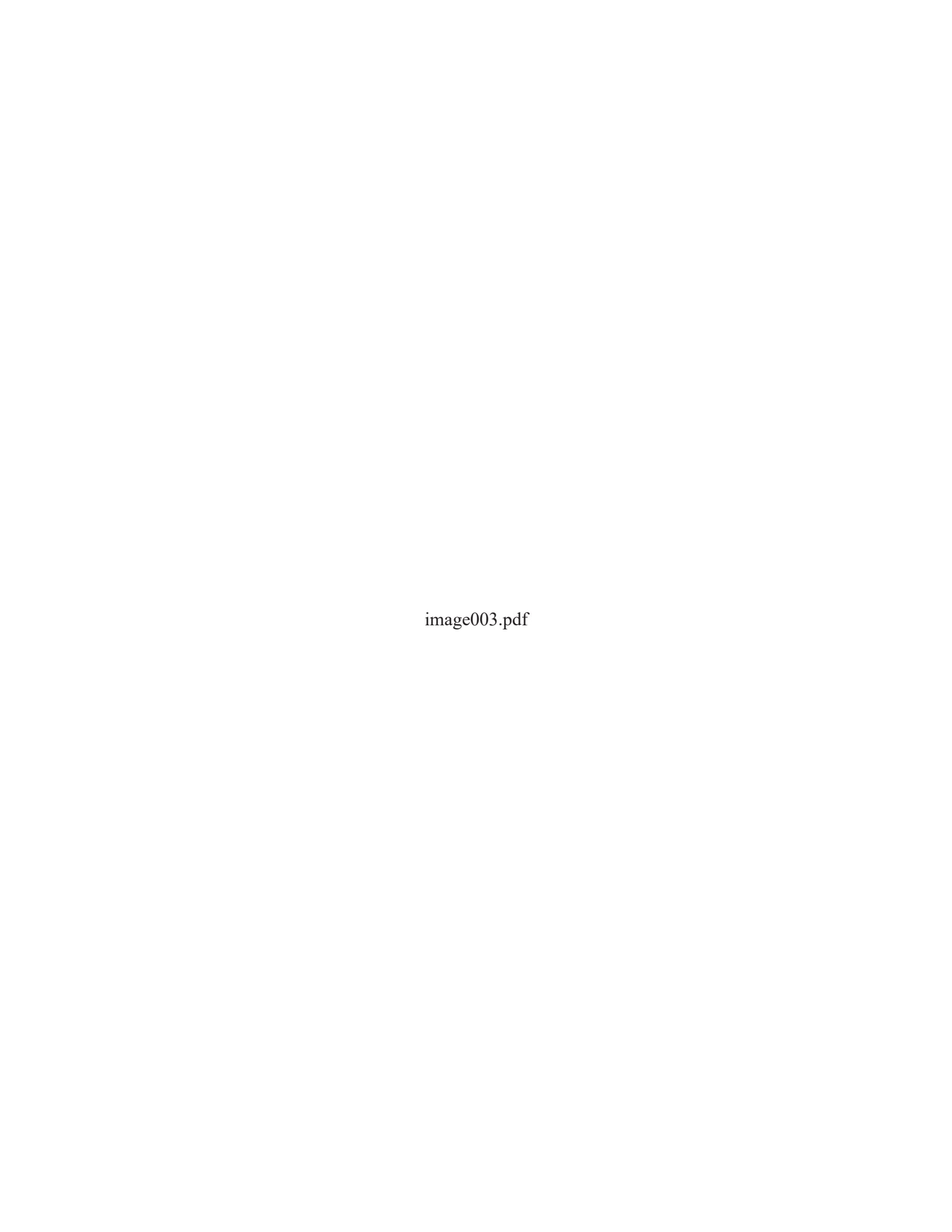
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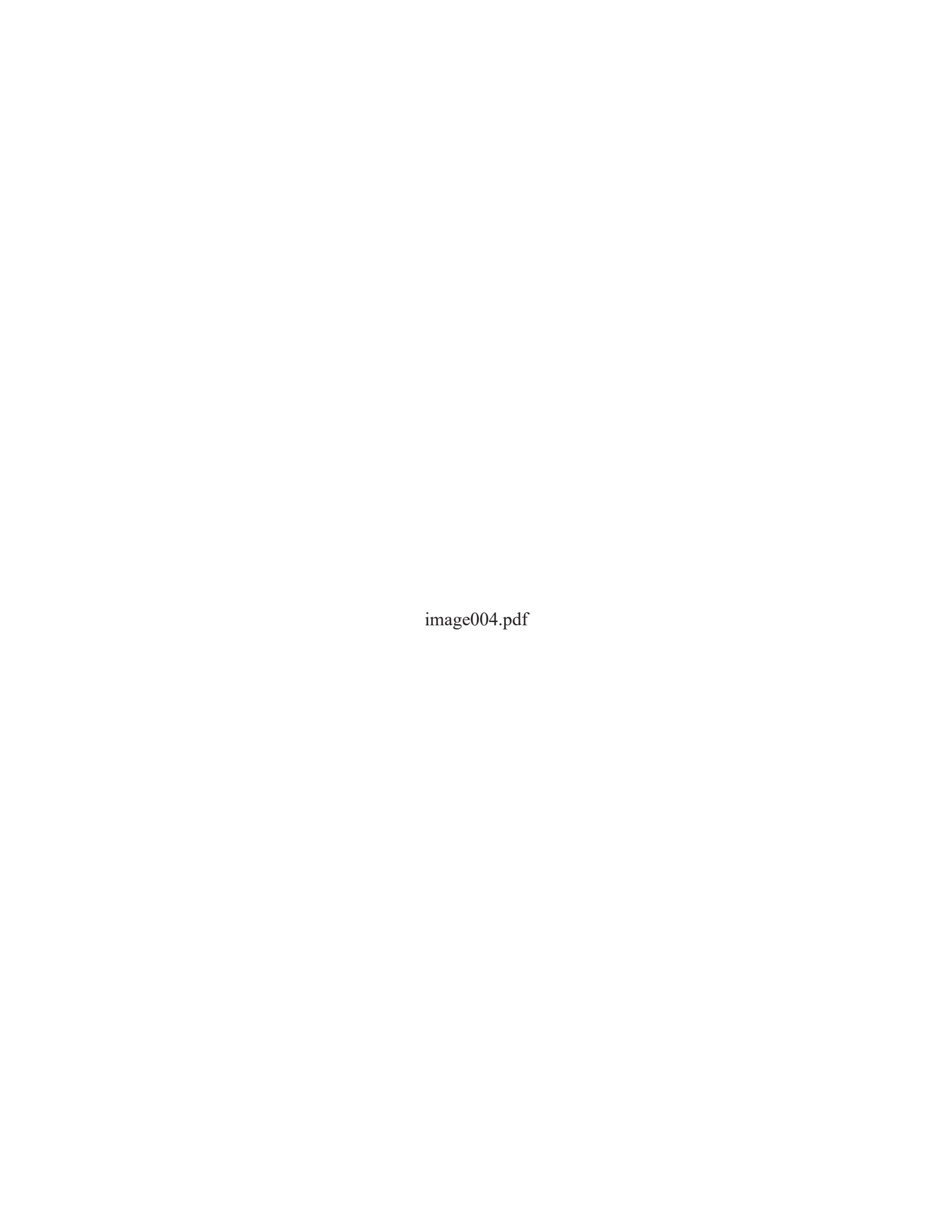
image004.pdf

Blakes

RE_ Consent.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: PRESTAGE, JA [JA.PRESTAGE@blakes.com]
Subject: RE: Consent
Date: Wednesday, March 22, 2017 14:45:03

Nadine,

I believe the provision you are looking at in the TPA is saying that references in the TPA to the DoT are to the form of DoT approved by the Province in accordance with 20.2.

If the DoT were to be amended without the Province's consent (i.e., which is not to be unreasonably withheld, operating by reference to 20.2), then the reference to the DoT in the TPA would mean the DoT without that amendment.

Does that clarify the point for you?

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

-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, March 22, 2017 2:38 PM
To: ASHBOURNE, STEPHEN
Subject: RE: Consent

Hi Stephen. Please see Michel's subsequent advice. n

-----Original Message-----
From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: March 22, 2017 2:38 PM
To: Petsche, Nadine (TBS)
Cc: Schwab-Pflug, Emma (ENERGY)
Subject: RE: Consent

I don't think it is needed.

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

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-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: Wednesday, March 22, 2017 2:35 PM
To: ASHBOURNE, STEPHEN
Cc: Schwab-Pflug, Emma (ENERGY)
Subject: FW: Consent

Stephen,
Michel and I have been going back and forth on the remaining TPA definition wording for the Trust Declaration. Please see his suggestion below. I would agree, for consistency purposes (with 20.2), that it should be revised. Hope you agree. Nadine

-----Original Message-----
From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: March 22, 2017 2:16 PM
To: Petsche, Nadine (TBS)
Subject: Re: Consent

I believe the definition of trust in the TPA should be amended either to delete "with the consent of the Province" or to include "not to be unreasonably withheld or delayed."

Sent from my iPhone

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.
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If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

RE_ Discussion Item for IESO Call.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]; leeanne.probert@ca.ey.com [leeanne.probert@ca.ey.com]; Jeannette Briggs [jeannette.briggs@ieso.ca]; Susan Nicholson [susan.nicholson@ieso.ca]
CC: Georgia Ritchie-Wust [georgia.ritchie-wust@ieso.ca]
Subject: RE: Discussion Item for IESO Call
Date: Tuesday, June 27, 2017 09:00:14

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Just a heads up that I can only be in this meeting for the first half hour.

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 |

RE_ Discussion Item for IESO Call.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]; leeanne.probert@ca.ey.com [leeanne.probert@ca.ey.com]; Jeannette Briggs [jeannette.briggs@ieso.ca]; Susan Nicholson [susan.nicholson@ieso.ca]
CC: Georgia Ritchie-Wust [georgia.ritchie-wust@ieso.ca]
Subject: RE: Discussion Item for IESO Call
Date: Tuesday, June 27, 2017 09:00:14

Just a heads up that I can only be in this meeting for the first half hour.

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
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-----Original Appointment-----
From: Georgia Ritchie-Wust **On Behalf Of** Kim Marshall
Sent: June 23, 2017 10:56 AM
To: Kim Marshall; Petsche, Nadine (TBS); Picard, Michel; leeanne.probert@ca.ey.com; Jeannette Briggs; Susan Nicholson
Subject: Discussion Item for IESO Call
When: June 28, 2017 8:30 AM-9:30 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Kim's CSCC Office/Conference Call - Details Below

The call will commence once Kim signs on as the moderator:

Local Dial In: 416-343-2654

Toll Free Dial In: 1-866-440-8935

Conference ID: 4149199

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RE_ Discussion Items for IESO Call.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]; leeanne.probert@ca.ey.com [leeanne.probert@ca.ey.com]
CC: Jeannette Briggs [jeannette.briggs@ieso.ca]; Susan Nicholson [susan.nicholson@ieso.ca]
Subject: RE: Discussion Items for IESO Call
Date: Thursday, June 15, 2017 15:36:42

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Nadine and Leeanne, Jeannette is the Director of settlements and Susan is our corporate controller. They are best to answer questions re the IESO market accounting and settlement. By cc to Georgia

RE_ Discussion Items for IESO Call.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: Discussion Items for IESO Call
Date: Monday, June 26, 2017 08:21:53

Why Shannon?

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
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-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: June 24, 2017 4:16 PM
To: Kim Marshall
Subject: RE: Discussion Items for IESO Call

Hi Kim.
I was thinking that it might be useful to invite Shannon (from E&Y) to participate on the call as well. In addition, if Lee Anne has additional questions on how the market books work, it might be helpful to give her the contact info for the team that reviews the internal controls for the market books?
Thanks in advance.
Nadine

-----Original Message-----
From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
Sent: June-20-17 8:00 AM
To: Petsche, Nadine (TBS); Picard, Michel; leeanne.probert@ca.ey.com
Cc: Jeannette Briggs; Susan Nicholson; Georgia Ritchie-Wust
Subject: RE: Discussion Items for IESO Call

Georgia will co-ordinate. Can probably do without me

Kimberly Marshall | VP, Corporate Services & CFO Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
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-----Original Message-----
From: Kim Marshall
Sent: June 15, 2017 3:37 PM
To: 'Petsche, Nadine (TBS)'; Picard, Michel; 'leeanne.probert@ca.ey.com'
Cc: Jeannette Briggs; Susan Nicholson
Subject: RE: Discussion Items for IESO Call

Nadine and Leeanne, Jeannette is the Director of settlements and Susan is our corporate controller. They are best to answer questions re the IESO market accounting and settlement. By cc to Georgia can we pls set up a 1/2 hour with Michel as well re your questions, thanks

Kimberly Marshall | VP, Corporate Services & CFO Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
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-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: June 15, 2017 8:01 AM
To: Picard, Michel; Kim Marshall
Subject: Fw: Discussion Items for IESO Call

Good morning.
We had suggested that EY list some of their questions in advance of today's call (see below). I personally think however, that we first need to establish a common understanding of RRA (eg. Clarity of accounting guidance wrt governing board, independence, different types of RRAs), and perhaps address some of EY's questions/confusion following their read of the AG's recent comments/postings and how they might relate (or not) to the IESO's situation.
Just forwarding these Q's as an info item. Talk soon, N

From: Lee Anne Probert <leeanne.probert@ca.ey.com>
Sent: Thursday, June 15, 2017 2:42 AM
To: Petsche, Nadine (TBS)
Cc: Veinot, Cindy (TBS); Suzie Gignac; Blake Langill
Subject: Discussion Items for IESO Call

Hi Nadine,

Below is a list of the items I would like to discuss on our call with the IESO.

Please let me know if you have any questions/concerns with the list.

Regards,
Lee Anne

IESO Financial Statements

Current supply cost variance account

· Where is this recorded on the 2016 balance sheet (Amounts due to/from market participants?)

· Why is this not a regulatory asset? Is it considered to be a financial asset?

· There are similarities between this variance account and the new FHP variance account, but FHP variance account is going to be accounted for a regulatory asset. What is driving different treatment?

Market accounts

· Can we walk through the entries that are booked as part of the settlement process (timing and DRs/CRs)

· What are 'Other liabilities' (Note 3)

Market Administration/Settlement

Confirm/correct the following:

Price consumers pay comprised of:

· Electricity price:

o Electricity commodity price (HOEP)

o Transmission price

o Distribution price

· Global Adjustment

IESO only settles the electricity commodity price component and the related portion of the Global Adjustment

Supply of electricity comes from:

1. OPG (rate set by OEB)

2. Non-utility generators (rate set by contract – contracts held by OEFC)

3. Generation facilities under contract with IESO (rate set by contract)

4. Imports (paid HOEP)

Are there are other suppliers that are paid HOEP?

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· Does the IESO negotiate the terms of these contracts?

Buyers of electricity from IESO grid are comprised of:

· LDCs

· Large consumers

The electricity commodity price paid by all buyers is HOEP.
IESO determines HOEP.
Although IESO determines HOEP, IESO is not really determining rates charged to buyers because total price is a bundle of electricity at HOEP plus/minus Global Adjustment and OEB mandates that bundle must (over time) equal cost.

[cid:image001.gif@01D2E57B.8F206A10]

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RE_ Discussion Items for IESO Call.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Picard, Michel [mpicard@kpmg.ca]; leeanne.probert@ca.ey.com [leeanne.probert@ca.ey.com]
CC: Jeannette Briggs [jeannette.briggs@ieso.ca]; Susan Nicholson [susan.nicholson@ieso.ca]
Subject: RE: Discussion Items for IESO Call
Date: Thursday, June 15, 2017 15:36:42

Nadine and Leeanne, Jeannette is the Director of settlements and Susan is our corporate controller. They are best to answer questions re the IESO market accounting and settlement. By cc to Georgia can we pls set up a 1/2 hour with Michel as well re your questions, thanks

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

-----Original Message-----
From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
Sent: June 15, 2017 8:01 AM
To: Picard, Michel; Kim Marshall
Subject: Fw: Discussion Items for IESO Call

Good morning.
We had suggested that EY list some of their questions in advance of today's call (see below). I personally think however, that we first need to establish a common understanding of RRA (eg. Clarity of accounting guidance wrt governing board, independence, different types of RRAs), and perhaps address some of EY's questions/confusion following their read of the AG's recent comments/postings and how they might relate (or not) to the IESO's situation.
Just forwarding these Q's as an info item. Talk soon, N

From: Lee Anne Probert <leeanne.probert@ca.ey.com>
Sent: Thursday, June 15, 2017 2:42 AM
To: Petsche, Nadine (TBS)
Cc: Veinot, Cindy (TBS); Suzie Gignac; Blake Langill
Subject: Discussion Items for IESO Call

Hi Nadine,

Below is a list of the items I would like to discuss on our call with the IESO.

Please let me know if you have any questions/concerns with the list.

Regards,
Lee Anne

IESO Financial Statements

Current supply cost variance account

· Where is this recorded on the 2016 balance sheet (Amounts due to/from market participants?)

· Why is this not a regulatory asset? Is it considered to be a financial asset?

· There are similarities between this variance account and the new FHP variance account, but FHP variance account is going to be accounted for a regulatory asset. What is driving different treatment?

Market accounts

· Can we walk through the entries that are booked as part of the settlement process (timing and DRs/CRs)

· What are 'Other liabilities' (Note 3)

Market Administration/Settlement

Confirm/correct the following:

Price consumers pay comprised of:

· Electricity price:

o Electricity commodity price (HOEP)

o Transmission price

o Distribution price

· Global Adjustment

IESO only settles the electricity commodity price component and the related portion of the Global Adjustment

Supply of electricity comes from:

1. OPG (rate set by OEB)

2. Non-utility generators (rate set by contract – contracts held by OEFC)

3. Generation facilities under contract with IESO (rate set by contract)

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[cid:image001.gif@01D2E57B.8F206A10]

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RE_ Discussion on IESO_OPG accounting impacts.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: JORDA Jenny -FIN & C CTRL [jenny.jorda@opg.com]; Michael Boll [Michael.Boll@ieso.ca]; Susan Nicholson [susan.nicholson@ieso.ca]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; VISWANATHAN Suneethi -FIN & C CTRL [suneethi.viswanathan@opg.com]; 'Picard, Michel' [mpicard@kpmg.ca]; GO Matthew -TREASURY [matthew.go@opg.com]; PRESTON Stuart -TREASURY [stuart.preston@opg.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Anthony Martinello [Anthony.Martinello@ieso.ca]
Subject: RE: Discussion on IESO/OPG accounting impacts
Date: Thursday, July 06, 2017 13:58:32

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Just an update. KPMG is preparing documented responses to items 1-3, should be available beginning of next week. What is the timing and process for revisiting this? I am on vacation most of next we

RE_ Discussion on IESO_OPG accounting impacts.rtf

From: JORDA Jenny -FIN & C CTRL [jenny.jorda@opg.com]
To: 'Michael Boll' [Michael.Boll@ieso.ca]; 'Kim Marshall' [Kim.Marshall@ieso.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Susan Nicholson' [susan.nicholson@ieso.ca]; 'Tracy Brennan' [tracy.brennan@ca.ey.com]; Laney Doyle [laney.doyle@ca.ey.com]; 'Brittany Keenan' [Brittany.Keenan@ca.ey.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; 'phamilton@stikeman.com' [phamilton@stikeman.com]; 'gzacher@stikeman.com' [gzacher@stikeman.com]; VISWANATHAN Suneethi -FIN & C CTRL [suneethi.viswanathan@opg.com]; 'Picard, Michel' [mpicard@kpmg.ca]; GO Matthew -TREASURY [matthew.go@opg.com]; PRESTON Stuart -TREASURY [stuart.preston@opg.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]
CC: Kelly, Gale M [galekelly@kpmg.ca]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]
Subject: RE: Discussion on IESO/OPG accounting impacts
Date: Wednesday, June 28, 2017 17:57:36

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Hi All – see below for action items from today’s meeting. Please let me know if I missed anything.

Item Action Item Responsibility
Assumptions:

* Four year moratorium exists where ratepay

RE_ EXTERNAL Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro.rtf

From: Montgomery, Kaitlin (MOF) []
To: Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; McKinlay, Tom (ENERGY) [Tom.McKinlay@ontario.ca]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro
Date: Tuesday, July 11, 2017 12:02:16
Attachment 1: image001.jpg
Attachment 2: Fair Hydro - Master Transfer & Servicing Agreement (2).docx

---

Hi,

OPG has shared a draft of the MTSA which was referenced.

Kaitlin

From: Hanslep, Malle (MOF)
Sent: July 6, 2017 9:52 AM
To: Nelms, Scott (MOF); Calwell, Carolyn (ENERGY/MEDEI/MRI); Hume, Steen (ENERGY); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); Montgomery, Kaitlin (MOF); ASHBOURNE, STEPHEN; Whitfield, Tobias P. (MOF); Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Cc: Karpowicz, Eva (MOF)
Subject: RE: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Hi all,

Are there any other draft agreements that are available for review by the Province that would provide more precision respecting the context in which this provincial support is to operate. For example, the Master Sales and Servicing Agreement? Torys' comment mentions the "MTSA" – which agreement is this? Is there a draft trust indenture? Torys also asks about what is meant by the "Approval Requirement" and it is difficult to answer these questions without having a fuller picture of the various agreements.

Thank you.

Malle Hanslep

Deputy Director

Ministry of the Attorney General

Ministry of Finance Legal Services Branch

Telephone: 416-325-1457

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From: Nelms, Scott (MOF)
Sent: July 5, 2017 5:49 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Hume, Steen (ENERGY); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); Montgomery, Kaitlin (MOF); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Cc: Karpowicz, Eva (MOF)
Subject: RE: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Good suggestion from Gadi – we should probably touch base internally in advance of meeting with OPG. I wonder if we could try for a quick 30 min phone call either tomorrow or Friday.

I will reach out to OPG to set something up for next week.

From: Nelms, Scott (MOF)
Sent: July 5, 2017 2:44 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Steen Hume (ENERGY) (Steen.Hume@ontario.ca); Mayman, Gadi (OFA) (Gadi.Mayman@ofina.on.ca); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); Montgomery, Kaitlin (MOF); ASHBOURNE, STEPHEN
Subject: FW: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Hi,

Please see the following comments from OPG / Torys on the guarantees.

I wonder if we are now at a point we should suggest sitting down with OPG on this perhaps early next week.

Thanks,

Scott

From: LEE John -TREASURY [mailto:john.s.lee@opg.com]
Sent: June 30, 2017 3:12 PM
To: Nelms, Scott (MOF)
Cc: WONG Leslie -LAWDIV; RYFA Ken -TREASURY; HAHN PARKER Janet -TREASURY
Subject: FW: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Scott:

Further to our discussion on the outstanding issues, please find below the comments from the Dealers on the “Markup” of the Provincial Protection and Assurance term sheet.

As noted below, the next step should be to get the appropriate parties from the Province to sit down with the dealers and OPG to go over the points and agree on a basis to move forward.

We should try to do that sometime next week. Let us know what times work on the Province side and we will coordinate with the Dealers & counsels.

John

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Friday, June 30, 2017 12:24 PM
To: LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV
Cc: Ramchandani, Rima; Hill, Krista; Feldman, Michael; Emes, Aaron; Mansoori, Nina
Subject: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

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John/Les/Ken,

Please find below an issues list on the Province’s comments on the Provincial Protection and Assurances Term Sheet (formerly the Provincial Support Agreement). This list reflects input from the dealers, Oslers and Torys. Please let us know if you have any additional comments or questions. If not, will you be reaching out to the

Province to schedule a meeting next week (with the dealers, OPG, the Province and their counsels) to discuss these points? The dealers and their counsel don't see value in exchanging further drafts of the term sheet until they have had an opportunity to meet with the Province. We agree with this approach and are happy to assist in coordinating a meeting for next week. It would also be helpful to hear the Province's rationale and concerns for making some of these changes. Please let us know.

Many thanks,

Nina

1. The Servicing Guarantee:

(a) It is written in favour of only the financing entity. However, in the MTSA, we are asking for covenants directly in favour of Indenture Trustee. The Indenture Trustee/specified creditors should have the direct benefit of the guarantee rather than relying on an indirect security interest in the servicing guarantee.

(b) It should be clarified that the servicing obligations of the electricity vendors are covered.

(c) If the guarantee is unenforceable, we should fall back to an indemnity, not a "functionally equivalent direct covenant" which is an uncertain concept.

(d) We don't want an exclusion for economic loss. That may cover whatever losses the specified creditors do suffer.

2. Change of Law.

(a) This should be written as a guarantee not an indemnity.

(b) It should be directly in favour of the Indenture Trustee/specified creditors and it should cover all the "finance amount" and not just funding obligations.

(c) We do not want the guarantee to be provided by another entity which is in turn guaranteed by Ontario. It should come directly from Ontario.

(d) There should be no "materiality" threshold for a claim. If obligations are not paid in full, then there should be a claim.

(e) The choice to assume or accelerate should be at the option of the holders, not the guarantor.

(f) If accelerated, then the 1% premium should be payable. This is a voluntary termination by the Province.

3. Undertaking Regarding Mismatches (market disruption)

(a) At best this structure defers the discussion of protection for a market disruption. At worst, it is impractical that take-out financing needs to be arranged in advance of each warehouse financing. We should rely on a definition of market disruption.

4. Approvals.

(a) Province to clarify what is contemplated under the heading “Approval Requirement”. Is Province proposing to approve any obligation incurred by the Financing Entity?

(b) Approval under Section 28 of the *Financial Administration Act* to be attained (in case the OFHPA is declared void in its entirety).

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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TORYS
LLP

Fair Hydro - Master Transfer & Servicing Agreement (2).pdf

TORYS DRAFT: July 11, 2017

MASTER TRANSFER AND SERVICING AGREEMENT

between

[FINANCING ENTITY]
as Issuer

- and -

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor and Servicer

Acknowledged and Accepted by

■
as Indenture Trustee

Dated as of ■, 2017

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EXHIBIT

Exhibit A	–	Form of Transfer Notice
Exhibit B	–	Form of Monthly Report
Exhibit C	–	Form of Monthly Funding Rebate Statement

MASTER TRANSFER AND SERVICING AGREEMENT

THIS AGREEMENT made as of ■, 2017.

BETWEEN:

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

(the "**Issuer**")

- and -

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

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

- acknowledged and accepted by -

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

(the "**Indenture Trustee**")

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

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

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

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

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

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

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

ARTICLE 1
INTERPRETATION

1.1 Definitions

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

"**Act**" has the meaning ascribed thereto in the recitals;

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

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

"**Affiliate**" means, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "**control**" when used with respect to any specified Person means the power to direct the management and policies of such specified Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing;

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

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

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

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

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

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

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

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

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

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

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

"**Daily Remittance Event**" means ■ **[NTD: Definition to be tied to the loss of investment grade ratings of the IESO]**;

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

"**Electricity Act**" means the *Electricity Act, 1998*, SO, 1998;

"**Electricity Vendor**" has the meaning ascribed to the term "electricity vendor" in the Act;

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

"**Eligible Deposit Account**" means an account in Canada with an Eligible Institution;

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

"**Eligible Institution**" means:

(a) at any time before the Co-Owner Implementation Date, an "Eligible Institution" as defined in the Indenture; and

(b) at any time on or after the Co-Owner Implementation Date, an "Eligible Institution" as defined in the applicable Co-Owner Agreement;

"**Fair Hydro Variance Account**" means the variance account established by the IESO pursuant to subsection 24(1) of the Act;

"**Finance Reserve Deposit**" has the meaning ascribed to the term "finance reserve deposit" in the Regulations;

"**Financing Entity**" has the meaning ascribed to the term "financing entity" in the Act;

"**Financing Entity Expenses**" has the meaning ascribed to the term "financing entity expense" in the Regulations;

"**Funding Cost**" has the meaning ascribed to the term "funding cost" in the Regulations;

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

"**Funding Rebate**" has the meaning ascribed thereto in Section 3.4(b);

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

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

"**IESO Deferral**", at any time, means the amount determined by the IESO under subsection 23(1) of the Act and sections 15 and 16 of the Regulations and recorded by the IESO under subsection 24(1) of the Act in the Fair Hydro Variance Account at such time;

"**IESO Disclosure**" has the meaning ascribed thereto in Section 5.7;

"**IESO Segregated Account**" means the account established under Section 3.3(a);

"**Indemnified Losses**" has the meaning ascribed thereto in Section 6.1(a);

"**Indemnified Party**" has the meaning ascribed thereto in Section 6.1(a);

"**Indenture**" means the master trust indenture dated ■, 2017 between the Indenture Trustee and the Issuer;

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

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

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

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

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

"**Issuer Funding Obligations**" means the Funding Obligations of the Issuer;

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

"**Issuer Share**" means:

(a) at any time before the Co-Owner Implementation Date, 100%; and

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

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

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

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

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

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

"**Monthly Funding Expenses**" has the meaning ascribed thereto in Section 3.4(a);

"**Monthly Funding Rebate Statement**" has the meaning ascribed thereto in Section 3.4(a);

"**Monthly Report**" has the meaning ascribed thereto in Section 3.3(e);

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

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

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

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

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

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

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

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

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

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

"**Rating Agency**" has the meaning ascribed thereto in the Indenture;

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

"**Records**" has the meaning ascribed thereto in Section 7.1;

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act;

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

"**Regulatory Asset**" has the meaning ascribed thereto in the recitals;

"**Released Parties**" has the meaning ascribed thereto in Section 6.1(e);

"**Remittance Date**" means, in respect of each Billing Period, the **[3rd]**[2] Servicer Business Day following the last day of each Billing Period;

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

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

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

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

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

"**Servicer CEA Collections**" has the meaning ascribed thereto in Section 3.2(a)(ii);

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

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

"**Specified Creditors**" has the meaning ascribed thereto in the Indenture;

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

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

"**Tax Liability**" has the meaning ascribed to the term "tax liability" in the Regulations;

"**Tax Refund**" has the meaning ascribed to the term "tax refund" in the Regulations;

"**Termination Event**" has the meaning ascribed thereto in Section 3.11;

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

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

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

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

1.2 Sections and Headings[3]

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

1.3 Extended Meanings

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

3 Torys to conform boilerplate provisions, as applicable, across all transaction documents.

means such agreement, instrument or declaration as the same may be amended, supplemented, modified, restated or replaced from time to time.

(b) The term "**including**" means "including without limitation", and other forms of the verb "**include**" have correlative meanings.

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

(d) Unless otherwise stated, in the computation of a period of time from a specified date to a later specified date, the word "**from**" means "**from and including**" and each of the words "**to**" and "**until**" means "**to but excluding**".

(e) The words "**hereof**", "**herein**" and "**hereunder**" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified. References to Articles, Sections, Appendices and Exhibits in this Agreement are references to Articles, Sections, Appendices and Exhibits in or to this Agreement unless otherwise specified.

(f) References to any law, rule, regulation or order of a Governmental Authority shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor.

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

ARTICLE 2
TRANSFER OF SPECIFIED PORTIONS OF THE REGULATORY ASSET

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

(a) The Transferor may, no more frequently than monthly and no later than the 8th Business Day of each calendar month, provide to the Issuer a Transfer Notice executed by the Transferor and setting out (i) the specified portion of the Regulatory Asset that the Transferor desires to Transfer to the Issuer, (ii) the consideration to be paid to the Transferor by the Issuer for the Transfer (the "**Purchase Price**") which shall be equal to the amount of the specified portion of the Regulatory Asset that the Transferor proposes to Transfer to the Issuer, (iii) the Closing Date to effect such transfer which shall be the 10th Business Day following delivery of the Transfer Notice, or such other date as may be agreed upon by the Transferor and the Issuer, and (iv) such other information as required in the form of Transfer Notice attached as Exhibit A hereto.

(b) **[The Issuer shall use commercially reasonable efforts to provide reasonable notice to the Transferor if the Issuer has reasonable cause to believe that it will not accept a Transfer Notice sent by the Transferor or that the conditions precedent in Sections 2.2(b)(i), (v), (vi), (vii), (viii) and (vii) will not be satisfied on the relevant Closing Date.][NTD: Subject to review by OPG.]**

(c) On or before the 2nd Business Day following receipt of a Transfer Notice, the Issuer shall have the right, but not the obligation, to accept the Transferor's offer to Transfer the portion of the Regulatory Asset subject to the Transfer Notice by executing and returning such Transfer Notice to the Transferor. Upon acceptance by the Issuer of the Transfer Notice, there shall be a binding agreement for IESO to Transfer the specified portion of the Regulatory Asset and for the Issuer to pay the Purchase Price, subject to satisfaction of all conditions precedent in Section 2.2.

(d) In consideration and as an inducement for the Issuer to acquire the Investment Interest at the Purchase Price, the Transferor shall, concurrently with each such Transfer and in accordance with Section 3.4, agree to pay to the Issuer all Monthly Funding Expenses that are incurred by or on behalf of the Issuer in connection with each applicable Transfer in respect of each calendar month in which there are no Clean Energy Adjustments billed to Specified Consumers.

(e) Provided that all conditions precedent set out in Section 2.2 have been satisfied on or prior to the applicable Closing Date, on the applicable Closing Date, the Issuer shall deliver or cause to be delivered to the Transferor, by wire transfer in immediately available funds, an amount in Canadian dollars equal to the Purchase Price set forth in the applicable Transfer Notice.

(f) Upon receipt by the Transferor of the payment referred to in Section 2.1(e):

(i) the Transferor shall reduce the balance of the Fair Hydro Variance Account by an amount equal to the Purchase Price and, as a consequence, the Regulatory Asset shall be adjusted accordingly; and

(ii) the corresponding Investment Interest shall immediately vest in the Issuer, free and clear of any adverse claim, and in accordance with section 27(1) of the Act, shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the Issuer.

(g) Any Transfer of a specified portion of the Regulatory Asset by the Transferor pursuant to this Agreement shall constitute a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the Issuer, shall be treated as a true sale and not as a pledge of or secured transaction relating to the Transferor's right, title, and interest in, to, and under the specified portion of the Regulatory Asset. After giving effect to a Transfer contemplated hereby, the Transferor shall have no right, title or interest in, to or under the corresponding Investment Interest because (i) it has Transferred all of its right, title and interest in and to the corresponding specified portion of the Regulatory Asset

to the Issuer, (ii) as provided in the Act, all right, title and interest to the corresponding Investment Interest shall be vested in the Issuer, (iii) as provided in the Act, such Transfer is perfected, vested, valid and binding as against the Transferor and all other Persons who may have claims of any kind against the Transferor, regardless of whether the Persons who have claims have received notice of the Transfer, and (iv) the property rights and interests acquired by the Issuer shall be free and clear of any Liens arising through the IESO.

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

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

(i) the Issuer and the Indenture Trustee shall have received from the Transferor the following documents, in form and substance satisfactory to each of the Issuer and the Indenture Trustee:

(A) a certificate of an officer of the IESO, dated the initial Closing Date certifying (1) that attached thereto is a true and complete copy of the by-laws of the IESO, each as in effect on the date of such certificate, (2) that attached thereto is a true and complete copy of a resolution adopted by the IESO's board of directors authorizing the execution, delivery and performance of this Agreement and the Program Agreements to which the IESO is party, and that such resolution has not been modified, rescinded or amended and is in full force and effect, and (3) as to the incumbency and true specimen signature of each of the IESO officers executing this Agreement or any of the Program Agreements to which the IESO is party; and

(B) reports showing the results of searches conducted against the IESO under applicable personal property security registers in the Province of Ontario together with executed copies of all discharges or releases of prior security interests relating to the Regulatory Asset subject to the Transfer; provided that the IESO may establish that any particular registration does not affect the Regulatory Asset by delivering a letter or acknowledgment signed by the applicable secured party.

(b) The obligation of the Issuer to pay the Purchase Price related to each Transfer of a specified portion of the Regulatory Asset (including the initial Transfer) shall be subject to the satisfaction or waiver by the Issuer and the Indenture Trustee of each of the following conditions:

(i) as of the applicable Closing Date, all Program Agreements shall have been entered into on terms and conditions satisfactory to the Issuer and the Indenture Trustee and shall be in full force and effect as of such Closing Date;

(ii) as of the applicable Closing Date, no Insolvency Event in respect of the Transferor shall have occurred and the Transferor is not insolvent and will not have been made insolvent by such Transfer and the Transferor is not aware of any pending insolvency with respect to itself;

(iii) as of the applicable Closing Date, (A) the representations and warranties of the IESO in this Agreement must be true and correct with the same force and effect as if made on that date (except to the extent they relate to an earlier date), (B) no breach of any covenant or agreement of the IESO contained in this Agreement shall have occurred and not been waived, and (C) no Servicer Default shall have occurred and not been waived;

(iv) on or prior to the applicable Closing Date, the Transferor shall have taken all action required to provide for the Transfer, upon payment of the Purchase Price, of the specified portion of the Regulatory Asset as set forth in the applicable Transfer Notice on the Closing Date, free and clear of all Liens other than Liens created by the Issuer pursuant to the Program Agreements;

(v) the Transferor shall have delivered to the Indenture Trustee and the Issuer an Officer's Certificate confirming the satisfaction of each condition precedent specified in Sections 2.2(b)(i), (ii), (iii) and (iv);

(vi) the Transferor shall have delivered to the Indenture Trustee, the Rating Agencies and the Issuer any Opinions of Counsel reasonably required by them **[NTD: Scope of opinions required to be confirmed by the Dealers and their counsel]**;

(vii) as of the applicable Closing Date, (A) the Issuer shall have sufficient funds available to pay the Purchase Price as set forth in the applicable Transfer Notice, (B) all conditions to any incurrence of Funding Obligations intended to provide such funds set forth in the Indenture (and any applicable Supplemental Indenture) or other instrument shall have been satisfied or waived, (C) the Rating Agency Condition in respect of the issuance of the Funding Obligations funding the payment of the Purchase Price shall have been satisfied, and (D) the Funding Obligation required to fund the payment of the Purchase Price shall have been issued at the same time as, or prior to, the Transfer; and

(viii) after giving effect to the Transfer, each of the Fair Hydro Variance Account and the Regulatory Asset will have a balance or amount, as applicable, equal to or greater than zero.

ARTICLE 3
ROLE OF THE SERVICER

3.1 Designation of Servicer

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

3.2 Duties of Servicer Generally

(a) The Servicer shall:

(i) issue settlement statements to Electricity Vendors that include amounts in respect of the Clean Energy Adjustment as prescribed by the Act and the Regulations;

(ii) receive from Electricity Vendors amounts in respect of Electricity Vendor CEA Collections including payments made directly to the IESO as an Electricity Vendor (such amounts received being "**Servicer CEA Collections**");

(iii) hold and remit Servicer CEA Collections in accordance with Section 3.3;

(iv) receive information from Electricity Vendors in respect of CEA Consumer Invoice Amounts and Electricity Vendor CEA Collections and such other information as the IESO may reasonably request for the purposes of determining the IESO Deferral or such further information as may be required;

(v) determine and record the IESO Deferral for each month and make any necessary corrections thereto in accordance with the Act and the Regulations;

(vi) forecast electricity demand by Specified Consumers for Reference Periods;

(vii) provide information to the Board in respect of forecast electricity demand or any other information the Board may require from the Servicer to facilitate the Board's determination of the rates at which Specified Consumers are to be invoiced so as to enable full recovery of the Clean Energy Adjustment in respect of any Reference Period;

(viii) respond to inquiries by Electricity Vendors, the Board or any other Governmental Authority with respect to the Clean Energy Adjustment;

(ix) investigate and handle delinquencies by Electricity Vendors regarding Servicer CEA Collections (and furnish reports with respect to such delinquencies to the Issuer);

(x) process and deposit Servicer CEA Collections and make periodic remittances to the Issuer in accordance with Section 3.3;

(xi) furnish periodic and current reports to the Issuer, the Board, the Indenture Trustee and the Rating Agencies, as may reasonably be required by the Issuer;

(xii) take all necessary action in connection with Funding Rebates as set forth herein; and

(xiii) perform such other duties as may be reasonably required from time to time to be performed by it.

(b) Without limiting the generality of Section 3.2(a), in furtherance of the foregoing, the Servicer hereby agrees that it shall also have, and shall comply with, the duties and responsibilities relating to data acquisition, consumption and settlement statement calculation, settlement, collections, posting, payment processing and remittance with reasonable care and in material compliance with each applicable Requirement of Law, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to similar assets for its own account and, if applicable, for others.

(c) Notwithstanding anything to the contrary in this Agreement, the duties of the Servicer set forth in this Agreement shall be qualified and limited in their entirety by the Act, the Regulations, all applicable laws and the rules and regulations promulgated thereunder as in effect at the time such duties are to be performed.

3.3 Remittances

(a) The Servicer shall establish an Eligible Deposit Account (the "**IESO Segregated Account**") bearing a designation clearly indicating that the funds deposited therein are held in trust for the benefit of the owners of Investment Interests. If at any time the IESO Segregated Account ceases to be an Eligible Deposit Account, the Servicer shall within 30 days establish a new IESO Segregated Account as an Eligible Deposit Account and shall transfer any cash and/or any investments held in the former account to such new account and make all future deposits to such new account.

(b) The Servicer shall deposit all Servicer CEA Collections into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within two Servicer Business Days of receipt by the Servicer and such Servicer CEA

Collections shall remain in the IESO Segregated Account until remitted in accordance with Section 3.3(d).

(c) The IESO agrees and acknowledges that it holds all Servicer CEA Collections and any other proceeds in respect of the Clean Energy Adjustment received by it in trust for the benefit of the Issuer, any other owner of Investment Interests, the Indenture Trustee and the Specified Creditors and that all such amounts will be remitted by the Servicer in accordance with this Section 3.3 without any surcharge, fee, offset, charge or other deduction. The IESO further agrees not to make any claim to reduce its obligation to remit all Servicer CEA Collections received by it in accordance with this Agreement.

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

(e) On or before the **[2nd]** Servicer Business Day following the end of each Billing Period, the Servicer shall prepare and deliver to the Issuer, the Indenture Trustee and the Rating Agencies a written report substantially in the form of Exhibit B (a "**Monthly Report**").

3.4 Funding Rebates

(a) On or before the **[4th]** Servicer Business Day following the end of each calendar month in which no Clean Energy Adjustment is billed to Specified Consumers, the Issuer shall prepare and deliver to the IESO a written statement substantially in the form of Exhibit C (a "**Monthly Funding Rebate Statement**") setting out the aggregate amount of all (i) Funding Costs, (ii) Finance Reserve Deposits, (iii) Financing Entity Expenses, and (iv) Tax Liabilities (net of Tax Refunds), that were incurred by or on behalf of the Issuer during the previous calendar month ("**Monthly Funding Expenses**").

(b) On or before the **[10th]** Servicer Business Day following receipt by the IESO of the Monthly Funding Rebate Statement, the IESO shall deliver or cause to be delivered to the Issuer, by wire transfer in immediately available funds, an amount in Canadian dollars equal to the Monthly Funding Expenses set forth in the applicable Monthly Funding Rebate Statement (the "**Funding Rebate**").

(c) Concurrent with the payment by the IESO to the Issuer of any Funding Rebate as required under Section 3.4(b), the IESO shall increase the balance of the Fair Hydro Variance Account by an amount equal to the Funding Rebate and, as a consequence, the Regulatory Asset shall be adjusted accordingly.

[NTD: It may be necessary to have IESO pay an additional nominal Funding Rebate (i.e. $10) each time a Regulatory Asset is Transferred – for tax reasons.]

3.5 Reporting Functions

(a) Notification of Laws and Regulations. The Servicer shall promptly notify the Issuer in writing of any Requirement of Law hereafter adopted or announced or the occurrence of any other event or circumstance that has a material adverse effect on the Servicer's ability to perform its duties and obligations under this Agreement.

(b) Other Information. Upon the reasonable request of the Issuer, the Indenture Trustee or any Rating Agency, the Servicer shall provide to the Issuer, the Indenture Trustee or such Rating Agency, as the case may be, any public financial information in respect of the Servicer, or any material information regarding the Investment Interest or the Regulatory Asset to the extent it is reasonably available to the Servicer, as may be reasonably necessary and permitted by law to enable the Issuer, the Indenture Trustee or the Rating Agencies to monitor the performance by the Servicer of its duties and obligations hereunder. In addition, the Servicer shall provide the Issuer and the Indenture Trustee, within a reasonable time after written request therefor, any information available to the Servicer or reasonably obtainable by it that is necessary to calculate the Clean Energy Adjustment.

3.6 Servicing and Maintenance Standards

The Servicer shall monitor payments and impose collection policies on Electricity Vendors with respect to Electricity Vendor CEA Collections. On behalf of the Issuer, the Servicer shall: (a) manage, service, administer, collect and receive Servicer CEA Collections with reasonable care and in material compliance with each applicable Requirement of Law, including the Act and the Regulations, using the same degree of care and diligence that the Servicer exercises with respect to the collection of other amounts from Electricity Vendors for its own account and, if applicable, for others; (b) follow standards, policies and procedures in performing its duties as Servicer that are customary for an electricity market operator and administrator that regularly performs settlement functions; (c) use all reasonable efforts, consistent with its customary servicing procedures, to receive and hold Servicer CEA Collections in trust for the benefit of the Issuer; (d) comply with each Requirement of Law, including all regulations and guidelines, applicable to and binding on it relating to its duties hereunder; and (e) provide all information to the Board as required by the Act and the Regulations. The Servicer shall follow such customary and usual practices and procedures as it shall deem necessary or advisable in its servicing of all or any portion of the Investment Asset and the Issuer Investment Interest, which may include, at the direction of the Issuer, the taking of legal action, at the Issuer's expense but subject to the priority of payments set forth in **[Section 8.02(e)]** of the Indenture. In no event shall the Issuer Investment Interest be set off at any time by the IESO or any Permitted Successor thereof in connection with any default by such Person or otherwise.

3.7 Binding Effect of Servicing Obligations

The obligations to continue to provide services and to receive and account for Servicer CEA Collections and related amounts will be binding upon the Servicer and any Permitted Successor so long as the Servicer CEA Collections have not been fully received and posted. Any Person (a) into which the Servicer may be merged, converted or amalgamated and that is a Permitted Successor, (b) that may result from any merger, conversion or amalgamation to which the Servicer shall be a party and that is a Permitted Successor, (c) that may succeed to the properties and assets of the Servicer substantially as a whole and that is a Permitted Successor, or (d) that otherwise is a Permitted Successor, which Person in any of the foregoing cases executes an agreement of assumption to perform all of the obligations of the Servicer hereunder, shall be the successor to the Servicer under this Agreement without further act on the part of any of the parties to this Agreement; provided, however, that (i) immediately after giving effect to such transaction, no representation or warranty made pursuant to Section 4.1 shall have been breached and no Servicer Default and no event that, after notice or lapse of time, or both, would become a Servicer Default shall have occurred and be continuing, (ii) the Servicer shall have delivered to the Issuer and the Indenture Trustee an Officer's Certificate and an Opinion of Counsel from external counsel stating that such consolidation, conversion, merger or succession and such agreement of assumption complies with this Section 3.7 and that all conditions precedent, if any, provided for in this Agreement relating to such transaction have been complied with, and (iii) the Servicer shall have given to the Issuer prior written notice of such transaction. When any Person that is a Permitted Successor acquires the properties and assets of the Servicer substantially as a whole or otherwise becomes the successor, by merger, conversion, consolidation, sale, transfer, lease or otherwise, to all or substantially all the assets of the Servicer in accordance with the terms of this Section 3.7, then, upon satisfaction of all of the other conditions of this Section 3.7, the preceding Servicer shall automatically and without further notice be released from all of its obligations hereunder (except for responsibilities for its actions prior to such release).

3.8 Limitation on Liability of Servicer and Others

(a) Except as otherwise provided under this Agreement, including Section 6.1, neither the Servicer nor any of the directors, officers, employees or agents of the Servicer shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment; provided, however, that this provision shall not protect the Servicer or any such Person against any liability that would otherwise be imposed by reason of negligence, recklessness or willful misconduct in the performance of duties or by reason of reckless disregard of obligations and duties under this Agreement. The Servicer and any director, officer, employee or agent of the Servicer may rely in good faith on the advice of counsel or on any document of any kind, *prima facie* properly executed and submitted by any Person, respecting any matters arising under this Agreement.

(b) Except as provided in this Agreement, the Servicer shall not be under any obligation to appear in, prosecute or defend any legal action relating to the Issuer Investment Interest that is not directly related to one of the Servicer's enumerated duties in this Agreement or related to its obligation to pay indemnification, and that in its

reasonable opinion may cause it to incur any expense or liability; provided, however, that the Servicer will, at the direction of the Issuer, in respect of any Proceeding, undertake any action that is not specifically identified in this Agreement as a duty of the Servicer but that the Issuer reasonably determines is necessary or desirable in order to protect the rights and duties of the Issuer or the Indenture Trustee under this Agreement and the interests of Specified Creditors under the Indenture.

3.9 The IESO Not to Resign as Servicer

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

3.10 Appointments

(a) Subject to Section 3.10(b), the Servicer may at any time appoint any Person to perform all or any portion of its obligations as Servicer hereunder; provided, however, that the Rating Agency Condition shall have been satisfied in connection therewith; and provided, further, that the Servicer shall remain obligated and be liable under this Agreement for the servicing and administering of the Issuer Investment Interest in accordance with the provisions hereof without diminution of such obligation and liability by virtue of the appointment of such Person and to the same extent and under the same terms and conditions as if the Servicer alone were servicing and administering the Investment Interest. The fees and expenses of any such Person shall be as agreed between the Servicer and such Person from time to time, and none of the Issuer, the Indenture Trustee, Specified Creditors or any other Person shall have any responsibility therefor or right or claim thereto. Any such appointment shall not constitute a resignation of the Servicer under Section 3.9.

(b) The following matters shall be performed by the Electricity Vendors in accordance with the Act and shall not be considered an "appointment" for purposes of Section 3.10(a): (i) invoicing Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) collection from Specified Consumers of payments in respect of such invoices and remittance of such payments to the Servicer; and (iii) reporting to the Servicer the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and such other information the

IESO may reasonably request for the purposes of determining the IESO Deferral or such further information as may be required. The Servicer shall not be responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the Act or the Regulations or in respect of the matters set out in this Section 3.10(b).

3.11 Effective Period and Termination

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

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE IESO

4.1 Representations and Warranties

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

(a) Organization and Good Standing. The IESO is a statutory corporation amalgamated under the laws of the Province of Ontario, with requisite power and authority to own its properties, to conduct its business as such properties are currently owned and such business is presently conducted by it, and to execute, deliver and carry out the terms of this Agreement, including, for greater certainty, acting as Servicer in accordance with this Agreement.

(b) Due Qualification. The IESO has obtained all necessary licences and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including acting as Servicer under this Agreement) shall require such licences or approvals, except where the failure to so qualify or obtain such licences and approvals would not be reasonably likely to have a material adverse effect on the IESO's business, operations, assets, revenues or properties, the Regulatory Asset, the servicing of related Investment Interests, the Issuer or the repayment when due of the Funding Obligations.

(c) Power and Authority. The IESO has the requisite power and authority to execute and deliver this Agreement and to carry out its terms. The IESO has full corporate

power and authority to hold the Regulatory Asset and to Transfer specified portions of the Regulatory Asset to the Issuer and the IESO has duly authorized such Transfer to the Issuer by all necessary action. The execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary action on the part of the IESO under all applicable laws.

(d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the IESO, enforceable against the IESO in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally from time to time in effect and to general principles of equity (including concepts of materiality, reasonableness, good faith and fair dealing).

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms hereof by the IESO do not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time, or both) a default under, the IESO's by-laws, or any indenture, or other material agreement or instrument to which the IESO is a party or by which it is bound, result in the creation or imposition of any Lien upon any of the IESO's properties pursuant to the terms of any such indenture, agreement or other instrument or violate any existing law or any order, rule or regulation applicable to the IESO issued by any Governmental Authority having jurisdiction over the IESO or its properties.

(f) No Proceedings. There are no Proceedings or, to the IESO's knowledge, investigations pending or Proceedings threatened, before any Governmental Authority having jurisdiction over the IESO or its properties: (a) asserting the invalidity of this Agreement or the Act, (b) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or the Act, or (c) seeking a determination or ruling that could reasonably be expected to materially and adversely affect the performance by the IESO of its obligations under, or the validity or enforceability of, this Agreement or the Act.

(g) Approvals. No approvals, authorizations, consents, orders or other actions or filings with any Governmental Authority are required for the IESO to execute, deliver and perform its obligations under this Agreement except those which have previously been obtained or made.

(h) Information.

(i) At the date hereof and as of each applicable Closing Date, all written information, as amended or supplemented from time to time, provided by the Transferor to the Issuer with respect to the Regulatory Asset is true and correct in all material respects and does not omit any material facts.

(ii) Each report and certificate delivered in connection with any filing made or information provided to the Board by the IESO in connection with the Act,

including on behalf of the Issuer with respect to Clean Energy Adjustments, will constitute a representation and warranty by the IESO that each such report or certificate, as the case may be, is true and correct in all material respects; provided, however, that, to the extent any such report or certificate is based in part upon or contains assumptions, forecasts or other predictions of future events, the representation and warranty of the IESO with respect thereto will be limited to the representation and warranty that such assumptions, forecasts or other predictions of future events are reasonable based upon historical performance (and facts known to the IESO on the date such report or certificate is delivered).

(i) The Transfer. On the applicable Closing Date, the specified portion of the Regulatory Asset as set forth in the applicable Transfer Notice shall be validly Transferred to the Issuer and the IESO will have no right, title or interest in the related Investment Interest and the related Investment Interest shall not form part of the estate of the IESO in the event of an Insolvency Event in respect of the IESO.

(j) No Transfer. Except pursuant to any Co-Owner Agreement, no portion of the Regulatory Asset has been sold, transferred, assigned, pledged or otherwise conveyed by the IESO to any Person other than the Issuer or the Indenture Trustee, and, to the IESO's knowledge (after due inquiry), no security agreement, financing statement or equivalent security or lien instrument listing the IESO as debtor covering all or a portion of the Regulatory Asset (or the corresponding Investment Interest upon the Transfer thereof) is on file or of record in any jurisdiction, except such as may have been filed or recorded in favour of the Issuer or the Indenture Trustee in connection with the Program Agreements.

(k) Title. The IESO is the sole owner of the specified portion of the Regulatory Asset that is to be Transferred to the Issuer on the applicable Closing Date, free and clear of all Liens.

(l) Tax Liens. After due inquiry, the IESO is not aware of any judgment or tax lien filing against the IESO.

(m) Solvency. On the date hereof and after giving effect to each Transfer, the IESO:

(i) is solvent and expects to remain solvent;

(ii) reasonably believes that it will be able to pay its debts as they come due; and

(iii) is able to pay its debts as they mature and does not intend to incur, or believes that it will not incur, indebtedness that it will not be able to repay at its maturity.

(n) No Court Order. There is no order by any court that seeks to enjoin the performance of any obligations of the IESO under the Act or this Agreement.

4.2 Survival

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

4.3 Limitations on Representations and Warranties

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

ARTICLE 5
COVENANTS OF THE IESO

5.1 Existence

Subject to Section 3.9, so long as any Funding Obligations are outstanding, the IESO (a) will keep in full force and effect its existence and remain validly existing under the laws of the Province of Ontario, and (b) will obtain and preserve its qualifications to do business in each jurisdiction in which such qualification is or will be necessary to protect the validity and enforceability of this Agreement and each other instrument or agreement to which the IESO is a party necessary for the proper administration of this Agreement and the transactions contemplated hereby.

5.2 No Liens

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

5.3 Notice of Liens

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

5.4 Compliance with Law

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

5.5 Covenants Related to the Investment Interest

(a) So long as any Issuer Funding Obligations are outstanding, the IESO shall treat the Issuer Investment Interest as the Issuer's property for all purposes.

(b) Except for passive investments held for employee benefit purposes, the IESO shall not at any time become a holder of Issuer Funding Obligations other than Funding Rebates.

(c) The IESO shall disclose the effects of all transactions between the IESO and the Issuer in accordance with generally accepted accounting principles (for government entities).

(d) The IESO agrees that upon completion of a Transfer, the IESO shall reduce the balance in the Fair Hydro Variance Account by the Purchase Price and will adjust the Regulatory Asset accordingly.

(e) (i) in all Proceedings relating directly or indirectly to the Issuer Investment Interest, the IESO shall affirmatively certify and confirm that it has Transferred all of its rights and interests in and to the specified portion of the Regulatory Asset giving rise to the Issuer Investment Interest, (ii) the IESO shall not make any statement or reference in respect of the Issuer Investment Interest that is inconsistent with the ownership interest of the Issuer, (iii) the IESO shall not take any action in respect of the Issuer Investment Interest except solely in its capacity as the Servicer thereof pursuant to this Agreement, and (iv) the IESO shall not sell any portion of the Regulatory Asset pursuant to the Act to any other Person unless a Co-Owner Agreement has been entered into and the Rating Agency Condition has been satisfied with respect thereto.

5.6 Non-petition Covenants

Notwithstanding any prior termination of this Agreement or the Indenture, the IESO shall not, prior to the date that is one year plus one day after termination of the Indenture and the payment in full of all Issuer Funding Obligations and any other amounts owed under the Indenture, petition or otherwise invoke the process of any Governmental Authority for the purpose

of commencing or sustaining a Proceeding against the Issuer under any Canadian bankruptcy, insolvency or similar law, appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official or any substantial part of the property of the Issuer.

5.7 Disclosure

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

5.8 Further Assurances

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

5.9 Co-Owner Agreements

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

5.10 Access to Certain Records and Information Regarding Investment Interest

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

5.11 Maintenance of Operations

Subject to Section 3.7, the IESO agrees to continue, unless prevented by circumstances beyond its control, to operate as the electricity system operator in the Province of Ontario in order to provide service so long as it is acting as the Servicer under this Agreement.

ARTICLE 6
IESO INDEMNITIES

6.1 Liability of the IESO; Indemnities

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

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

(b) For purposes of Section 6.1(a), in the event of the termination of the rights and obligations of the IESO (or any successor thereto pursuant to Section 3.7) as Servicer pursuant to Section 7.1, or a resignation by such Servicer pursuant to this Agreement, the IESO shall be deemed to be the Servicer pending appointment of a Successor Servicer pursuant to Section 7.2.

(c) Indemnification under Section 6.1(a) shall include reasonable out-of-pocket fees and expenses of investigation and litigation (including reasonable legal fees and expenses), except as otherwise expressly provided in this Agreement.

(d) Indemnification under this Section 6.1 shall survive any repeal of, modification of, or supplement to, or judicial invalidation of, the Act and shall survive the resignation or removal of the Indenture Trustee or the termination of this Agreement and will rank *pari passu* with other general, unsecured obligations of the IESO. Other than provided in the preceding sentence, the IESO shall not indemnify any party under this Section 6.1 for any changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision.

(e) Except to the extent expressly provided in this Agreement (including the payment of the Purchase Price), the IESO hereby releases and discharges the Issuer and the Indenture Trustee, and each of their respective trustees, officers, directors and agents (collectively, the "**Released Parties**"), from any and all actions, claims and

demands whatsoever, whenever arising, which the IESO, in its capacity as Servicer or otherwise, shall or may have against any such Person relating to the Investment Interest or the IESO's activities with respect thereto, other than any actions, claims and demands arising out of the willful misconduct, bad faith or gross negligence of the Released Parties.

ARTICLE 7
SERVICER DEFAULT

7.1 Servicer Default

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

(a) any failure by the Servicer to remit to the Collection Account on behalf of the Issuer any required remittance that shall continue unremedied for a period of **[two/three][NTD: Rating Agencies will expect 2-3 days]** Business Days after written notice of such failure is received by the Servicer from the Issuer (with a copy to the Indenture Trustee) or the Indenture Trustee or after discovery of such failure by a Responsible Officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, duly to observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in this Agreement (other than as provided in Section 7.1(a)) or any other Program Agreement to which it is a party, which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer (with a copy to the Indenture Trustee) or to the Servicer or the IESO, as the case may be, by the Indenture Trustee or (B) such failure is discovered by a Responsible Officer of the Servicer;

(c) any representation or warranty made by the Servicer in this Agreement, any other Program Agreement or in any Monthly Report, shall prove to have been incorrect when made, which has a material adverse effect on the Issuer, the Indenture Trustee or any other Specified Creditor and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer (with a copy to the Indenture Trustee) by the Issuer or the Indenture Trustee or (ii) such failure is discovered by a Responsible Officer of the Servicer;

(d) an Insolvency Event occurs with respect to the Servicer or the IESO;

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs; or

(f) the termination or withdrawal of the "Servicing Guarantee" under the Provincial Protection and Assurances Agreement. **[NTD: Subject to finalization of the Provincial Protection and Assurances Agreement.]**

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

7.2 Appointment of Successor Servicer

(a) Upon the Servicer's receipt of a Termination Notice pursuant to Section 7.1 or the Servicer's resignation or removal in accordance with the terms of this Agreement, the predecessor Servicer shall continue to perform its functions as Servicer under this Agreement, until a Successor Servicer shall have assumed in writing the obligations of the Servicer hereunder as described below. In the event of the Servicer's removal or resignation hereunder, the Indenture Trustee may, and at the

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

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

7.3 Waiver of Past Defaults

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

7.4 Notice of Servicer Default

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

7.5 Cooperation with Successor Servicer

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

ARTICLE 8
MISCELLANEOUS

8.1 Amendment

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

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

8.2 Notices

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

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

Independent Electricity System Operator
[Address]

Attention: ■
Email: ■

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

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

Attention: ■
Email: ■

(c) in the case of the Indenture Trustee:

■
[Address]

Attention: ■
Email: ■

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

8.3 Assignment

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

8.4 Limitations on Rights of Third Parties

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

8.5 Severability

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

8.6 Separate Counterparts; Electronic Delivery

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

8.7 Governing Law

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

8.8 Assignment to Indenture Trustee

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

8.9 Limitation of Liability of Indenture Trustee

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

8.10 Limitation of Liability of the Issuer Trustee

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

(b) The Issuer Trustee will not be subject to any liability whatsoever, in tort, in contract or otherwise, in connection with the Issuer's property or the Issuer's activities, to the Issuer's beneficiaries or to any other Person, for any action taken or permitted by the Issuer Trustee to be taken, or the Issuer Trustee's failure to compel in any way any former or acting Issuer Trustee to redress any breach of trust with respect to the execution of the duties of its office or in respect of the Issuer's property or

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

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

8.11 Waivers

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

8.12 Indenture Trustee Actions

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

8.13 Issuer Trustee

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

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

By: _____
Name:
Title:

By: _____
Name:
Title:

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor and Servicer

By: _____
Name:
Title:

By: _____
Name:
Title:

ACKNOWLEDGED AND ACCEPTED:

[INDENTURE TRUSTEE]
as Indenture Trustee

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A

FORM OF TRANSFER NOTICE

See attached

TRANSFER NOTICE

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

Attention: ■
Email: ■

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

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

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

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

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

Specified portion of Regulatory Asset: $■

Purchase Price: $■

Closing Date: ■

The Transferor hereby represents, warrants and confirms that:

(i) each of the representations and warranties on the part of the Transferor contained in the Master Transfer and Servicing Agreement are true and correct in all respects on the date hereof as if made on the date hereof;

(ii) the Transferor is not in breach of any of its covenants in the Master Transfer and Servicing Agreement; and

(iii) as of the date hereof, each condition precedent that must be satisfied by the Transferor under Section 2.2 of the Master Transfer and Servicing Agreement is capable of being satisfied prior to Closing Date.

The closing shall take place at ■ (Toronto time) on the Closing Date referred to above at the offices of ■, except as may be otherwise mutually agreed.

DATED this ■ day of ■, 20■.

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

By: _____
Name:
Title:

By: _____
Name:
Title:

The undersigned hereby accepts the foregoing offer.

DATED this ■ day of ■, 20■.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Transferor

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B

FORM OF MONTHLY REPORT

See Attached

MONTHLY REPORT

[NTD: Dealers and Counsel to confirm form of Monthly IESO Report.]

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

Attention: ■
Email: ■

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

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

	Item	**Amount**
(A)	Servicer CEA Collections:	$■
(B)	Balance of Collection Account:	$■

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

DATED this ■ day of ■, 20■.

INDEPENDENT ELECTRICITY SYSTEM OPERATOR
as Servicer

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT C

FORM OF MONTHLY FUNDING REBATE STATEMENT

See Attached

MONTHLY FUNDING REBATE STATEMENT

TO: INDEPENDENT ELECTRICITY SYSTEM OPERATOR
[Address]

Attention: ■
Email: ■

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

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

Monthly Funding Expense	**Amount**
Funding Costs:	$■
Finance Reserve Deposits:	$■
Financing Entity Expenses:	$■
Tax Liabilities (net of Tax Refunds):	$■
Total Monthly Funding Expense:	**$■**

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

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

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

DATED this ■ day of ■, 20■.

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

By: _____
Name:
Title:

By: _____
Name:
Title:

RE_ EXTERNAL Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro.rtf

From: Montgomery, Kaitlin (MOF) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro
Date: Monday, July 10, 2017 11:26:07

Hi Cindy, Nadine – would 12-1:30pm on Wednesday work for you?

Thanks,

Kaitlin

From: Gadi Mayman [mailto:Gadi.Mayman@ofina.on.ca]
Sent: July 10, 2017 10:12 AM
To: Montgomery, Kaitlin (MOF)
Cc: Calwell, Carolyn (ENERGY/MEDEI/MRI); Hume, Steen (ENERGY); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Veinot, Cindy (TBS); Petsche, Nadine (TBS); Karpowicz, Eva (MOF); Nelms, Scott (MOF); Gavaris, Hresa (OFA); Strathy, Anna (OFA)
Subject: Re: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

My morning on Wednesday is pretty jammed, but I'm available any time after 11:30, as I can free up my time in the afternoon. I agree that TD should be included.

Regards,

Gadi

On Jul 10, 2017, at 9:58 AM, Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca> wrote:

> Hi Everyone,
>
> Following up on our Thursday discussion I'd like to set up a call with OPG this week

– could 10am on Wednesday work? Should anyone from TD be included in this discussion as well?

Thanks,

Kaitlin

From: Nelms, Scott (MOF)
Sent: July 5, 2017 5:49 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Hume, Steen (ENERGY); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); Montgomery, Kaitlin (MOF); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Cc: Karpowicz, Eva (MOF)
Subject: RE: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Good suggestion from Gadi – we should probably touch base internally in advance of meeting with OPG. I wonder if we could try for a quick 30 min phone call either tomorrow or Friday.

I will reach out to OPG to set something up for next week.

From: Nelms, Scott (MOF)
Sent: July 5, 2017 2:44 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Steen Hume (ENERGY) (Steen.Hume@ontario.ca); Mayman, Gadi (OFA) (Gadi.Mayman@ofina.on.ca); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); Montgomery, Kaitlin (MOF); ASHBOURNE, STEPHEN
Subject: FW: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Hi,

Please see the following comments from OPG / Torys on the guarantees.

I wonder if we are now at a point we should suggest sitting down with OPG on this perhaps early next week.

Thanks,

Scott

From: LEE John -TREASURY [mailto:john.s.lee@opg.com]
Sent: June 30, 2017 3:12 PM
To: Nelms, Scott (MOF)
Cc: WONG Leslie -LAWDIV; RYFA Ken -TREASURY; HAHN PARKER Janet -TREASURY
Subject: FW: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Scott:

Further to our discussion on the outstanding issues, please find below the comments from the Dealers on the “Markup” of the Provincial Protection and Assurance term sheet.

As noted below, the next step should be to get the appropriate parties from the Province to sit down with the dealers and OPG to go over the points and agree on a basis to move forward.

We should try to do that sometime next week. Let us know what times work on the Province side and we will coordinate with the Dealers & counsels.

John

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Friday, June 30, 2017 12:24 PM
To: LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV
Cc: Ramchandani, Rima; Hill, Krista; Feldman, Michael; Emes, Aaron; Mansoori, Nina
Subject: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

John/Les/Ken,

Please find below an issues list on the Province's comments on the Provincial Protection and Assurances Term Sheet (formerly the Provincial Support Agreement). This list reflects input from the dealers, Oslers and Torys. Please let us know if you have any additional comments or questions. If not, will you be reaching out to the Province to schedule a meeting next week (with the dealers, OPG, the Province and their counsels) to discuss these points? The dealers and their counsel don't see value in exchanging further drafts of the term sheet until they have had an opportunity to meet with the Province. We agree with this approach and are happy to assist in coordinating a meeting for next week. It would also be helpful to hear the Province's rationale and concerns for making some of these changes. Please let us know.

Many thanks,

Nina

1. The Servicing Guarantee:

(a) It is written in favour of only the financing entity. However, in the MTSA, we are asking for covenants directly in favour of Indenture Trustee. The Indenture Trustee/specified creditors should have the direct benefit of the guarantee rather than relying on an indirect security interest in the servicing guarantee.

(b) It should be clarified that the servicing obligations of the electricity vendors are covered.

(c) If the guarantee is unenforceable, we should fall back to an indemnity, not a "functionally equivalent direct covenant" which is an uncertain concept.

(d) We don't want an exclusion for economic loss. That may cover whatever losses the specified creditors do suffer.

2. Change of Law.

(a) This should be written as a guarantee not an indemnity.

(b) It should be directly in favour of the Indenture Trustee/specified creditors and it should cover all the "finance amount" and not just funding obligations.

(c) We do not want the guarantee to be provided by another entity which is in turn guaranteed by Ontario. It should come directly from Ontario.

(d) There should be no "materiality" threshold for a claim. If obligations are not paid in full, then there should be a claim.

(e) The choice to assume or accelerate should be at the option of the holders, not the guarantor.

(f) If accelerated, then the 1% premium should be payable. This is a voluntary termination by the Province.

3. Undertaking Regarding Mismatches (market disruption)

(a) At best this structure defers the discussion of protection for a market disruption. At worst, it is impractical that take-out financing needs to be arranged in advance of each warehouse financing. We should rely on a definition of market disruption.

4. Approvals.

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RE_ EXTERNAL Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro.rtf

From: Montgomery, Kaitlin (MOF) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro
Date: Monday, July 10, 2017 11:26:07

Hi Cindy, Nadine – would 12-1:30pm on Wednesday work for you?

Thanks,

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To: Montgomery, Kaitlin (MOF)
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Re_ A favour.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: A favour
Date: Saturday, October 14, 2017 12:39:21

Thx

Sent from my iPhone

On Oct 14, 2017, at 11:14 AM, Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca> wrote:

> Hi kim
>
> Please see attached for the deck that was used for the public accounts technical briefing in September (incl. the ieso piece)
>
> Hope this helps!
>
> Sarah
>
> Sent from my BlackBerry 10 smartphone on the Rogers network.
> Original Message
> From: Kim Marshall
> Sent: Saturday, October 14, 2017 7:01 AM
> To: Veinot, Cindy (TBS); Hosick, Sarah (TBS)
> Subject: A favour
>
> If either of you has access to the public accounts presentation pieces re ieso can you pls send to me, would like to use it as a model for technical briefing and am having vpn issues at home thx
>
> Sent from my iPad
> This e-mail message and any files transmitted with it are intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient(s), any dissemination, distribution or copying of this e-mail message or any files transmitted with it is strictly prohibited. If you have received this message in error, or are not the named recipient(s), please notify the sender immediately and delete this e-mail message.

<Public Accounts Technical Briefing 201617_Final.pptx>

Re_ Discussion Items for IESO Call.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Re: Discussion Items for IESO Call
Date: Monday, June 26, 2017 08:32:13

Will call in about 20min

Sent from my iPad

> On Jun 26, 2017, at 8:26 AM, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca> wrote:
>
> Are you available for a call? I'm at 416 325 8027.
> Thanks.
> Nadine
>
> -----Original Message-----
> From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
> Sent: June 26, 2017 8:22 AM
> To: Petsche, Nadine (TBS)
> Subject: RE: Discussion Items for IESO Call
>
> Why Shannon?
>
> Kimberly Marshall | VP, Corporate Services & CFO Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
> 120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
> Web: https://na01.safelinks.protection.outlook.com/?url=www.ieso.ca&data=01%7C01%7Ckim.marshall%40ieso.ca%7Ca517545407f34398f9cd08d4bc8e8db7%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=TCuOyZyTXZQlHyDNYPcANB4gqf0oiQ9kqn4kSfbKqkA%3D&reserved=0 | Twitter: IESO_Tweets | LinkedIn: IESO
>
> Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.
>
> Conservation: https://na01.safelinks.protection.outlook.com/?url=www.saveONenergy.ca&data=01%7C01%7Ckim.marshall%40ieso.ca%7Ca517545407f34398f9cd08d4bc8e8db7%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=1A9JqBQIY%2Bq4rqTSJpyUPHl2kvsvRzQIzQFhIE7D5WQ%3D&reserved=0 | Twitter: saveONenergyOnt | LinkedIn: saveONenergy
>
> -----Original Message-----
> From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
> Sent: June 24, 2017 4:16 PM
> To: Kim Marshall
> Subject: RE: Discussion Items for IESO Call
>
> Hi Kim.
> I was thinking that it might be useful to invite Shannon (from E&Y) to participate on the call as well. In addition, if Lee Anne has additional questions on how the market books work, it might be helpful to give her the contact info for the team that reviews the internal controls for the market books?
> Thanks in advance.
> Nadine
>
> -----Original Message-----

> From: Kim Marshall [mailto:Kim.Marshall@ieso.ca]
> Sent: June-20-17 8:00 AM
> To: Petsche, Nadine (TBS); Picard, Michel; leeanne.probert@ca.ey.com
> Cc: Jeannette Briggs; Susan Nicholson; Georgia Ritchie-Wust
> Subject: RE: Discussion Items for IESO Call
>
> Georgia will co-ordinate. Can probably do without me
>
> Kimberly Marshall | VP, Corporate Services & CFO Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
> 120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
> Web: https://na01.safelinks.protection.outlook.com/?url=www.ieso.ca&data=01%7C01%7Ckim.marshall%40ieso.ca%7C96e45d0f650241fb9cd708d4bb3dc918%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=DFaAryrvQx%2FK9IEiSYfRcv5HbkPG7ofrXUZrGysaLwU%3D&reserved=0 | Twitter: IESO_Tweets | LinkedIn: IESO
>
> Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.
>
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>
>
> -----Original Message-----
> From: Kim Marshall
> Sent: June 15, 2017 3:37 PM
> To: 'Petsche, Nadine (TBS)'; Picard, Michel; 'leeanne.probert@ca.ey.com'
> Cc: Jeannette Briggs; Susan Nicholson
> Subject: RE: Discussion Items for IESO Call
>
> Nadine and Leeanne, Jeannette is the Director of settlements and Susan is our corporate controller. They are best to answer questions re the IESO market accounting and settlement. By cc to Georgia can we pls set up a 1/2 hour with Michel as well re your questions, thanks
>
> Kimberly Marshall | VP, Corporate Services & CFO Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
> 120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1
> Web: https://na01.safelinks.protection.outlook.com/?url=www.ieso.ca&data=01%7C01%7Ckim.marshall%40ieso.ca%7C96e45d0f650241fb9cd708d4bb3dc918%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=DFaAryrvQx%2FK9IEiSYfRcv5HbkPG7ofrXUZrGysaLwU%3D&reserved=0 | Twitter: IESO_Tweets | LinkedIn: IESO
>
> Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.
>
> Conservation: https://na01.safelinks.protection.outlook.com/?url=www.saveONenergy.ca&data=01%7C01%7Ckim.marshall%40ieso.ca%7C96e45d0f650241fb9cd708d4bb3dc918%7C7cd55abd63f243c58f4bd38ea458add8%7C0&sdata=0GvnegcowNacrEfrfOXTXxkm5SmwBVlqsxUYQ7v2kOk%3D&reserved=0 | Twitter: saveONenergyOnt | LinkedIn: saveONenergy
>

> -----Original Message-----
> From: Petsche, Nadine (TBS) [mailto:Nadine.Petsche@ontario.ca]
> Sent: June 15, 2017 8:01 AM
> To: Picard, Michel; Kim Marshall
> Subject: Fw: Discussion Items for IESO Call
>
> Good morning.
> We had suggested that EY list some of their questions in advance of today's call (see below). I personally think however, that we first need to establish a common understanding of RRA (eg. Clarity of accounting guidance wrt governing board, independence, different types of RRAs), and perhaps address some of EY's questions/confusion following their read of the AG's recent comments/postings and how they might relate (or not) to the IESO's situation.
> Just forwarding these Q's as an info item. Talk soon, N
>
> From: Lee Anne Probert <leeanne.probert@ca.ey.com>
> Sent: Thursday, June 15, 2017 2:42 AM
> To: Petsche, Nadine (TBS)
> Cc: Veinot, Cindy (TBS); Suzie Gignac; Blake Langill
> Subject: Discussion Items for IESO Call
>
>
> Hi Nadine,
>
> Below is a list of the items I would like to discuss on our call with the IESO.
>
> Please let me know if you have any questions/concerns with the list.
>
> Regards,
> Lee Anne
>
> IESO Financial Statements
>
> Current supply cost variance account
>
> · Where is this recorded on the 2016 balance sheet (Amounts due to/from market participants?)
>
> · Why is this not a regulatory asset? Is it considered to be a financial asset?
>
> · There are similarities between this variance account and the new FHP variance account, but FHP variance account is going to be accounted for a regulatory asset. What is driving different treatment?
>
> Market accounts
>
> · Can we walk through the entries that are booked as part of the settlement process (timing and DRs/CRs)
>
> · What are ‘Other liabilities’ (Note 3)
>
> Market Administration/Settlement
>
> Confirm/correct the following:
>
> Price consumers pay comprised of:
>
> · Electricity price:

>
> o Electricity commodity price (HOEP)
>
> o Transmission price
>
> o Distribution price
>
> · Global Adjustment
>
> IESO only settles the electricity commodity price component and the related portion of the Global Adjustment
>
> Supply of electricity comes from:
>
> 1. OPG (rate set by OEB)
>
> 2. Non-utility generators (rate set by contract – contracts held by OEFC)
>
> 3. Generation facilities under contract with IESO (rate set by contract)
>
> 4. Imports (paid HOEP)
>
> Are there are other suppliers that are paid HOEP?
>
> Portion of Global Adjustment determined by IESO driven by variances relating to #1, #2, #3 above
>
> What is the nature of the contracts IESO enters into?
> Participation agreements
>
> · IESO enters into participation agreements with all market participants (buyers and sellers)
>
> · Participation agreements bind IESO and counterparty to follow market rules
>
> · Participation agreement would be the only contract IESO enters into with #1, #2, #4 above
> Supply contracts
>
> · Since IESO does not buy and sell electricity, what is the contract for? (IESO paying for commitment that the counterparty will supply electricity into the IESO grid?)
>
> · Does the IESO negotiate the terms of these contracts?
>
> Buyers of electricity from IESO grid are comprised of:
>
> · LDCs
>
> · Large consumers
>
> The electricity commodity price paid by all buyers is HOEP.
> IESO determines HOEP.
> Although IESO determines HOEP, IESO is not really determining rates charged to buyers because total price is a bundle of electricity at HOEP plus/minus Global Adjustment and OEB mandates that bundle must (over time) equal cost.
>
>
> [cid:image001.gif@01D2E57B.8F206A10]
>

> LeeAnne Probert | Senior Manager | Assurance Services
>
> Ernst & Young LLP
> EY Tower, 100 Adelaide Street West, P.O. Box 1, Toronto, Ontario M5H 0B3, Canada
> Office: 416 943 3554 | Cell: 416 888 6997 |
leeanne.probert@ca.ey.com<mailto:leeanne.probert@ca.ey.com>
> Fax: 416 943 3767 | EY/Comm: 1657762
>
> This e-mail does not constitute an opinion on the application of generally accepted accounting principles, or any form of assurance on or concurrence with a specific entity's accounting matters, financial statements, any financial or other information or internal controls. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment a specific entity should select or adopt. This e-mail is the equivalent of an informal discussion and may not be shown, referenced or distributed to anyone outside the recipient's organization.
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Market participants.pdf

From:	Veinot, Cindy (TBS)
To:	Susan Nicholson; Kim Marshall
Cc:	Donaldson, Mark (TBS); Hosick, Sarah (TBS)
Subject:	Market participants
Date:	August 31, 2017 12:34:00 PM

Hi Susan and Kim – do you have a list of the market participants divided by producers and users that you could share with us. I've included the following in a deck re: the market accounts and wanted to have a few other entity names to reference. I don't need a complete list, so even 5 of the largest on each side would be great. Today if possible.

Thanks,

Cindy

Slide content

§ The IESO is a party to the contracts with each market participant, and each market participant either owes an amount to the IESO or is owed an amount from the IESO.

§ For example:

- Ontario Power Generation has a receivable from IESO recorded on its financial statements related to power generated, and historically, IESO did not have a payable recorded to Ontario Power Generation – now it does

- Hydro One has a payable to IESO recorded on its financial statements related to power purchases, and historically, IESO did not have a receivable recorded from Hydro One – now it does

Materials for Review draft OFHP legislation .rtf

From: Cox, Hilary (ENERGY) []
To: Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]
CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]
Subject: Materials for Review draft OFHP legislation
Date: Monday, April 03, 2017 15:25:53
Attachment 1: @

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View the original item

Please see attached materials for Review of Draft OFHP legislation meeting tomorrow morning.

Hilary

Hilary Cox
Executive Assistant/Sr. Policy Advisor (A) | Assistant Deputy Mini

Attachments:

External - Draft 5 Annotated (Blks DS) GOV2016.146.e05 (April 3 2017).docx (126 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1A2976F1FBFAADB4AAB6FBC22FB1A95001110000ctsbigdcapmvs01&SavesetId=201706308855556~201704031925540000~Z~D12D983F4D46837B3E2D158F10A4DBF1&AttachmentId=1External - Draft 5 Annotated (Blks DS) GOV2016.146.e05 (April 3 2017).docx

Materials for Review draft OFHP legislation .rtf

From: Cox, Hilary (ENERGY) []
To: Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; 'Gavin He' [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]
CC: 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Ramchandani, Rima' [rramchandani@torys.com]; 'Glenn Zacher' [GZacher@stikeman.com]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Anthony Martinello' [Anthony.Martinello@ieso.ca]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Olusoga, Yinka' [yolusoga@torys.com]; 'Myers, Jonathan' [jmyers@torys.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]
Subject: Materials for Review draft OFHP legislation
Date: Monday, April 03, 2017 15:25:53
Attachment 1: External - Draft 5 Annotated (Blks DS) GOV2016.146.e05 (April 3 2017).docx

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Please see attached materials for Review of Draft OFHP legislation meeting tomorrow morning.

Hilary

Hilary Cox
Executive Assistant/Sr. Policy Advisor (A) | Assistant Deputy Minister's Office
Energy Supply Policy Division | Ministry of Energy
T: 416.327.7204 | Bb: 647.237.8140 |

E: Hilary.cox@ontario.ca

External - Draft 5 Annotated (Blks DS) GOV2016.146.e05 (April 3 2017).pdf

A proposal to create Legislation.

Fair Hydro Plan Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Insert explanatory note.]

ELECTRICITY ACT, 1998

1. (1) Section 1 of the *Electricity Act, 1998* would be amended by adding the following clause:

[Note: GGRA provisions have been removed for now. Please confirm if they should be re-inserted.]

(2) Clause 1 (f) of the Act would be struck out and the following substituted:

(f) to protect the interests of consumers with respect to the adequacy, reliability and quality of electricity service;

(f.1) to protect the interests of consumers with respect to the prices they pay for electricity, including protection of those interests through the Hydro financing initiative;

[Note: Since the Hydro financing initiative is a defined term and is clearly required to be implemented under the new substantive provisions of the Act, I'm still not sure why this needs to be addressed in the purpose clause. However, I have included a purpose provision as per your instructions.]

Article 1 – Purpose

The proposed new legislation will likely include a large number of provisions intended to support the "financeability" of the structure. As a result, it may make sense for (LSB is exploring the potential) the Bill to create a new stand-alone energy statute, much like the *Green Energy and Green Economy Act, 2009* created the *Green Energy Act, 2009*.

The new legislation would have a purpose clause that explains the objective of intergenerational fairness. This would be useful for the markets to see, and may

Confidential Draft

help support the validity of the legislation from a constitutional law perspective (charge vs. tax)

x. Subsection 2 (1) of the Act would be amended by adding the following definitions:

"Financing Entity" means the trust established by Ontario Power Generation Inc. under clause XX (a) or the entity prescribed for the purposes of clause XX (b); ("French")

"hydro financing initiative" means those policies of the Government of Ontario related to its decision to ensure costs to Ontario electricity consumers are allocated fairly over time, taking into account the useful life of new sources of and technologies for electricity; ("French")

[Note: I have applied the precedent of the "smart metering initiative" as per your instructions. Just want to reiterate my concern that the reference to government policies is really vague (which initiative/ policies? At which point in time?) and I think this could cause lots of confusion, particularly if the policies evolve over time. It could also have unintended consequences.]

[Note: To consider -- by describing the initiative as we have in the above definition, we are potentially linking the deferred amount to amounts that would otherwise be paid for by consumers as part of the GA. If the deferred amounts are not all about "the useful life of new sources and technologies" then the description of the initiative should likely be broadened. (For example, if some of the deferred amount may be used to cover high wholesale prices, one could argue that the initiative is NOT about allocating costs fairly over time… it's just about pushing the cost increase to future consumers without considering what is "fair" across the generations.]

Article 2 - Definitions

The new legislation will include many new defined terms. One important term will be "Funding Shortfall" (or equivalent wording). This will be the net reduction in cash flows to IESO as a result of the reallocation of a portion of the Global Adjustment to later periods of time. Currently, the "Funding Shortfall" would be limited to the Global Adjustment attributable to the procurement contracts, but this is a question that still has to be settled.

Another important defined term that is worth noting is "Replacement Event". This is an event under which the market would want to replace a person who has responsibility to take essential actions under the program (including LDCs, IESO and OPG), like invoicing and collecting amounts.

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The triggering events are likely to include insolvency and breach of duty/obligation.

Another key defined term is "Transition Charge". This is the amount that will be calculated and applied to the "deferral consumers", based on the amounts of payments due under funding obligations incurred to cover the funding shortfall (i.e., what we have until now been calling "deferral repayments").

Another important defined term will be "Treasury Plan". This will be the written plan prepared by OPG relating to the sale of the "regulatory asset(s)" to the OPG Financing Entity (sometimes previously referred to as the "Financing Trust") and the debt issued by the OPG Financing Entity to the markets.

Another defined term will be "True-up Amount". This is a key provision for the market. It allows for a catch-up for estimate/actual adjustments and to address consumer non-payment credit losses.

A further defined term will be "Undertaking of the Province". This will be a promise by the Government not to impair the program. This will be expected by the market, even though it will be understood that there may be issues for investors to enforce the promise, or get damages if there is a breach.

x. (1) Subsection 6 (1) of the Act would be amended by adding the following clauses:

(q.1) to enter into agreements or arrangements with the Financing Entity;

(q.2) to engage in activities related to making payments to and receiving payments from the Financing Entity under Part V.2, as required under this Act, and to engage in related settlement activities;

Note: Is some of this covered already by clause (i)? Could we address this by expanding upon clause (i)? Trying to understand whether there is any potential overlap.]

(q.3) to engage in activities related to the [sale/disposition/conveyance/assignment] of the [right/regulatory asset] created under section XX, which activities may include,

[Note: As discussed, please confirm terminology.]

(i) incurring liabilities in relation to the [right/asset];

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(ii) [selling/assigning/disposing of?] the [right/asset] to the Financing Entity;

(iii) assigning [the right/asset] to third parties;

[Note: I don't understand (iii) -- I thought the rights to the asset were being assigned to the trust and nobody else?]

(q.4) acting as a recovery agent for the Financing Entity in relation to [the right/asset];

x. (1) Subsections 25.33 (1) and (2) of the Act would be repealed and the following substituted [TBD].

[Note: As per our telephone discussion today (March 27), there seems to be ongoing debate about the policy direction:

1. Do you want to amend the GAM so that the money received from the FE and the money recovered by the FE are part of the initial GA calculation?

2. Do you want to leave the GAM section as is and add a requirement (in a new section) for the IESO to conduct additional adjustments for a subset of the payments referred to in s. 25.33? This second adjustment would be engaged in after the existing GAM is calculated. So it would be a further adjustment of what has already been adjusted under the GAM.

Until this fundamental question is answered, we would be removing the proposed amendments to s. 25.33.]

OPTION 2:

Deferral adjustments, 25.33 amounts.

25.33.2 (0.1) For the purposes of this section and sections 25.34 and 25.35,

(a) "authorized entity" means **[the hydro financing trust established by Ontario Power Generation Inc. for the sole purpose of financing the recovery of the balance in the deferral account, or]** such **[other]** entity as may be prescribed by regulation;

(b) "deferral account" means the deferral account established under section 25.34;

(c) "deferral amount" means the amount recorded in the deferral account for each month during the deferral and recovery period;

(d) "deferral and recovery period" means the period from May 1, 2017 to April 30, 2047;

(e) "deferral consumer" means a consumer who is a member of a class of consumers prescribed by the regulations for the purposes of sections 25.34 and 25.35;

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[NTD: This will be set out in a new subection 4(3) of O. Reg. 95/05 and will reflect OREC-eligible consumers other than non-grid connected customers of IPAs (who would not pay a GA charge anyway). Note that this is not quite the same as "RPP-eligible" consumers.]

(f) "electricity supply cost" means the amount calculated according to the formula:

$$(A + B + C + D) - E$$

where,

A is the amounts paid by the IESO to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the *Ontario Energy Board Act, 1998,*

B is the amounts paid by the IESO to entities with whom the IESO has a procurement contract, as determined under the procurement contract,

[NTD: A and B use exactly the same wording as is set out in (a) and (b) of the existing ss. 25.33(1).]

C is

[NTD: C is the "net new" costs associated with the GA deferral. These are costs that the IESO will record in the GA deferral account established under s. 25.34, and that the IESO (or its assignee) will subsequently recover. These costs consist of the interest and financing-related admin costs associated with the GA deferral (which costs will be flowed through from the hydro financing trust to the IESO). These costs do not include the principal amount deferred and recovered, since that is already captured as part of A and B.

The "net new" costs in C will be recoverable solely from a newly prescribed class of consumers - deferral consumers (i.e. those consumers who will benefit from the GA deferral). The rules for the recovery of these costs will be part of a new subsection 4(3) of the RPP Regulation.]

D is any other amounts that may be prescribed by regulation,

[NTD: Paragraph D would give us flexibility to add new cost categories by reg. if/as needed now or later.]

[GGRA-related amendments are removed for the time-being]

and

E is any other amounts that may be prescribed by regulation;

[NTD: Paragraph E would give us flexibility to add new cost categories by reg.

Question for leg counsel: If in the future HOEP were to exceed contract prices and/or regulated rates, presumably the formula would still work (i.e. in such case the amounts for A and B would simply be negative amounts)?] *[ntd-LSB: IESO appears to agree with that idea, based on our shared appreciation of how EA s.25.33 works today.]*

(f) "reduction period" means the period commencing May 1, 2017 and ending April 30, 2018;

(g) "RPP Regulation" means Ontario Regulation 95/05 (Classes of Consumers and Determination of Rates).

Electricity pricing adjustments

Adjustments by IESO

(1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by such classes of market participants in Ontario as are prescribed by regulation, reflect the electricity supply cost.

Adjustments by distributors and retailers

(2) Distributors and retailers shall, through their billing systems, make adjustments in accordance with the regulations that ensure that, over time, payments by such classes of consumers in Ontario as are prescribed by regulation, reflect the electricity supply cost.

[NTD: There will be two "classes of consumers in Ontario that are prescribed" for the purposes of RPP-"plus" deferral – the EA regulation that "prescribes" these two classes will refer to (or be aligned with) the two classes as described in the RPP Regulation. 1) The first class are the deferral consumers (see definition above), and 2) the second class (or defined base consumer) will be the "proxy" Toronto Hydro consumer whose bill will only be allowed to increase year-over-year according to rules prescribed in a new s. 6.1 of the RPP Regulation.]

Variance accounts

(3) The IESO shall, in accordance with the regulations, establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section and under sections 25.34 and 25.35, in accordance with such rules and requirements as may be prescribed by regulation. *[ntd-DAN: I left "this section"*

even though this provision is part of a new s.25.33.2 – did you want "this section" to refer to "section 25.33"? If so, then we'd add this to the list we've started referencing proposed new s.25.34 and s.25.35. Consider.]

[Drafting note: We can prescribe the different variance accounts that must be maintained, and the different amounts that must be tracked and accounted for, by the IESO. Among other things, the IESO will presumably need to establish variance accounts related to the GA deferral and payback, to take into account timing and other differences. Any financing costs associated with these variance accounts (over and above the financing costs passed through to the IESO by the authorized entity (the hydro financing trust) would be subject to Board scrutiny.]

Same, distributors and retailers

(4) Distributors and retailers shall, in accordance with the regulations, establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by them under this section and under sections 25.34 and 25.35, in accordance with such rules and requirements as may be prescribed by regulation.

x. The Act would be amended by adding the following sections:

Deferral account

25.34 (1) The IESO shall establish a deferral account to record, for each month during the reduction period and the deferral and recovery period, the difference between,

(a) the amounts that would be payable by deferral consumers in respect of the electricity supply cost for the month under section 6.1 of the RPP Regulation; and

(b) the amounts payable by deferral consumers in respect of the electricity supply cost for the month under section 6.2 of the RPP Regulation.

[NTD: IESO to confirm whether the differences between (a) and (b) would be recorded monthly.

Explanatory note: The Board will determine a rate under a new s. 6.1 of the RPP Regulation that will essentially follow the same process the Board uses to establish the RPP rate, except that it will establish a rate for the deferral consumers (which is a slightly broader class than RPP consumers). The Board will also determine a "proxy" rate for the deferral consumers, calculated according to a different set of rules set out in a new s. 6.2 of the RPP Regulation. The rules in s. 6.2 will establish the "proxy" rate for a "proxy" Toronto Hydro customer consuming an average of 750 kWh/mth, to achieve an all-in tax-included total bill amount reduction of approximately 17% (the bill reduction for GA deferral + 8% OREC will result in an all-in bill reduction for May 1, 2017 – April 30, 2018 of 25% over the May 1, 2016 – April 30, 2017 period). There will be

additional rules dealing with bill increases and full repayment of the GA deferral by April 30, 2047.]

Note that because we refer to the new provisions in the RPP Regulation, we will need to amend that regulation *before* the introduction of the proposed legislative amendments. Drafting of the proposed RPP Regulation amendments is underway.

Do we need to create a parallel provision requiring distributors and retailers to establish deferral accounts as well?]

(2) The IESO shall record interest on the balance of the deferral account at a rate or rates reflecting the costs incurred by the IESO, or by any assignee under section 25.35, to finance the amounts recorded in the deferral account.

(3) The IESO shall also record in the deferral account the costs incurred by the IESO to finance the amounts recorded in the deferral account.

[NTD: This is a placeholder for what we will need here. The concept is that ss. (2) and (3) will ultimately apply to the interest and admin costs incurred by the hydro financing trust (assignee of the right of recovery under s. 25.35) in providing funds to the IESO to finance the GA deferral. Those interest costs and admin costs will be fully recoverable through section 25.35, subject to Board scrutiny presumably limited to verifying the calculations. This is not intended to address interest and costs incurred by the IESO and recorded in the variance accounts established under ss. 25.33(5).]

Recovery of GA deferral amounts

25.35 (1) The IESO shall have the right to fully recover the balance recorded in the deferral account. **[The Board shall authorize?]** recovery of the balance from the deferral consumers over the deferral recovery period in accordance with the prescribed rules.

[NTD: What role should the Board play in determining the amounts recovered each year (within the smoothing parameters that are prescribed)? For e.g., could the Board set rates such that the year-over-year increase in the proxy Toronto Hydro customer's all-in bill was less than the maximum permitted under the prescribed rules?

The prescribed rules will be set out in the new s. 6.2 of the RPP Regulation, which will determine how much the "proxy" Toronto Hydro customer's monthly average bill can increase year-over-year (after the reduction period). Basically, for the first four years after the reduction period, the increase will be limited to CPI. For the balance of the deferral and recovery period, the increases will be limited to 10%, with an overarching requirement that the deferral amounts be fully repaid by April 30, 2047.]

Assignment of right of recovery

(2) The IESO shall have the right to assign**[, in whole or in part?,]** to **[one or more?]** authorized entities, the IESO's rights under subsection (1).

[NTD: This is largely a placeholder for what needs to be addressed here. We will need to determine how to characterize this transaction. For e.g., will it be an outright assignment? Will it be a series of assignments? Should it be characterized as a "sale"? How will this transaction be implemented – e.g. by way of a contract between the IESO and the Trust? We will need the input of external counsel and others to ensure that it adequately supports the contemplated financings.]

Payments to assignee

(3) In the event of an assignment to an authorized entity under subsection (2), the IESO shall, through its billing and settlement systems, make payments to the authorized entity of the full amounts paid to the IESO in respect of the rights assigned.

[NTD: This is largely a placeholder for what needs to be addressed here. Iin addition to requiring IESO to make payments to the authorized entity, do we need to include explicit provisions giving the assignee the right to recover the amounts in the deferral account that are covered by the assignment?

We will need provisions dealing with billing and payment as between the authorized entity and IESO. We will also have to decide whether the interest and admin costs incurred by the authorized entity will simply be passed through to IESO, or whether the authorized entity (or OPG) will have an opportunity to keep any profits made on financing activities (swaps, etc.) by establishing some sort of "reference rate" that IESO would have to pay (and that might be different than the rate(s) the authorized entity would have to pay). A middle ground that could be considered would be to cap the amount of profits the authorized entity (or OPG) could make.

Along similar lines, the amounts charged by OPG to the authorized entity to provide admin services should be subject to Board review (e.g. for reasonableness). This would not jeopardize the ability of the authorized entity to recover all of its costs (since it would affect the amounts OPG could recover from the authorized entity).

We also need to contemplate a provision that if there is a change of law by the Government of Ontario that materially adversely affects the ability of the authorized entity to fully recover the assigned deferral account amounts, then repayment of those amounts will be accelerated and become immediately due and payable.]

x. The Act would be amended by adding the following provisions after s.29:

Transition Charges -- Ratepayer Obligation to Pay a Transition Charge

s.29.0.1 (1) Each consumer in the class of ratepayers to which this program applies (previously referred to as the "deferral consumers") will have a direct statutory obligation to the OPG Financing Entity to pay its share of the deferral repayments (principal, interest, financing costs).

Indebtedness of Ratepayers –
(2) This will be a debt owed by the consumer directly to the OPG Financing Entity. If it is not paid, the OPG Financing Entity can sue the consumer directly through the agreed procedures. This is identifying an explicit and identifiable revenue stream for the comfort of investors.

Separate tracking - distributors,
(3) This debt is separate from the debt owed by the consumer to its LDC, although the LDC will be the collection agent.

No set-off, etc. *[see similar provision at EA s.29.0.3(2)]*
(4) This debt cannot be netted out against any amount owed by the LDC to the consumer (e.g. year-end credit to consumer on equal monthly billing).

Allocation of Ratepayer Payments
(5) If a consumer pays less than its total invoiced amount, the payment will be allocated pro rata between the deferral repayment and the amounts owing to the LDC.

Transition Charges are Irrevocable

(6). This is intended to prohibit any reversal of amounts that must be paid to meet the terms and conditions of the funding obligations to be incurred under the program.

> **The deferral repayments are due regardless of whether a financing obligation incurred under the treasury plan is consistent with government policy at the time a related payment obligation arises.**
>
> **If the Fair Allocation Plan is amended after a funding obligation is properly incurred, any inconsistency in the payment profile will not impair the existing funding obligation or the pass-through of related payment amounts as Transition Charges.**

Anti-avoidance; No-by-pass

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(7) The idea here tracks the U.S. transactions, which say that the obligation of a consumer to pay Transition Charges cannot be "by-passed". If a consumer leaves the grid, he or she will still be obligated. See the highlighted text in the definition of "Ratepayer" for a sense of how this may be accomplished.

> **This concept is a key to a rated market financing and will need to be developed further.**
>
> **For example, self-generating customers could be charged a flat fee (for example, equal to the amount that would be payable by the "representative" Toronto Hydro customer that underpins the current government policy on the 25% or some other basis.)**

Distributor, agent for Financing Entity,
s.29.0.2(1) LDC is agent for the OPG Financing Entity. LDC must invoice the deferral consumer the deferral repayment amount - referable to the items described in "Finance Amount" (i.e., an amount already borrowed).

IESO - Calculation of the Period Transition Charge

(2) IESO will calculate the total amount of deferral financing that will be repayable in an applicable [e.g. 6 month] period.

(3) IESO will then determine the deferral repayments due from deferral consumers based on a prescribed methodology for allocating payments to individual deferral consumers.

Notice of Transition Charges, IESO to distributors

(4) IESO will then inform each LDC of the amount of the deferral repayments to be included in the invoices issued to each deferral consumer in the LDC's service territory.

Adjustments *[ntd: Consider – Deferral repayment amount final]*

(5) Deferral consumers cannot challenge the amount of the deferral repayment showing on their invoice unless there is a substantial calculation error.

Successors of Electricity Distributors –
(6) Any successor of an LDC will be bound by the same obligations as the original LDC re: billing and collecting deferral repayments.

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Successors of IESO –

(7) Any successor of the IESO will be bound by the same obligations as the original IES re: billing and collecting deferral repayments from distributors *[ntd-LSB: what about from consumers?].*

Appointment of an Alternative Invoicing Agent *[NTD – this provision may be moved closer to the powers/authorities of the OPG financing entity.]*

(8) If a "replacement event" (as defined in any payment obligation incurred to fund a deferral) occurs in respect of an LDC, the OPG Financing Entity can appoint someone else as the OPG Financing Entity's agent to collect deferral repayments. The LDC must sign whatever agreements and assignments are needed to enable the replacement agent to collect the deferral repayments from the LDC's deferral consumers.

Regulatory Asset Owner has Standing

(9) The OPG Financing Entity (or investors through their security) will be able to sue LDCs for failing to properly calculate or invoice the financing repayments.

29.0.3 Collections and Remittances [Collecting and Remitting Deferral Repayments]

(1) If a "replacement event" (as defined in any payment obligation incurred to fund a deferral) occurs in respect of an LDC or the IESO, the OPG Financing Entity can appoint someone else as the OPG Financing Entity's agent to collect and remit deferral repayments. The LDC (or IESO, as applicable) must sign whatever agreements and assignments are needed to enable the replacement agent to collect and remit the deferral repayments. "Replacement Events" are necessary to investors to safeguard against a person holding money in a distressed circumstance.

No Set-off, etc. *[see similar provision at EA s.29.0.1(3)]*

(2) The deferral repayments cannot be netted out against any amounts owed by the party responsible for collecting those repayments.

Sequestration,

(3) If any LDC or the IESO fails to remit deferral repayments, the OPG Financing Entity can get a court to order the LDC (or IESO, as applicable) to require them do so.

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x. Subsection 53.1 (1) of the Act would be repealed and the following substituted:

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, the following:

[Note: I know that the words "in addition to any other objects" appears in the current provision, but it seems very odd. This suggests that the objects are unlimited, which doesn't seem to be the intention but I could be wrong.]

1. Owning and operating generation facilities.

2. Establishing, operating and supervising the activities of entities for the purposes of supporting and promoting the government's hydro financing initiative.

3. Providing financial and other support to the IESO in its activities in relation to the hydro financing initiative.

4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.

5. Providing equity, not exceeding the prescribed amount, to support the financing capacity of the Financing Entity.

Subsidiaries

(1.1) Ontario Power Generation Inc. may create one or more subsidiaries in order to more efficiently conduct its activities or achieve its objects.

x. Section 53.2 of the Act would be repealed and the following substituted:

Rights of the Minister[1]

53.2 (1) The Minister, on behalf of Her Majesty in right of Ontario, may acquire, hold, dispose of and otherwise deal with securities or debt obligations of, or any other interest in, Ontario Power Generation Inc. or any of its subsidiaries.

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[1] FLS - this provision is based on s. 49 of the Act

Agreements

(2) The Minister, on behalf of Her Majesty in right of Ontario, may enter into any agreement or arrangement that the Minister considers necessary or incidental to the exercise of a power under subsection (1).

x. The Act would be amended by adding the following Part:

PART V.2
HYDRO FINANCING INITIATIVE

FAIR HYDRO FINANCING PLAN

Establishment and adoption of the Fair Allocation Plan

A. 1 (1) The Minister of Energy [may/shall] establish a "fair allocation plan"

(a) The purpose of the plan is generally to try and reallocate the portion of GA attributable to the procurement contracts over the anticipated useful life of the generation assets under those contracts.

- **This is the intergenerational funding of the Green Generation Initiaitves.**
- **One policy question is whether the amounts deferred and the period over which the deferred amounts are repaid are to be limited to the portion of GA attributable to the procurement contracts and to the anticipated useful life of the [renewable] generation assets under those contracts.**

- From a constitutional validity perspective (and hence a financeability perspective) these limits are very important.

-Financial/economic modelling to verify this link is required.

Principles and Parameters,

(2) Based on this initial description (which is only illustrative to advance the initial stakeholder discussion), the Minister would determine the details of the "fair allocation plan", but must take into consideration the following principles:

- **The deferred GA costs should be spread over a period not exceeding the anticipated remaining useful life of the generation assets under the procurement contracts**
- **The plan should specify the length of the "reference periods", to identify which deferral consumers are responsible for which deferral repayments**

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- **The share of the deferral repayments to be allocated to deferral consumers in each "reference period" should reflect a reasonable assessment of the remaining anticipated useful life of the generation assets under procurement contracts and perhaps to the benefits received by those deferral consumers from the procurement contracts (e.g. transition off coal)]**

- **No deferral consumer group should bear an unreasonably disproportionate share of the deferral repayments. That could be limited to a maximum amount, determined on a formula basis, if it makes sense tot he stakeholders**

- **In making the allocations, real (i.e. inflation-adjusted) dollars should be usedThe fair allocation plan is made using forward-looking information and projections.**

- **If, after the fact, the Minister determines that a Ratepayer Group paid more than would otherwise would have been the case had the projections for such period been accurate or other considerations come to light, adjustments to the plan could be made.**

Attribution Methodology

(3) The program will need to define how deferral consumers will be allocated an appropriate share of aggregate adjustment amount.

Confirmation][Review] of the Fair Allocation Plan – [OEB?]

Confirmation][Review] of the Fair Allocation Plan – [OEB?]

(4) Consideration will be needed regarding the level of review and confirmation of the plan is needed or appropriate. For example, should the scope of review be limited to calculations only? If there is a need for review, then consideration will be needed as to who will be the reviewer and under what authority, etc.

THE TREASURY PLAN

Power to Prepare and Implement the Treasury Plan –

A.2 (1) The "Treasury Plan" will be prepared by OPG. It must follow the requirements set out in this Part. Accounting considerations will need to be factored into this delegation, as well as the degree of province input initially and on an on-

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going basis. [Note for leg counsel: We will need to create the necessary sub-delegation authority]

Required Terms and Conditions of the Treasury Plan

(2) The Treasury Plan will establish the basis for OPG making funding decisions, which will need to align with the Fair Allocation Plan.

Power to Review and Approve the Treasury Plan

(3) The Minister may designate one or more persons to review, and require changes to the Treasury Plan. (This review could also be given to the Minister.) *[NTD-: Assumin no role for OEB – confirm. Any role for MOF/OFA here?]*

Obligation to Apply IESO Remittances,

(4) OPG will need to ensure that pass-through amounts, transferred to it as agent for the OPG Financing Entity, are only used to repay the debt and related costs.

Non-Recourse,

(5) The Treasury Plan will provide that the investors and other contracting parties will not have recourse to the IESO, LDCs, agents, the OEB or the Province, except where such parties fail to comply with applicable law. This may be modified in the contracts under which a financing arises.

> **NOTE: The documentation creating the Funding Obligations must expressly state that such obligations are not guaranteed by the Province.**
>
> **NOTE: See IESO/Stikeman's language for "Regulatory Asset" above.**

Incurrences are Binding,

(6) A failure to implement the Treasury Plan will not impair the pass-through of the deferral amounts or the validity of an otherwise valid funding obligation.

- **NOTE: Separate from the legislative provisions, we will also be preparing a very rough sketch of some of the items that might be included in the Treasury Plan direction.**
- **The sketch will be for illustration purposes only and will be for use in discussions with stakeholders including OPG and IESO.**

Crown bound, actions prohibited,

A.3 (1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – *[NTD: alternative* - Crown bound, prohibition against discriminatory action.

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(2) The Province will be prohibited from taking or permitting any action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or collections.

Undertaking and Agreement

(3) Under this Undertaking, the Province will agree for the benefit the OPG Financing Entity that it will not impair the value of the Regulatory Asset or the Transition Charges imposed under this Part. This "pledge" is in line with market expectations. Enforcement issues arise in this sort of undertaking, which will be assessed by the market and rating agencies based on the likelihood that a failure by the Province would lead to a successful damages claim. Unlike in the U.S., the law regarding such a claim is uncertain. Nevertheless, we expect that this sort of Undertaking will be requested in the legislation itself (i.e., requiring an act of the legislature to disavow – which is a higher bar than simply walking away from a contractual undertaking.

[Note: TBD where to place this Part within the Act and how to structure this Part. Temporary number (e.g. A1, A2, A3 etc.) has been used for now.]

FINANCING ENTITY

Financing Entity, established or prescribed

A1. (1) For the purpose of accomplishing the hydro financing initiative, the Minister may,

(a) direct Ontario Power Generation Inc. to establish and operate a trust; or

(b) direct Ontario Power Generation Inc. to [oversee? Administer?] an entity prescribed by the regulations.

[Note: Would the direction of the Minister include any additional instructions re timing etc.?]

Duty of Ontario Power Generation Inc.

(2) Ontario Power Generation Inc. shall comply with the direction of the Minister.

[Note: Once OPG takes action under A1 in accordance with the Minister's direction, what happens if at some point in the future, the Minister wants a different entity to take over the role of the FE? Is this a concern that needs to be addressed?]

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Object of Financing Entity

A2. (1) The object of the Financing Entity is to finance the amounts required to accomplish the hydro financing initiative.

[Note: We are imposing several obligations on the Financing Entity (FE). As a practical matter, how will these obligations be enforced? Who will be responsible for meeting these obligations? (e.g. would there be directors or officers of the trust?). Or will the OPG be responsible for meeting these obligations as the body that establishes/manages the trust or oversees the designated entity?]

Activities

(2) To achieve the object, the Financing Entity shall engage in the following activities:

[Note: Just want to confirm that this should be "shall" and not "may".]

1. Borrowing funds from the Financial Corporation or from such other persons or entities [as may be prescribed?].

2. Investing funds.

3. Making payments and loans to the IESO or such other entity as may be prescribed in accordance with the regulations [or an order of the Board].

[Note: I think it would be best to specify whether the rules would be set out in a reg or in a Board order to avoid confusion.]

[Note: Should the "loans" language be removed, since you noted that the IESO is not "borrowing" from the FE?]

4. Receiving payments from the IESO or such other person or entity as may be prescribed in accordance with the regulations.

5. Issuing securities or debt ***[in the manner prescribed?].***

6. Engaging in any activities, including entering into such transactions, agreements or arrangements as may be prescribed and in accordance with the regulations.

Board review of expenditures, etc.

A3. (1) The Financing Entity shall, at least 60 days after the end of each fiscal year, submit its expenditures relating to its operations for the fiscal year including the expenses it has charged to Ontario Power Generation Inc. or the IESO, or that it has been charged by the Financial Corporation, in relation to those operations, to the Board for review.

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[Note: The list of items that have to be reported on could be more prescriptive (e.g. specifying specific amounts to be set out) or it could also allow for the Board to specify what it wants to see in the report. Let me know if you'd like to adjust the wording of the requirement.]

Board recommendations, etc.

(2) The Board may review the expenditures and charges referred to in subsection (1) and make recommendations to the Financing Entity as are appropriate in order to ensure the most efficient operation and management of the Financing Entity in order to protect consumers.

[Note: Rather than saying "in order to protect consumers", should this say "in order to achieve the object of the FE"? Or perhaps this could just be deleted altogether with no need for replacement language.]

Deemed assets, entity,

A4. Despite any other provision of this Act or the *Business Corporations Act*, the assets and liabilities which are resident in and form part of the property of the Financing Entity shall not form part of the assets and liabilities of Ontario Power Generation Inc. or any of its subsidiaries for any purpose.

[Note: You posed a question about excluding an OPG subsidiary from this rule. Please instruct.]

OBTAINING FINANCING

[Note: It will be important to read all of the provisions that follow against the provisions in the existing Act, to ensure there is no overlap/confusion being created due to potential interactions between existing authority and new authority. The drafting focus so far has just been to get the relevant substantive provisions into the draft without evaluating how they fit into the broader scheme of the Act.]

Ontario Power Generation Inc. to obtain financing

A5. (1) The IESO may direct Ontario Power Generation Inc. to cause the Financing Entity to engage in any of the following activities in order to accomplish the hydro financing initiative:

[Note: As a practical matter, how would OPG "cause the FE" to do these things? How is this different from "directing"?]

1. Financing, borrowing or lending to provide the IESO with short-term or long-term financing.

2. [Purchasing/receiving/obtaining the right created under section XX] and making any payments to the IESO that relate to the IESO's activities in support of the hydro financing initiative.

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[Note: Not sure if the regulated assets would always be "purchased" or if other terminology might be needed. Please advise.]

3. Collecting from the IESO amounts that the IESO is required to pay in relation to its activities in support of the hydro financing initiative.

4. Assigning its [the IESO's?] rights to all or part of the regulatory assets established under section XXXX.

[Note: What is para. 4 about? If this is about forcing OPG to make the FE do things, then does this belong in the list? I thought that it was only the IESO that would be assigning the rights to the FE]

5. Such other activities as may be prescribed.

Same

(2) Ontario Power Generation Inc. shall comply with a direction under subsection (1) within the time specified in the direction [and any prescribed rules?].

IESO to enter into transactions

A6. (1) The IESO shall, in order to support the achievement of the hydro financing initiative, enter into transactions with the Financing Entity or any other entity for such amounts as are necessary to support the hydro financing initiative.

[Note: My understanding is that the need for "or any other entity" stems from the need to allow for the IESO to obtain temporary financing in the immediate term, before it is able to access the FE. Do you want to narrow this so that the IESO is only authorized to do this before the FE is up and running? Or do you want to keep it available on an ongoing basis?]

Same

(2) In entering into transactions under subsection (1), the IESO shall comply with the regulations.

RIGHT OF RECOVERY [CREATION OF REGULATORY ASSET]

[Note re the following provisions:
I found a provision dealing with the concept of "regulatory asset" in Bill 210 from 2002 (see s. 79.13 of the OEBA). It deems certain things to be regulatory assets but does not say much more. On the phone, you noted that the term "regulatory asset" does not have any legal meaning on its own but is just an accounting term that has been used to describe the statutorily created right of recovery. However, you also said that there may be a need to use this term in order to convey the intended meaning from an accounting perspective.

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In order to ensure that the drafting captures the policy intent, please answer/address the following questions:

1. Should we be creating a statutory right of recovery or deeming certain amounts to be a regulatory asset? [NTD-LSB: Yes. The term "Regulatory Asset" has currency in commercial law (parliance) and since much of what we're doing is to support a securitization model, the term should remain for now. Further, the term "regulatory asset" was consistently referred to in the documents provided to ENERGY LSB by Blakes. Further, IESO/Stikemans offered up alternative language for the creation of a "regulatory asset" (as an intangible asset of sorts). You said you'd consult on whether the regulatory asset terminology is important to flag in the Bill.

2. You said you're not sure whether or not the Act will require the IESO to sell/assign the right. Please instruct. If it is optional for the IESO to sell/assign, then it seems that the right could in theory remain with the IESO (unless you are saying that the statute can just create the right of the FE to recover without any need for the right to be assigned/sold by the IESO… in which case please explain why we need to deal with the sale/assignment at all). Please clarify.

3. I'm assuming that if we are creating a right, then the right must be held by someone (e.g. the IESO) before it can be assigned/sold? So should the right be created in the Act for the IESO (e.g. the IESO has a right to recover the amounts from distributors and prescribed consumers) since the IESO would then sell/assign/transfer the right to the FE? The FE must also have the right to recover from the IESO itself, so that creates an extra complication.

4. Should there be some indication of when the right of recovery/regulatory assets will no longer continue to exist (e.g. once all of the amounts have been paid?). I notice that your instructions below about the debt indicate that the debt is no longer owing once the amounts are paid, but do we need to indicate that the regulatory asset also ceases to exist at that point?

Right of recovery created

A7. A right to recover the following amounts in full from the IESO, distributors and prescribed consumers is created.

1. The [deferred amount].

2. The amounts of costs relating to the operation or management of the Financing Entity, as are approved by the Board.

[Note: How will the Board be approving these costs? Is this related to the expenditure report submitted to the Board? That provision dealing with Board expenditures doesn't refer to any approval taking place… just a review and recommendations.]

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[Note: Need to mention expenditures?]

3. Other amounts as may be prescribed or as may be approved by the Board.

Note: Are you going to be saying anything about how the interest will be calculated?

Sale [and/or?] assignment of [right? Regulatory assets?]

A8. (1) The IESO [may? Shall?], in accordance with the regulations, sell [and/or?] convey to the Financing Entity the right to recovery created established under section A7 on such terms and conditions as are provided for by the Financing Entity.

[Note: Your instructions include the terms "sell", "assign" and "convey" -- which are correct?]

[Note: Your instructions suggested that something other than the "regulatory assets" may need to be assigned to the FE. Are you referring to the "warehousing" liabilities assumed by the IESO in the early days? What else would need to be assigned? Could these items be listed above in A7 or is there a reason why they need to be kept separate?]

Sale deemed final

(2) The sale and conveyance referred to in subsection (1) is deemed to be final for all purposes.

[Note: What is this intended to achieve? Is this based on precedent language that has been interpreted to have the desired effect?]

Debts

(3) For greater certainty, the [amounts to which the FE has a right of recovery] are debts owing by the IESO, distributors and prescribed consumers to the Financial Entity until the amounts have been fully paid and fully discharged.

[Note: Why is subs. (3) necessary? Isn't it inherent in the sale of the regulatory assets that the FE would have acquired the future right to collect these amounts? Perhaps it is unclear that the amount can be collected from not just the IESO but from others down the chain. But isn't that what the "right of recovery" section above is meant to cover?]

[Note: I haven't checked to see how other similar provisions dealing with debts are drafted. Not sure we need the "for greater certainty" and also not sure what the distinction is between "fully paid" and "fully discharged". This provision will need further consideration. You also noted that you may want to specify who determines when all obligations have been satisfied.]

IESO to recover amounts

A9. The IESO shall recover the amounts set out in section A7 from distributors and prescribed consumers, in accordance with […]:

Note: how are the requirements that would determine recovery for this subsection meant to interact with the GAM reg?

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[Note: The following two subsections are placeholders. You noted that *the provision is going to have to evolve to deal with consumers who exit the grid (disconnect) completely either because they leave the province or they decide to generate their own electricity and completely disconnect. You also want to be able to prescribe* methods of ensuring that the amounts required cannot be "by-passed". I'll need to understand what is meant by "by-passed".]

Distributors liable

(x) The IESO and distributors are entitled to compensation for any shortfall in relation to the amounts the IESO must pay to generators, the Financial Corporation or other persons including prescribed persons, under section 25.33 resulting from the IESO's activities under the hydro financing initiative.

Consumers liable

(X) Prescribed consumers are required to contribute towards the amount of any compensation referred to in subsection (4) in accordance with the amounts and methods prescribed by the regulations and such amounts shall not be by-passed.

USE OF FUNDS TO REDUCE ELECTRICITY BILLS

[Note: Depending on how things land with s. 25.33, this might be a place to explain how the transactions between the IESO and the FE translate into reduction in the electricity bills of RPP consumers. Regulations could specify how the IESO would ensure that the short-term rate reductions that flow from the FE amounts are only received by the targeted class of consumers and that this same class of consumers is the only class responsible for the repayment of FE funds in the long-term.]

ALTERNATIVE LANGUAGE – REGULATORY ASSET -- PROPOSED BY IESO (STIKEMANS)

Regulatory Asset Created

A7. (1) There is hereby created and conferred upon the IESO a "Regulatory Asset" consisting of the right to recover, in addition to the amounts otherwise recoverable, in accordance with the Regulations, the aggregate of the following amounts [from distributors and] prescribed consumers. **[Quare: do we regard the Regulatory Asset as a single asset in a variable amount or as different assets arising on each deferral]:**

1. The [deferred amount, including interest accrued thereon].
2. The amounts of costs relating to the operation or management of the Financing Entity, as are approved by the Board.
3. Other amounts as may be prescribed or as may be approved by the Board.

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(2) The Regulatory Asset created by (1), shall constitute, for all purposes, a property right, shall be transferable by the IESO in accordance with Section A8, and shall constitute an intangible in which a security interest can be created for purposes of the *Personal Property Security Act*.

Election to Transfer Regulatory Asset

A8. (1) The IESO shall, from time to time, in accordance with the Regulations, elect to transfer to the Financing Entity all or any portion of the Regulatory Asset, on such terms and conditions as IESO may determine.

(2) Upon any election by the IESO pursuant to (1), the Financing Entity shall pay to the IESO in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, an amount, not less than the Deferred Amount, determined in accordance with the Regulations.

(3) Upon any election by the IESO pursuant to (1), the Financing Entity shall become the person entitled to the benefit of the Regulatory Asset, or the portion thereof in respect of which the election was made, free and clear of any adverse claim (other than any such claim created by the Financing Entity) and shall be entitled to exercise all of the rights and remedies conferred by or arising in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, and the IESO shall cease to have any rights (except as provided in Section A9) to or in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, all as if the Regulatory Asset, or the portion thereof in respect of which the election was made, had originally been conferred upon the Financing Entity and not the IESO.

(4) Upon any election by the IESO pursuant to (1), the IESO shall have no further rights or obligations in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, and the Regulatory Asset, or the portion thereof in respect of which the election was made, shall not form part of the assets and liabilities of IESO for any purpose.

(5) The LG in Council may adopt regulations providing for the circumstances in which IESO shall make the election or elections provided for in (1).

Financing Entity may Grant Security Interest

A9. (1) The Financing Entity may, at any time after an election referred to in Section A8(1), create a security interest in favour of any person in all or any portion of the Regulatory Asset subject to such election, all on such terms and conditions as the Financing Entity may determine.

(2) Except as provided for in Regulations adopted pursuant to (3), *The Personal Property Security Act* shall apply to any security interest created pursuant to (1), except that the rights of the secured party on default shall be limited to receiving the amounts collected in respect of the Regulatory Asset, or the portion thereof subject to the security interest, as and when collected by the IESO in accordance with A10.

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(3) The LG in Council may adopt regulations providing for the terms on which the security interest provided for in (1) can be created and perfected and for the priority of any such security interest.

IESO to Collect Amounts in Respect of the Regulatory Asset

A10. Subsequent to any election pursuant to Section A8, the IESO shall, as agent on behalf of the Financing Entity and any secured party, use reasonable efforts to collect the amounts owing in respect of the Regulatory Asset, or the portion thereof in respect of which the election was made, and shall promptly pay over to the Financing Entity or the secured party the amounts collected.

--------*END OF IESO/BLAKES ALTERNATIVE LANGUAGE FOR REG. ASSET ---*

------- *BLAKES VERSION OF LANGUAGE FOR REGULATORY ASSET*

The Regulatory Asset, Composition,

A7(1) The "regulatory asset" consists of the following:

- **present and future statutory obligation of:**
  - **deferral consumers - to make all deferral repayments (including interest and late payment fees)**
  - **LDCs - to invoice the deferral consumers for the deferral repayments and to remit the amounts collected to the IESO**
  - **IESO - to receive and remit the deferral repayments from LDCs to the OPG Financing Entity**
- **All deferral repayment amounts collected**
- **All amounts in LDC or IESO deferral payment bank accounts**

Validity of Dispositions

(2) This section is reinforcing by statute the "sale" of the asset to the Financing Entity. This has been an important feature of the legislation in other jurisdictions in similar circumstances. Specifically, it says that "Dispositions" of the Regulatory Asset are "true sales", and not subject to challenge. This is an essential requirement for a securitization transaction. This provision identifies possible grounds for a challenge that a sale took place and indicates that those events do not affect the validity of the sale.

Deemed Perfection and Priority of Dispositions

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(3) This is reinforcing the automatic nature of the "sale" of the asset. It Provides for a clean sale to the OPG Financing Entity, free and clear of encumbrances (i.e., no specific need to "perfect" the sale.

Validity of Pledges,
(4) Statutory override permitting the OPG Financing Entity to give a security interest in the "regulatory asset" to investors.

> **This would give the investors (through an indenture) the right to enforce collection of the deferral repayments to pay off amounts owed by the OPG Financing Entity to the investors upon certain defaults by the OPG Financing Entity under an indenture.**

Deemed Perfection and Priority of Pledges
(5) This is reinforcing that a commercial pledge given by OPG Financing Entity is valid and will have priority without specific "perfection". The result is that a pledge of the Regulatory Asset as security in accordance with the Treasury Plan will be given priority to other claims. The Pledge includes proceeds from the Regulatory Asset and is not affected by comingling or the ordinary requirement to file a financing statement under the PPSA.

Enforcement of Property Rights –

(6) The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5. ***[ntd-: NOT an annotation – pulled directly from Blakes' document.]***

Collective Action Required –
(7) This anticipates that the Regulatory Asset will be structured as a variable interest that can be divided between IESO (until it sells) and one or more OPG Financing Entitys. The likely format will be a co-ownership agreement, that will allow for different owners to have a fractional undivided ownership interest in the Regulatory Asset. Those will entitle the owners to a specified share of the cash flows, which will correspond to their finance payment obligations. This will allow for future financing flexibility.

MISCELLANEOUS

Fair Hydro Financing Plan, miscellaneous,

A.8 (1) Consideration will be given to whether any additional 'miscellaneous' provisions are needed (and expected by the market) to support the financing of this

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structure. Some of these provisions are not typical in legislation, and so will need further consideration (in consultation with leg counsel).

Regulations

114(1.5) The LGIC may make regulations to implement the Fair Hydro Financing Initiative

-(a) The power to implement the program (and to set out some of the details of the program) through regulations is important. Decisions remain to be made (once the drafting is a little further advanced) about what provisions/details need to appear in the proposed legislation, and what provisions/details can be set out in regulations.

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ONTARIO ENERGY BOARD ACT, 1998

x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [hydro financing initiative].

[Note: Would need to link with definition in the EA or else spell out the definition here - TBD.]

x. Section 27.1 of the Act would be amended by adding the following paragraph:

Hearings

(1.1) A directive may specify whether the Board is to hold a hearing, the circumstances under which a hearing may or may not be held and, if a hearing is to be held, the type of hearing to be held and the time within which it must be held.

The underlined is what makes this different from the other provisions in the Act that basically have the same wording. There are already a number of places in the Act where you have this type of hearings provision re directives (e.g., s. 27.2 (7)). If you basically want the same authority in each instance, then the wording should be consistent in each case. There are already some discrepancies between the current provisions (e.g., s. 27.2

(7) talks about types of hearings, whereas s. 28 (2) doesn't). Differences in wording will typically be presumed to be differences in meaning. So, the question is what you're intending to authorize in each case, and whether differences are intended. If you want the same thing everywhere, it should all be worded the same. Let me know.

[Note: Waiting for confirmation whether amendments to s. 78.7 are needed. Please advise.]

x. Section 78 of the Act would be amended by adding the following subsection after subsection (3.0.5):

Rates, fair hydro financing initiative activities -IESO, OPG, distributors, etc.
(3.0.6) The OEB would not be precluded from taking into account the performance of duties under this Part by any entity regulated by the OEB, including fees received by such entity in excess of the incremental costs of the provision of such services.

x. Section 79.16 (3) of the Act would be repealed and the following substituted:

Adjustment to eliminate variances

(3) In determining rates under clause (1) (b), the Board shall take into account balances in variance accounts established under section 25.33 of the *Electricity Act, 1998* and, subject to section X of that Act, make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.
[Note: Please let me know what section the highlighted portion is supposed to refer to… is it the provision that says the IESO has the 30 year period to pay off the amount in the variance account for the hydro financing initiative? I wonder if this is confusing and whether the amendment to subs. (3) above works… it almost seems unnecessary to say that the Board has to "take into account" this balance, given that we are setting up a bunch of very specific rules about what has to be done by various entities in order to eliminate this amount. What would the Board be expected to do with information about this variance account? For consideration.]

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PART VII.3

COMPLIANCE – FAIR HYDRO FINANCING INITIATIVE

Right of the [OEB] to Inspect Books and Records,
113 (1) OEB may be given the power to investigate compliance with the legislation and the power to examine books and records, etc.

Power to Investigate Compliance and Impose Regulatory Sanctions

(2) This legislation will not limit the OEB's power to investigate compliance or prevent or preclude the OEB's power to impose sanctions. The OEB can investigate compliance with this part and to impose regulatory sanctions for non-compliance.

Limitation, Board,

(2.1) The OEB cannot, however, take any action to affect the irrevocability of the Transition Charges or the Undertaking of the Province.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

Confidential Draft

Materials for Review draft OFHP legislation .rtf

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Subject: Materials for Review draft OFHP legislation
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Please see attached materials for Review of Draft OFHP legislation meeting tomorrow morning.

Hilary

Hilary Cox
Executive Assistant/Sr. Policy Advisor (A) | Assistant Deputy Mini

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From: Cox, Hilary (ENERGY) []
To: Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; 'Gavin He' [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; 'LEE John -TREASURY' (john.s.lee@opg.com) [john.s.lee@opg.com]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]
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Please see attached materials for Review of Draft OFHP legislation meeting tomorrow morning.

Hilary

Hilary Cox
Executive Assistant/Sr. Policy Advisor (A) | Assistant Deputy Mini

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RE_ Fair Hydro - Change of Law Protection Agreement.rtf

From: Saulnier, Brett [bsaulnier@torys.com]
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Milligan, Peter [PMilligan@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]
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Subject: RE: Fair Hydro - Change of Law Protection Agreement
Date: Tuesday, December 12, 2017 00:35:25
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All,

Attached for your review is a revised draft of the Change of Law Protection Agreement, clean and blacklined to the last version circulated by Blakes and reflecting the meetings held earli

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Blackline_24621171v1 - 24621171_2.pdf (467 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717454~201712120436520000~Z~009160210357FB0A8AF2DAAD89515CD1&AttachmentId=6Blackline_24621171v1 - 24621171_2.pdf

RE_ Fair Hydro - Change of Law Protection Agreement.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Ramchandani, Rima [rramchandani@torys.com]; Milligan, Peter [PMilligan@osler.com]; Saulnier, Brett [bsaulnier@torys.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]
Subject: RE: Fair Hydro - Change of Law Protection Agreement
Date: Tuesday, December 12, 2017 16:47:41
Attachment 1: @

This message has been archived. View the original item
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View the original item

The Province is okay with these changes. Thanks.

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com <mailto:stephen.ashbourne@blakes.com>

Dir: 416-863-3086

From: Ramc
Attachments:
image001.gif (1 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717494~201712122048020000~Z~009168096CA8FC4D52D3DD82C0969D21&AttachmentId=1image001.gif

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image004.jpg (5 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717494~201712122048020000~Z~009168096CA8FC4D52D3DD82C0969D21&AttachmentId=4image004.jpg

RE_ Fair Hydro - Change of Law Protection Agreement.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Milligan, Peter [PMilligan@osler.com]; Saulnier, Brett [bsaulnier@torys.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]
Subject: RE: Fair Hydro - Change of Law Protection Agreement
Date: Tuesday, December 12, 2017 15:09:11
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.gif
Attachment 4: image004.jpg
Attachment 5: 23239360-v30-Change of Law Protection Agreement.DOCX
Attachment 6: 23239360-vpdf-Change of Law Protection Agreement.PDF

Here is my mark-up of the matters raised by Oslers, in today's mark-ups of during our call this morning. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Milligan, Peter [mailto:PMilligan@osler.com]
Sent: Tuesday, December 12, 2017 1:43 PM
To: Saulnier, Brett; ASHBOURNE, STEPHEN; Sebastiano, Rocco; Mansoori, Nina
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Fullerton, Rick; 'Mayman,

Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Olusoga, Yinka; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca); PALMER, AARON; VINER, JON; PRESTAGE, JA
Subject: RE: Fair Hydro - Change of Law Protection Agreement

All,

Further to our call this morning, attached is a comparison document showing our comments on “Post-Suspension Refinancing” and “Protection Event”.

We will comment on Material Effect after we see what comes back from the accountants.

Peter

From: Milligan, Peter
Sent: Tuesday, December 12, 2017 9:09 AM
To: 'Saulnier, Brett' <bsaulnier@torys.com>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)'

<Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro - Change of Law Protection Agreement

All,

Attached are changed pages with my comments on the Change of Law Protection Agreement. This does not represent input from any dealer. I will follow up to see if the dealers have any additional comments but given the plan to have a call at 10, I pass along these comments now.

Peter

From: Saulnier, Brett [mailto:bsaulnier@torys.com]
Sent: Monday, December 11, 2017 11:35 PM
To: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Milligan, Peter <PMilligan@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY'

<may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro - Change of Law Protection Agreement

All,

Attached for your review is a revised draft of the Change of Law Protection Agreement, clean and blacklined to the last version circulated by Blakes and reflecting the meetings held earlier today. As discussed, we need to provide the attached to the rating agencies **by no later than noon tomorrow** in order to meet our end of year financing deadline. Accordingly, we will be circulating a calendar invite to this group for 10 a.m. tomorrow morning to confirm the parties are signed off. If Osler or Blakes have any comments on the attached, we would ask that they be circulated to this group prior to the 10 a.m. call.

Kind regards,

Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

Sent: December-08-17 3:16 PM
To: Milligan, Peter <PMilligan@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro - Change of Law Protection Agreement

Hi,

Attached is a revised version of the Change of Law Protection Agreement. I believe that most of the changes reflected from last night's Osler version (blackline is attached) are of a drafting or conforming nature, other than: (1) the Province disagrees that Approved Refinancing terms should be unfettered by adherence conditions post-Suspension Event and (2) the proposed rating-based "materially and adversely" qualification in the definition of Protection Event (and in fact any such qualification) is not acceptable to the Province. With regard to (1), this version comes into line with the proposed approach (i.e., using a modified adherence condition) that was incorporated into the version of the Change of Law Process Agreement I circulated yesterday. A

further turn of that Agreement, to conform the open item identified in section 3.02 to the revised Change of Law Protection Agreement, is also included here for your reference.

Please note that the Province is working through the drafting concurrently and so further drafting comments may be provided.

As mentioned yesterday, the Province would like to proceed with the Ministers sign-off briefing early next week, on the basis that these versions (minus the explanatory notes) are now in substantially final form. Please identify if you believe there are other 'must have' points (other than the 2 mentioned above).

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Milligan, Peter [mailto:PMilligan@osler.com]
Sent: Thursday, December 07, 2017 6:44 PM
To: ASHBOURNE, STEPHEN; Sebastiano, Rocco; Mansoori, Nina
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca); PALMER, AARON; VINER, JON; PRESTAGE, JA

Subject: Fair Hydro - Change of Law Protection Agreement

All,

Attached is a revised comment draft of the Change of Low Protection Agreement reflecting comments from Torys and Osler. In order to meet this transaction's timeline, this comment draft has not been reviewed by OPG or the Dealers and is delivered subject to any comments they may have.

Peter

Peter Milligan

416.862.6634

DIRECT

416.862.6666

FACSIMILE

pmilligan@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Thursday, December 07, 2017 4:27 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro -- Change of Law Process Agreement

Hi,

Please find (attached) a further turn of the Change of Law Process Agreement, reflecting the Province's comments on the mark-up of the Agreement circulated yesterday afternoon by Torys. The attached blackline shows changes made to yesterday's Torys mark-up.

This version addresses concerns Rocco raised last night, to the extent the Province feels that the issues can be accommodated. For your information, I have set out below responses to Rocco's comments/observations (in CAPs).

The Province would like to proceed with the Ministers briefing early next week, on the basis that this version (minus the explanatory notes) is now in final form. If there are any critical revisions that the other parties believe reflect 'must have' priority, then the Province would like to have a call to discuss them as soon as possible.

Responses to Rocco's Points:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration. [AGREED. 7.01(b) and 7.01(c) will need to mirror the cure language we settle on in the Process Agreement (see my earlier comments). Perhaps the "which continues …" language in 7.01(B) can be revised to read: "to the extent that the Province would be entitled to provide a Suspension Notice in accordance with the terms of the agreement or agreements between the Province and OPG under which such obligations, requirements and processes arise". SIMILAR CHANGE FOR 7.01(C).

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings. [THAT IS THE INTENDED EFFECT. THE ADHERENCE CONDITIONS WOULD APPLY TO THE REFINANCING, SO IF THE REFINANCING TERMS DEVIATED MATERIALLY (BASED ON THE SUBSTANTIALLY IN THE FORM" THRESHOLD"), THEN OPG WOULD REQUIRE THE PROVINCE NOT TO OBJECT IN

ORDER TO PROCEED WITH THOSE NEW TERMS. OTHERWISE, THE REFINANCING COULD INCORPORATE TERMS AND CONDITIONS, WHICH WOULD BIND THE PROVINCE UNDER THE LIMITED GUARANTEE, THAT WOULD BE UNCONSTRAINED AND WITHOUT ANY ACCOUNTABILITY TO THE PROVINCE. IN ROCCO'S EXAMPLE, THAT MIGHT MEAN THAT OPG WOULD NEED TO RESORT TO UNRATED DEBT, IF THE PROVINCE WAS UNWILLING TO ACCEPT THE NEW TERMS. PRESUMABLY EVERYONE WOULD ACT RATIONALLY. HOWEVER, AS A FAILSAFE, OPG COULD OFFER INCREASED PRICING IN ORDER TO ATTRACT INVESTORS TO ACCEPT THE EARLIER VETTED TERMS (BASED ON THE THEN ACCEPTED REVIEWED DOCUMENTATION).]

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable. [THE SUGGESTION REGARDING THE PROVINCE PREVENTING A REFINANCING IS ADDRESSED IN #2. IF THE REFINANCING TERMS WOULD EXCEED THE SCOPE OF THE TRANSACTION DOCUMENTS REVIEWED AND NOT OBJECTED TO BY THE PROVINCE, THEN THAT SUGGESTS THERE IS A MATERIAL EFFECT ON THE PROVINCE AND SO THE PROVINCE WOULD NEED THE ABILITY TO REVIEW AND CONSIDER THE PROPRIETY OF THOSE NEW TERMS FROM ITS PERSPECTIVE. AS FOR THE STANDALONE NATURE OF THE PROCESS AGREEMENT, THE INTENTION IS THAT THE PROCESS AGREEMENT BE UNCOUPLED AND NOT PART OF THE COLLATERAL, AND AS MICHAEL FELDMAN HAS EXPLAINED, LEAVE FUTURE FLEXIBILITY FOR THIS LONG-TERM STRUCTURE. TO ADDRESS ROCCO'S CONCERN THAT THE PROVINCE AND OPG COULD CHANGE THE UNDERLYING OBLIGATIONS APPLICABLE TO ADHERENCE IN RELATION TO A NEW OBLIGATION, REQUIREMENT OR PROCESS IN THE PROCESS AGREEMENT THAT WOULD MAKE A REFINANCING LESS LIKELY TO OCCUR, WE HAVE ADDED AND USED IN THE ATTACHED VERSION A NEW DEFFINTION:

“Approved Refinancing” means a Certified Primary Obligation proposed to be incurred as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions except that the certificate contemplated to be delivered under Section 4.02(b) shall instead confirm that OPG has delivered to the Province a certificate by its applicable officers confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of such existing Certified Primary Obligation.” Various references to “Refinancing” in the Protection Agreement can also be revised to refer to “Approved Refinancing”, as required.

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, December 06, 2017 7:45 PM
To: Mansoori, Nina; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Milligan, Peter; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka
Subject: RE: Fair Hydro -- Change of Law Process Agreement

I have reviewed the revised draft of the Change of Law Process Agreement that Torys has prepared and would like to pass along the following comments/observations:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration.

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an

Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings.

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Wednesday, December 06, 2017 4:38 PM
To: 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'JON.VINER@blakes.com' <JON.VINER@blakes.com>; 'JA.PRESTAGE@blakes.com' <JA.PRESTAGE@blakes.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>;

Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>
Subject: Fair Hydro -- Change of Law Process Agreement

Blakes team,

Please find attached OPG and Torys' comments on the Process Agreement reflecting our discussions from yesterday's call. Please note that this draft is subject to continuing review and comment by Osler and the dealers. As discussed at the tail end of our call yesterday, the section in the Process Agreement that gives the Province the right to object to new and material changes to transaction documents dovetails with the Protection Agreement so additional comments from Oslers may be forthcoming on this draft.

We are working on getting you a revised draft of the Protection Agreement either later today or tomorrow. In the meantime, please let us know if you have any comments or questions on the Process Agreement.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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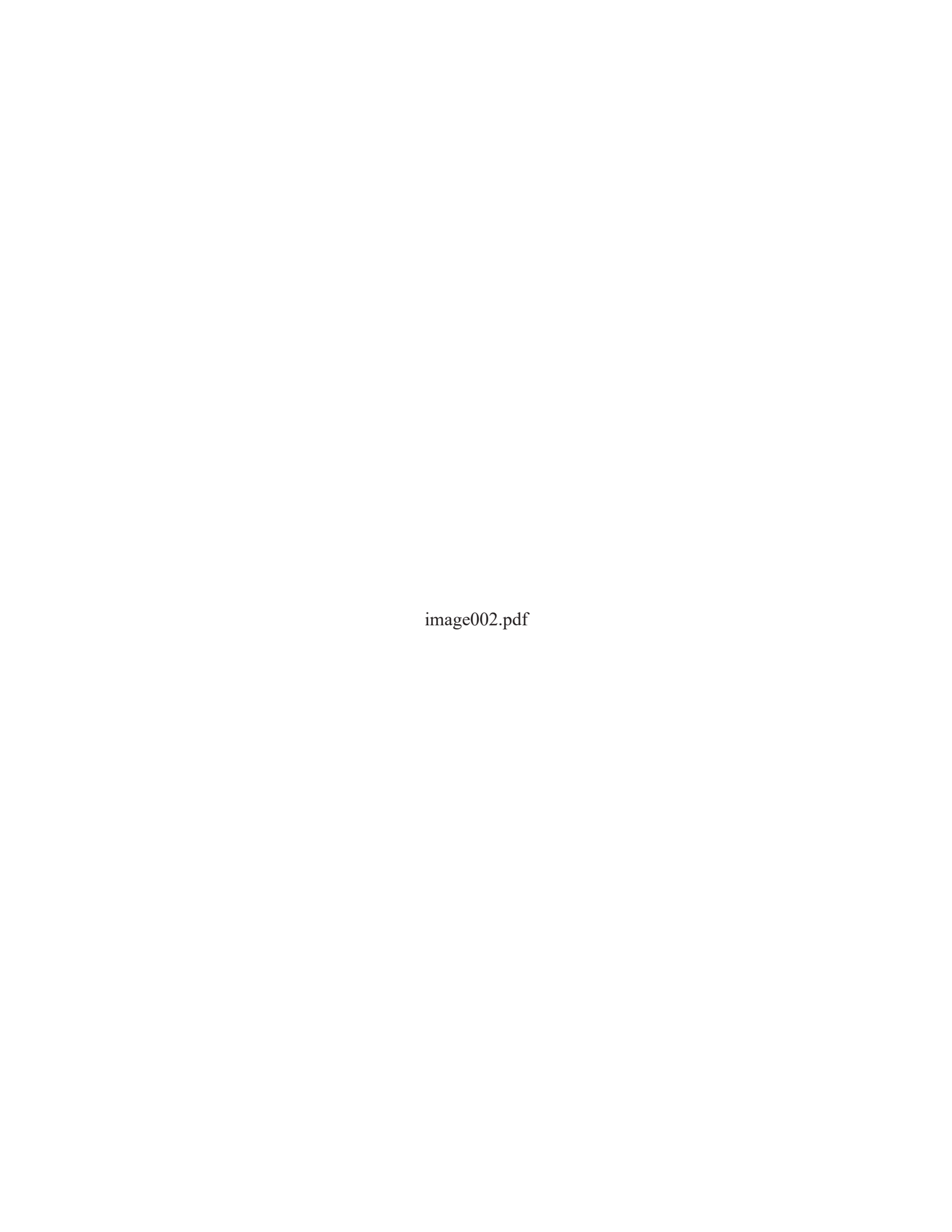
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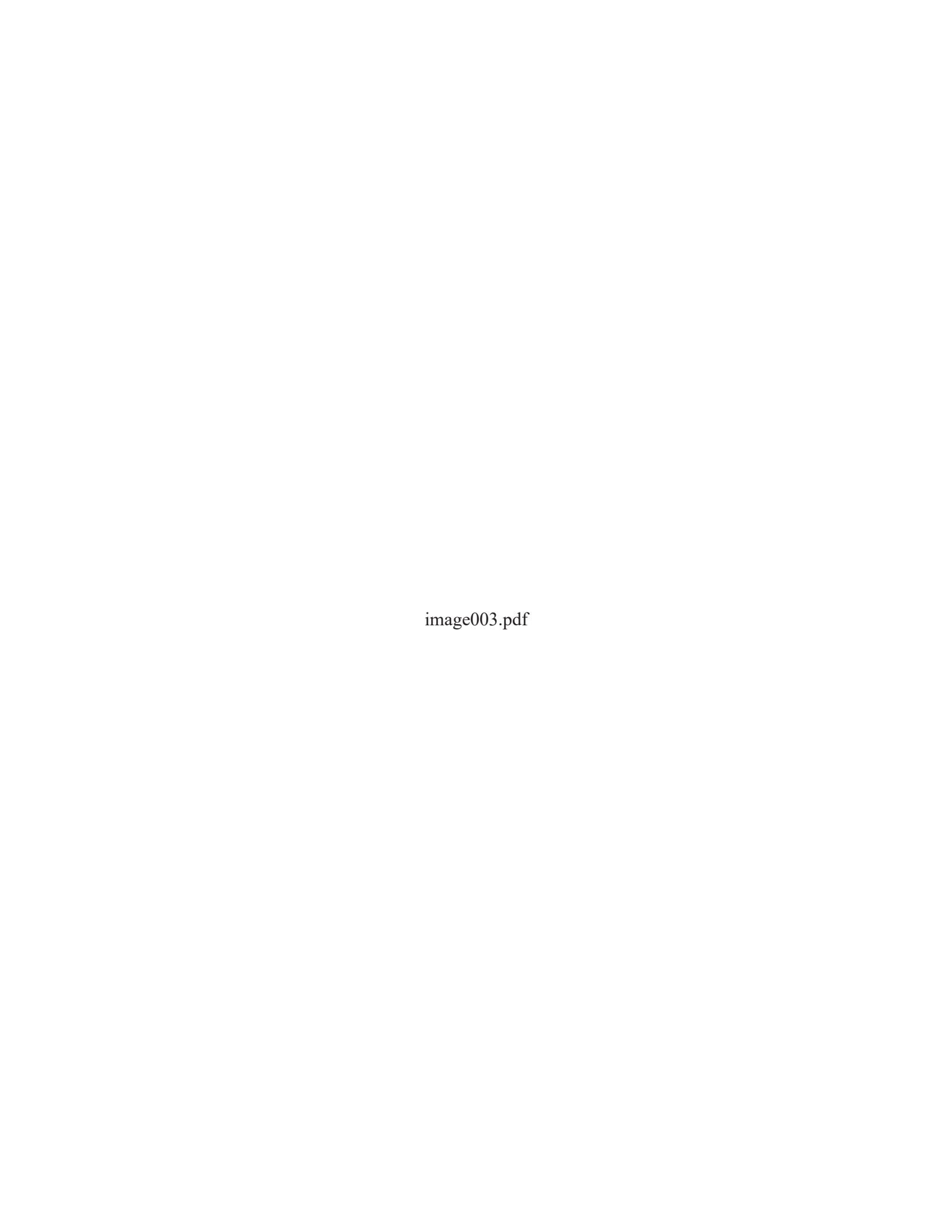
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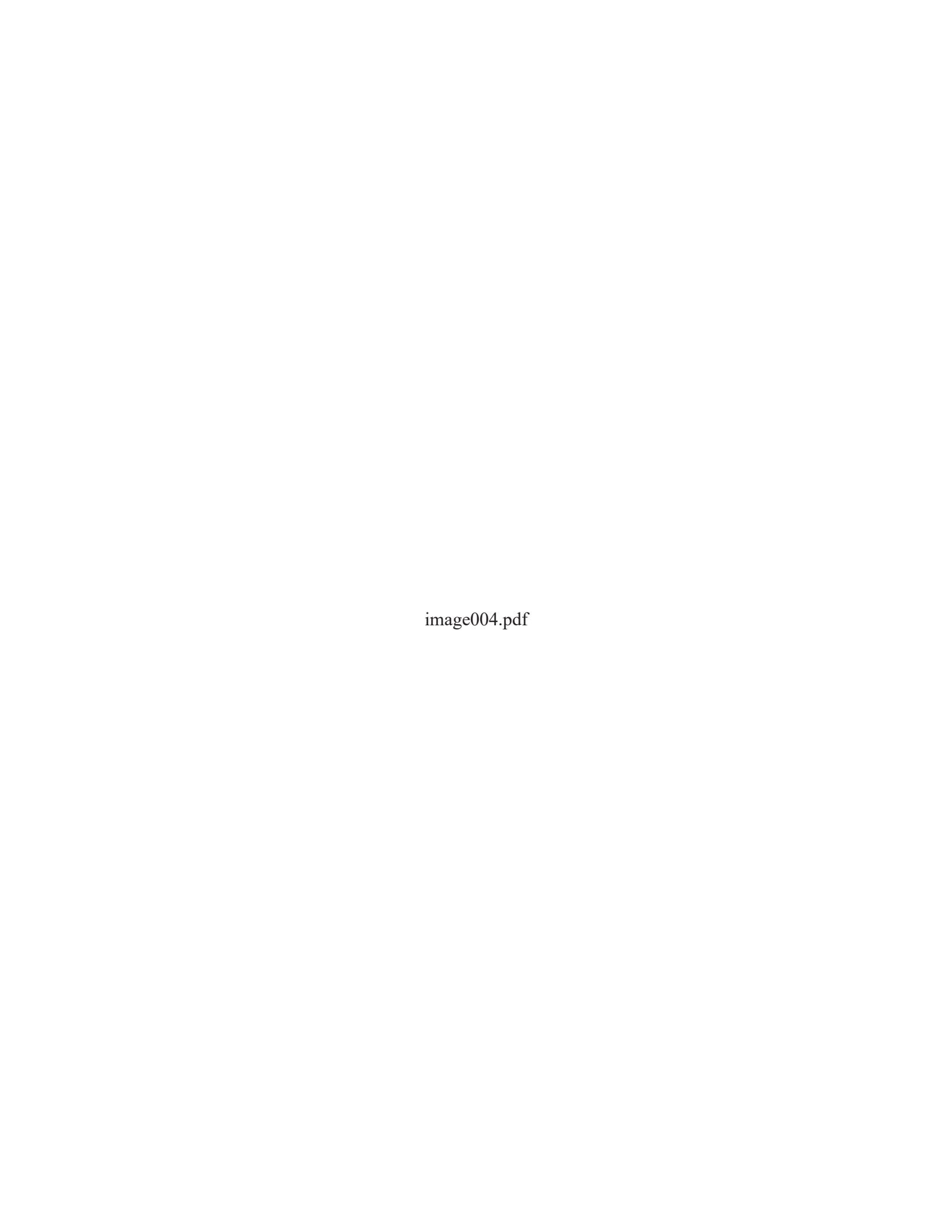
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23239360-v30-Change of Law Protection Agreement.pdf

Draft: December 12, 2017

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

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

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

RECITALS

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

Pursuant to an Order in Council 1981/2017 (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

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

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

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

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A, and any other capitalized terms not defined herein shall have the meanings assigned to them in the Trust Indenture;

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

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

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

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

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

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

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

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

1.02 Trustee to act in accordance with the Trust Indenture

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

1.03 Proof of Approved Obligations

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

Each statement delivered by the Manager under Section 2.01(a)i shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and each of the parties hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Manager shall act diligently in the preparation of each such statement and shall provide the Indenture Trustee and the Province with all supporting computations and calculations used by the Manager to prepare each such statement promptly following a request therefor made by the Indenture Trustee or the Province.

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture as of the date of this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

1.06 Effect of Headings

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

1.07 Successors and Assigns

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

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.09 Governing Law

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

1.10 Proceedings Against the Crown Act

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

1.11 Attornment

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

1.12 Counterparts; Electronic Delivery

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

electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

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

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

1.14 Non-Business Days

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

1.15 Waiver, Amendment

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

1.16 Interest Act

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

1.17 Currency

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

1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the

Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

1.19 Judgment Currency

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

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

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as **[Exhibit A]** (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a

Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, and the following terms shall apply:

i. Not less than three (3) Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand (each such day, a "**Guarantee Payment Date**"), the Manager shall deliver a written statement setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of such written statement, and details regarding any default in performance by any party obligated thereunder.

ii. On each such Guarantee Payment Date, the Province shall deposit the Aggregate Approved Obligations Amount into the Protection Account.

iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the payment provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a "**Beneficiary Payee**" and each payment made to a Beneficiary Payee on a Guarantee Payment Date, a "**Guarantee Payment**").

iv. On the first Guarantee Payment Date and on each subsequent Guarantee Payment Date, Payment Date or other day on which any amount is required to be paid in respect of any Obligations Secured under the Trust Indenture (a "**Subrogation Payment Date**"), the Issuer and the Indenture

Trustee shall ensure that the applicable payment provisions of the Trust Indenture shall be applied and operate on the following basis[1]:

(A) If such day is a Guarantee Payment Date, then for each Approved Obligation for which amounts are paid to a Beneficiary Payee on such day pursuant to clause 2.01(a)iii in respect of principal, interest or any other amounts ("**Payable Approved Amounts**"), the amounts payable by the Financing Entity in respect of such amounts for such Approved Obligation shall be reduced by the respective amounts of such payments to the Beneficiary Payee, and equivalent amounts shall be payable by the Financing Entity to the Province as "**Subrogation Amounts**" in respect of such Approved Obligations, such Subrogation Amounts being payable in the same order of priority and with the same entitlements accruing to the Province as applied in respect of the related Payable Approved Amounts which were previously owing to the Beneficiary Payee, and to reflect this subrogation the payments set out in clause 2.01(a)iv(B) below shall be made by the Financing Entity.

(B) If the Province has made all deposits required to be made by it on each Guarantee Payment Date occurring on or before such day in accordance with clause 2.01(a)ii (or the related Approved Obligation Amounts have otherwise all been paid in full), then in respect of each Approved Obligation for which any related Subrogation Amounts have not yet been paid in full to the Province, the Financing Entity shall pay to the Province from amounts available under the Trust Indenture payment provisions and in accordance with the priority of payment provisions in the Trust Indenture the amount that would be payable on such date in satisfaction of the relevant Payable Approved Amounts, as determined without regard to any Guarantee Payment paid on any Guarantee Payment Date and also without regard to the corresponding reduction of the amounts owing to present and former Beneficiary Payees pursuant to subclause 2.01(a)iv(A) up to the amount of the unpaid related Subrogation Amounts.

(C) No Beneficiary having a right to be paid an amount in respect of an Approved Obligation, and no other Person entitled under an Obligation Secured, in each case that

[1] Explanatory Note: The deletion of the paramountcy provision is acceptable as long as section 2.01 if fully reflected in the Trust Indenture. To be confirmed.

ranks equal with or subordinate to the Payable Approved Amount in respect of which a Subrogation Amount is payable to the Province under subclause 2.01(a)iv(B), shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right of set-off, offset, reimbursement, contribution or indemnity) and no such Beneficiary or other Person shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of any such Subrogation Amount.

(D) For greater certainty, the entitlements of the Province in respect of Subrogation Amounts arising in respect of Payable Approved Obligations that are interest and principal obligations on Notes shall be treated for all purposes of the Trust Indenture as interest and principal obligations, respectively, arising under Notes having the same priority as and any applicable voting rights[2] under the related Approved Obligations, and accordingly the Province (and any successor, assignee or transferee of such entitlements) shall be entitled to all of the rights, entitlements, interests and privileges of a Holder of such a Notes in accordance with the Trust Indenture, as supplemented by the Supplemental Indenture or other indenture document under which the related Approved Obligations were issued.

(b) On each Guarantee Payment Date and upon demand by the Province, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay Guarantee Payments to Beneficiary Payees on the Guarantee Payment Date in accordance with clause 2.01(a)iii or that otherwise remains on deposit in the Protection Account on the relevant date.

(c) In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable under Section 2.01(a), if applicable.

(d) The Province shall, as a payee of Subrogation Amounts under clause 2.01(a)iv(B) and as a payee of any amounts payable under clause 2.01(a)v, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

[2] Explanatory Note: As discussed, the Province understands that voting rights may be muted by the "outstanding" language in the Trust Indenture. Nevertheless, if voting rights would arise under the Trust Indenture they should be available to the Province.

(e) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).

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

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

(h) Any amount payable to the Province in respect of a Subrogation Amount shall bear interest from and including the date of payment by the Province of the related Guarantee Payment to but excluding the date of payment of the Subrogation Amount to the Province, such interest to accrue at the rate equivalent to the applicable interest rate borne by the related Approved Obligation, and such interest amounts shall be added to their respective Subrogated Amounts and shall consequently be payable in the same priority as the relevant Subrogated Amount under clause 2.01(a)iv(B), all such accruing interest amounts to be calculated and added to the Subrogation Amounts by the Manager in its discretion acting in a commercially reasonable fashion.

(i) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under and in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

2.02 Intentionally Deleted.

2.03 Absence of Set-off

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

2.04 Payment into Protection Account in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section **[7.03]** of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Financing Entity and the Indenture Trustee shall ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an Approved Obligation are applied to pay the amounts due and payable to the Beneficiary Payee as and to the extent provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiary Payee as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiary Payee in respect of the applicable Approved Obligations, whereupon an affected Beneficiary Payee shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

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

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

(c) diligence; and

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

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

2.06 Additional Security

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

2.07 Continuing Liability of the Province

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

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations in accordance with Section 8.01.

2.09 Modifications of Approved Obligations

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

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

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

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

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

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

3.02 Acceptance of Trusts

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

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

Except as provided in Section 7.02, a Primary Obligation that is not a Certified Primary Obligation shall be an Approved Obligation. A Certified Primary Obligation shall constitute an Approved Obligation if (i) the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred or (ii) the Province, in its sole discretion, designates in writing that it is an Approved Obligation.

4.02 Adherence Conditions

(a) The following shall be the Adherence Conditions applicable in relation to each Certified Primary Obligation:

i. the Certified Primary Obligation when incurred is an Obligation Secured under the Trust Indenture; and

ii. OPG, as FSM, delivers an Adherence Compliance Certificate in the form attached hereto as Exhibit B signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, on or before the incurrence of the Certified Primary Obligation (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation); and

iii. the Province has not provided a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity.

(b) Without limiting any obligations of OPG to the Province arising other than pursuant to this Agreement, satisfaction of the Adherence Conditions for a Certified Primary Obligation shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under the Certified Primary Obligation, as such Certified Primary Obligation may be amended, restated, supplemented or modified from time to time.

(c) For greater certainty, there shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Certified Primary Obligation.

4.03 Evidence of Satisfaction

An Adherence Compliance Certificate delivered in accordance with clause 4.02(a)ii shall be determinative as to whether the applicable Adherence Condition with respect thereto has been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same. An Adherence Compliance Certificate that purports on its face to be signed by officers specified in clause 4.02(a)ii may be relied upon by any addressee without further enquiry or evidence as to the incumbency or signatures of such officers. If an Adherence Compliance Certificate is not delivered in accordance with the timing requirements of clause 4.02(a)ii such certificate may be delivered at a later date, and be effective as if it had been delivered in accordance with the timing requirement of clause 4.02(a)ii if at the time such certificate was otherwise required to be delivered OPG had delivered to the Province all certifications required by the Province in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's

rights and interests under and in respect of the Approved Obligation to the extent of such payment, and shall be entitled to (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including Sections **[7.04]** through **[7.11]** and **[8.13]** (Payment Priorities), Section **[7.12]** (Payments Held in Trust), Section **[8.11]** (Control by Controlling Class Creditors), Section **[8.12]** (Limitation on Suits), Section **[8.14]** (Limited Recourse), Article IX (The Indenture Trustee), including all limitations of liability thereunder, Section **[9.14]** (Communications to Specified Creditors) and Section **[16.01]** (No Petition); (ii) consents, requests and authorizes the Issuer and the Indenture Trustee to (x) add the Province to the register of Specified Creditors described in subsection **[13.13(b)]** of the Trust Indenture and (y) disseminate the notice details of the Province to other Specified Creditors for the purposes set out in subsection **[9.14(b)]** of the Trust Indenture, and (iii) confirms that it will execute and deliver, or cause to be executed and delivered, all such further agreements, documents and instruments in connection with this Section 5.01 as the Indenture Trustee may request from time to time for the purpose of giving effect to the terms of this Section 5.01.

5.02 <u>Priorities</u>

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation and the Payable Approved Amounts

thereunder shall rank equally with the rights, interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section **[7.10]** of the Trust Indenture.

5.03 Intentionally Deleted

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
INDENTURE TRUSTEE MATTERS

6.01 Limited Recourse

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

6.02 Not Responsible for Recitals

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

6.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

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

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

(c) this Agreement has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 6.03(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Agreement shall not be affected in any manner whatsoever by reason only of such event.

ARTICLE VII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

7.01 Suspension Notice

Upon:

(a) a Program Breach;

(b) a default in the performance, or breach, of any covenants of OPG, as FSM, or OPG, in its corporate capacity, in each case to the Province in connection with its obligations to the Province pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligation and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as FSM or in its corporate capacity, to the Province in connection with its obligations to the Province and its internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations, proves to be incorrect in any material respect on the date made and the expiration of any applicable cure period; or

(d) the FSM no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the FSM as the Manager;

the Province may declare that the Limited Guarantee under this Agreement shall not apply to any Primary Obligations incurred on or after such declaration, excluding Post-Suspension Refinancings or Pre-Approved Refinancings, by delivering a written notice in

the form of Exhibit C (a "**Suspension Notice**") to the Indenture Trustee, the FSM and the Financing Entity.

7.02 Suspension

If a Suspension Notice has been provided under Section 7.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary Obligation incurred, excluding Post-Suspension Refinancings, or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province, in each case, on or after the time such Suspension Notice is delivered.

7.03 Additional Right of the Province Regarding Post-Suspension Refinancings

Following the occurrence of a Suspension Event, the Limited Guarantee shall continue to apply in respect of any Post-Suspension Refinancing (for greater certainty, without regard to the satisfaction of any Adherence Conditions); provided that prior to the Financing Entity incurring any Primary Obligation constituting a Post-Suspension Refinancing, the Manager shall provide the Province with at least 30 days' notice of its intention to seek a Post-Suspension Refinancing and prior to incurrence, which notice shall describe the material covenants, events of default, representations and warranties and indemnities of the Financing Entity and other material terms, excluding financial terms, rates and levels, and that shall be in respect of the full amount of the amount becoming due and payable in respect of the applicable Primary Obligation less amounts otherwise available to the Financing Entity from other available or committed sources (the "**Proposal**"), and during such 30 day period the Province may, but is not obligated to, offer to fund such Post-Suspension Refinancing or arrange for another Person to fund such Post-Suspension Refinancing on the same terms as set out in the Proposal or on such other terms as may be considered by the Province to be not more onerous on the Financing Entity and that are acceptable on that basis to the Financing Entity, acting reasonably. If, within such 30-day period, the Province elects to offer to fund such Post-Suspension Refinancing as provided in the preceding sentence, the Manager shall accept such offer; however, if the Province does not elect to offer to fund such Post-Suspension Refinancing, the Manager shall cause the Financing Entity to incur Primary Obligations constituting such a Post-Suspension Refinancing on substantially the same terms as than those set out in the Proposal if the Post-Suspension Refinancing can be completed by the Financing Entity in compliance with the Act, or on such other terms as would not have a Material Effect.

7.04 No Impact on Adherence

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

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

This Agreement will continue until the later of: (a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee and (b) the date that no amount is or may become due and payable to the Province in respect of any Subrogation Amount.

8.02 Notices

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

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity
Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: (416) 981-9777
Email: corporatetrust.toronto@computershare.com

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(c) if to the Province:

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

and

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

With copies to:

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

and

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

(d) if to the Indenture Trustee:

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

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

8.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

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

8.04 Enurement

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

8.05 FIPPA

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

8.06 No Petition

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

8.07 Notice to Rating Agencies

OPG, as FSM, shall deliver prompt written notice to the Rating Agencies of the occurrence of (i) a Protection Event; (ii) receipt of a Suspension Notice delivered by the Province pursuant to Section 7.01; and (iii) an assignment of this Agreement by any party pursuant to Section 8.03.

8.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

8.09 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS TRUSTEE OF FAIR HYDRO TRUST, AS ISSUER, BY ONTARIO POWER GENERATION INC., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration of a funding obligation" in the General Regulation.

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

"**Adherence Compliance Certificate**" means a certificate in the form attached hereto as Exhibit B delivered by the FSM in accordance with Section 4.02(a)ii.

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

"**Aggregate Approved Obligations Amount**" means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

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

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period for purposes of section 15(1) of the Act (in effect on the date hereof), including section 6.1 of the General Regulation (in effect on the date hereof), divided by the number of months in such Reference Period.

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

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

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

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

"**Certified Primary Obligations**" means Primary Obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest, including any Refinancing, other than a Post-Suspension Refinancing or a Pre-Approved Refinancing, of such a Primary Obligation (for greater certainty, including, in the case of any Certified Primary Obligation permitting funding transactions pursuant to a Funding Obligation Agreement applicable to the Certified Primary Obligation, each individual borrowing or funding utilization thereunder), (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not any individual trade confirmation other than a trade confirmation that modifies or purports to override the express terms or conditions of the related Master Agreement, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and expected (as determined by the Manager, acting reasonably) aggregate payments by the Financing Entity thereunder during the term of such contract are or would be in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).

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

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

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

"**Executive Officer**" has the meaning ascribed to the term "executive officer" in National Instrument 51-102 – *Continuous Disclosure Obligations* of the Canadian Securities Administrators.

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

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

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

"**Financing Entity Trustee**" has the meaning ascribed thereto in the first paragraph of this Agreement until a successor Financing Entity Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and the Declaration of Trust, and thereafter "Financing Entity Trustee" means and includes such Person.

"**Financing Plan**" has the meaning ascribed to the term "Financing Plan" in the Act.

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Guarantee Payment Date**" has the meaning ascribed thereto in Section 2.01(a)i.

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

"**Holder**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

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

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

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

"**Liens**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

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

"**Master Agreement**" means an agreement in the form of a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Material Effect**" means a material effect on the obligations (including as a result of a change in the nature, scope or extent of the Primary Obligation and the effect on the Province's obligations therefor under the Limited Guarantee) that could reasonably be expected to affect (i) the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization); (ii) the appointment, obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Financing Entity or the Financing Entity Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province as a Specified Creditor; (v) the limitations and requirements otherwise applicable to the capital structure of the Financing Entity under any existing Program Agreement; (vi) the payment provisions and associated priorities set forth in the Trust Indenture; (vii) the obligations or liability of the Financing Entity to pay any tax, (viii) compliance by the FSM with the then applicable Financing Plan; (ix) the circumstances in which a Protection Event could arise; (x) compliance by the FSM, the Financing Entity or IESO with the Act or the General Regulation; (xi) the nature or character of the payment obligations (but, subject to compliance with the Financing Plan, irrespective of the amount payable thereunder) that could become payable under the Limited Guarantee; or (xii) the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of this Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

"**Notes**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

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

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

"**Payable Approved Amounts**" has the meaning ascribed thereto in 2.01(a).

"**Payment Date**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

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

"**Post-Suspension Refinancing**" means a Funding Obligation that is an Obligation Secured and that is incurred on or after the occurrence of a Suspension Event in compliance with the requirements of Section 7.03, as a Refinancing of one or more Series of Approved Obligations (including any Pre-Approved Refinancing that is authorized to be incurred on or after the occurrence of a Suspension Event), in each case the proceeds of which, together with any other funds that may be available, in full such Series of Approved Obligations.

"**Pre-Approved Refinancing**" means a Refinancing of a Certified Primary Obligation in respect of which the Province has, prior to the incurrence of such Certified Primary Obligation, further agreed shall not be a Certified Primary Obligation, subject to compliance with such conditions and requirements as may be specified in such further agreement.

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account or Finance Reserve Account; and (ii) any obligation to pay the Financing Entity or on the Financing Entity's direction any remaining amounts in the Collection Account pursuant to the Trust Indenture.

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

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

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

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

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

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

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

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

in each case, that (X) adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any Finance Reserve Account, Capital Account or collateral posting account applicable under a Derivative Agreement, (ii) the availability of any credit enhancement agreement to which the Financing Entity is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in any of clauses (i) to (v) of this paragraph (a), or (Y) adversely affects the enforceability of, or adversely changes, the terms and conditions of this Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any Finance Reserve Account, Capital Account or collateral posting account applicable under a Derivative Agreement, (ii) the availability of any credit enhancement agreement to which the Financing Entity is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in paragraph (b).

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

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency Condition" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the Act as of the date hereof, as more particularly described and given meaning in the General Regulation as of the date hereof.

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

"**Specified Creditor**" has the meaning ascribed thereto in the Trust Indenture on the date hereof.

"**Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(B).

"**Subrogation Payment Date**" has the meaning ascribed thereto in clause 2.01(a)iv.

"**Suspension Event**" has the meaning ascribed thereto in Section 7.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 7.01.

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

"**True-up Amount**" has the meaning ascribed to the term "true up amount" in the Act as of the date hereof.

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

EXHIBIT A
FORM OF PAYMENT DEMAND

TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Pursuant to and in accordance with section 2.01(a) of the Change of the Law Protection Agreement, the Indenture Trustee hereby demands payment from the Province in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in the Change of Law Protection Agreement.

DATED as of the [■] day of [■], [■].

BNY TRUST COMPANY OF CANADA

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B
FORM OF ADHERENCE COMPLIANCE CERTIFICATE UNDER SECTION 4.02(a)

TO: **BNY TRUST COMPANY OF CANADA**, in its capacity as Indenture Trustee (the "**Indenture Trustee**") under the Master Trust Indenture dated as of December ●, 2017 between Fair Hydro Trust and the Indenture Trustee (the "**Master Trust Indenture**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province of Ontario, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust, Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Each of the undersigned, being the ● and ● of OPG acting in its capacity as FSM and holding the offices set forth under their names and signatures below, pursuant to and accordance with clause 4.02(a)ii of the Change of Law Protection Agreement, hereby certifies for and on behalf of OPG, in its capacity as Financial Services Manager, and not in such officer's personal capacity and intending that this certificate may be relied on by the addressees hereof without independent inquiry, that:

1. I have read and understand the provisions of the Change of Law Protection Agreement, the Master Trust Indenture and all other documents and materials necessary to enable me to deliver this certificate.
2. If the Certified Primary Obligation is a Refinancing, the proceeds of the Refinancing will be used solely for the purpose of repaying one or more Certified Primary Obligations in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied, including one or more other Refinancings in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied.
3. OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate was provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

DATED as of the [■] day of [■], [■].

Name: [3]	Name:
Office:	Office:

[3] This certificate must be signed by two officers of OPG being either (i) the Chief Financial Officer and the Treasurer, or (ii) any two Executive Officers (as defined in the Change of Law Protection Agreement) of OPG.

EXHIBIT C
SUSPENSION NOTICE

TO: Ontario Power Generation Inc., in its capacity as Financial Services Manager

AND TO: Fair Hydro Trust

AND TO: Computershare Trust Company of Canada, in its capacity as trustee of Fair Hydro Trust

AND TO: BNY Trust Company of Canada, as Indenture Trustee

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement. All references in this Suspension Notice to "Articles" or "Sections" refer to Articles or Sections of the Change of Law Protection Agreement.

The Province has a reasonable basis for concluding that an event described in clauses (a) to (d) of Section 7.01 has occurred. Pursuant to Section 7.01, the Province hereby declares that the Limited Guarantee shall hereby not apply in respect of (i) any Primary Obligation incurred, excluding Post-Suspension Refinancings or Pre-Approved Refinancings or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province, in each case, on or after delivery of this Suspension Notice.

This Suspension Notice is hereby delivered to the FSM, the Financing Entity and the Indenture Trustee in accordance with Section 8.02 of the Change of Law Protection Agreement.

* * * *

DATED as of the [■] day of [■], [■].

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

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

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

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

RECITALS

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

Pursuant to an Order in Council 1981/2017 (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

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

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

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

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A, and any other capitalized terms not defined herein shall have the meanings assigned to them in the Trust Indenture;

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

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

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

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

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

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

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

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

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

1.02 Trustee to act in accordance with the Trust Indenture

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

1.03 Proof of Approved Obligations

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

Each statement delivered by the Manager under Section 2.01(a)i shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and each of the parties hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Manager shall act diligently in the preparation of each such statement and shall provide the Indenture Trustee and the Province with all supporting computations and calculations used by the Manager to prepare each such statement promptly following a request therefor made by the Indenture Trustee or the Province.

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture as of the date of this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a

related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

1.06 Effect of Headings

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

1.07 Successors and Assigns

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

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.09 Governing Law

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

1.10 Proceedings Against the Crown Act

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

1.11 Attornment

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

1.12 Counterparts; Electronic Delivery

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

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

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

1.14 Non-Business Days

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

1.15 Waiver, Amendment

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

1.16 Interest Act

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

1.17 Currency

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

1.18 References to Acts of the Financing Entity

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

1.19 Judgment Currency

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

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

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as **[Exhibit A]** (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, and the following terms shall apply:

i. Not less than three (3) Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand (each such day, a "**Guarantee Payment Date**"), the Manager shall deliver a written statement setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of such written statement, and details regarding any default in performance by any party obligated thereunder.

ii. On each such Guarantee Payment Date, the Province shall deposit the Aggregate Approved Obligations Amount into the Protection Account.

iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the

payment provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a "**Beneficiary Payee**" and each payment made to a Beneficiary Payee on a Guarantee Payment Date, a "**Guarantee Payment**").

iv. On the first Guarantee Payment Date and on each subsequent Guarantee Payment Date, Payment Date or other day on which any amount is required to be paid in respect of any Obligations Secured under the Trust Indenture (a "**Subrogation Payment Date**"), the Issuer and the Indenture Trustee shall ensure that the applicable payment provisions of the Trust Indenture shall be applied and operate on the following basis[1]:

(A) If such day is a Guarantee Payment Date, then for each Approved Obligation for which amounts are paid to a Beneficiary Payee on such day pursuant to clause 2.01(a)iii in respect of principal, interest or any other amounts ("**Payable Approved Amounts**"), the amounts payable by the Financing Entity in respect of such amounts for such Approved Obligation shall be reduced by the respective amounts of such payments to the Beneficiary Payee, and equivalent amounts shall be payable by the Financing Entity to the Province as "**Subrogation Amounts**" in respect of such Approved Obligations, such Subrogation Amounts being payable in the same order of priority and with the same entitlements accruing to the Province as applied in respect of the related Payable Approved Amounts which were previously owing to the Beneficiary Payee, and to reflect this subrogation the payments set out in clause 2.01(a)iv(B) below shall be made by the Financing Entity.

(B) If the Province has made all deposits required to be made by it on each Guarantee Payment Date occurring on or before such day in accordance with clause 2.01(a)ii (or the related Approved Obligation Amounts have otherwise all been paid in full), then in respect of each Approved Obligation for which any related Subrogation Amounts have not yet been paid in full to the Province, the Financing Entity shall pay to the Province from amounts available under the Trust Indenture payment provisions and in accordance with the priority of payment provisions in

[1] Explanatory Note: The deletion of the paramountcy provision is acceptable as long as section 2.01 if fully reflected in the Trust Indenture. To be confirmed.

the Trust Indenture the amount that would be payable on such date in satisfaction of the relevant Payable Approved Amounts, as determined without regard to any Guarantee Payment paid on any Guarantee Payment Date and also without regard to the corresponding reduction of the amounts owing to present and former Beneficiary Payees pursuant to subclause 2.01(a)iv(A) up to the amount of the unpaid related Subrogation Amounts.

(C) No Beneficiary having a right to be paid an amount in respect of an Approved Obligation, and no other Person entitled under an Obligation Secured, in each case that ranks equal with or subordinate to the Payable Approved Amount in respect of which a Subrogation Amount is payable to the Province under subclause 2.01(a)iv(B), shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right of set-off, offset, reimbursement, contribution or indemnity) and no such Beneficiary or other Person shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of any such Subrogation Amount.

(D) For greater certainty, the entitlements of the Province in respect of Subrogation Amounts arising in respect of Payable Approved Obligations that are interest and principal obligations on Notes shall be treated for all purposes of the Trust Indenture as interest and principal obligations, respectively, arising under Notes having the same priority as and any applicable voting rights[2] under the related Approved Obligations, and accordingly the Province (and any successor, assignee or transferee of such entitlements) shall be entitled to all of the rights, entitlements, interests and privileges of a Holder of such a Notes in accordance with the Trust Indenture, as supplemented by the Supplemental Indenture or other indenture document under which the related Approved Obligations were issued.

[2] Explanatory Note: As discussed, the Province understands that voting rights may be muted by the "outstanding" language in the Trust Indenture. Nevertheless, if voting rights would arise under the Trust Indenture they should be available to the Province.

(b) On each Guarantee Payment Date and upon demand by the Province, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay Guarantee Payments to Beneficiary Payees on the Guarantee Payment Date in accordance with clause 2.01(a)iii or that otherwise remains on deposit in the Protection Account on the relevant date.

(c) In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable under Section 2.01(a), if applicable.

(d) The Province shall, as a payee of Subrogation Amounts under clause 2.01(a)iv(B) and as a payee of any amounts payable under clause 2.01(a)v, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(e) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).

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

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

(h) Any amount payable to the Province in respect of a Subrogation Amount shall bear interest from and including the date of payment by the Province of the related Guarantee Payment to but excluding the date of payment of the Subrogation Amount to the Province, such interest to accrue at the rate equivalent to the applicable interest rate borne by the related Approved Obligation, and such interest amounts shall be added to their respective Subrogated Amounts and shall consequently be payable in the same priority as the relevant Subrogated Amount under clause 2.01(a)iv(B), all such accruing interest amounts to be calculated and added to the Subrogation Amounts by the Manager in its discretion acting in a commercially reasonable fashion.

(i) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under and in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

2.02 Intentionally Deleted.

2.03 Absence of Set-off

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

2.04 Payment into Protection Account in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section **[7.03]** of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Financing Entity and the Indenture Trustee shall ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an Approved Obligation are applied to pay the amounts due and payable to the Beneficiary Payee as and to the extent provided for in Section 2.01(a). Upon a

payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiary Payee as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiary Payee in respect of the applicable Approved Obligations, whereupon an affected Beneficiary Payee shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

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

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

(c) diligence; and

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

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

2.06 Additional Security

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

2.07 Continuing Liability of the Province

The Approved Obligations shall be deemed not to have been paid, observed or performed, and the liability of the Province hereunder in respect thereof shall continue and not be discharged, to the extent that any payment, observance or performance thereof by the Financing Entity, or out of the proceeds of any Collateral, is recovered from or reimbursed by or for the

account of any of the Beneficiaries for any reason, including a preference or fraudulent transfer or by virtue of any subordination (whether present or future or contractual or otherwise) of the Approved Obligations, whether such recovery or payment over is effected by any judgment, decree or order of any court or Governmental Authority, by any plan of reorganization or by settlement or compromise by any of the Beneficiaries (whether or not consented to by the Financing Entity or the Province) of any claim for any such recovery or payment over.

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations in accordance with Section 8.01.

2.09 Modifications of Approved Obligations

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

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

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

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

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

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

3.02 Acceptance of Trusts

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

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

~~A~~Except as provided in Section 7.02, a Primary Obligation that is not a Certified Primary Obligation shall be an Approved Obligation. A Certified Primary Obligation shall constitute an Approved Obligation if (i) the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred~~,~~ or (ii) the Province, in its sole discretion, designates in writing that it is an Approved Obligation ~~or (iii) the Primary Obligation is a Post-Suspension Refinancing or a Pre-Approved Refinancing~~.

4.02 Adherence Conditions

(a) The following shall be the Adherence Conditions applicable in relation to each Certified Primary Obligation:

i. the Certified Primary Obligation when incurred is an Obligation Secured under the Trust Indenture; and

ii. OPG, as FSM, delivers an Adherence Compliance Certificate in the form attached hereto as Exhibit B signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, on or before the incurrence of the Certified Primary Obligation (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation); and

iii. the Province has not provided a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity.

(b) Without limiting any obligations of OPG to the Province arising other than pursuant to this Agreement, satisfaction of the Adherence Conditions for a Certified Primary Obligation shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under the Certified Primary Obligation, as such Certified Primary Obligation may be amended, restated, supplemented or modified from time to time.

(c) For greater certainty, there shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Certified Primary Obligation.

4.03 Evidence of Satisfaction

An Adherence Compliance Certificate delivered in accordance with clause 4.02(a)ii shall be determinative as to whether the applicable Adherence Condition with respect thereto has been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same. An Adherence Compliance Certificate that purports on its face to be signed by officers specified in clause 4.02(a)ii may be relied upon by any addressee without further enquiry or evidence as to the incumbency or signatures of such officers. If an Adherence Compliance Certificate is not delivered in accordance with the timing requirements of clause 4.02(a)ii such certificate may be delivered at a later date, and be effective as if it had been delivered in accordance with the timing requirement of clause 4.02(a)ii if at the time such certificate was otherwise required to be delivered OPG had delivered to the Province all certifications required by the Province in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, and shall be entitled to (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a

Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including Sections **[7.04]** through **[7.11]** and **[8.13]** (Payment Priorities), Section **[7.12]** (Payments Held in Trust), Section **[8.11]** (Control by Controlling Class Creditors), Section **[8.12]** (Limitation on Suits), Section **[8.14]** (Limited Recourse), Article IX (The Indenture Trustee), including all limitations of liability thereunder, Section **[9.14]** (Communications to Specified Creditors) and Section **[16.01]** (No Petition); (ii) consents, requests and authorizes the Issuer and the Indenture Trustee to (x) add the Province to the register of Specified Creditors described in subsection **[13.13(b)]** of the Trust Indenture and (y) disseminate the notice details of the Province to other Specified Creditors for the purposes set out in subsection **[9.14(b)]** of the Trust Indenture, and (iii) confirms that it will execute and deliver, or cause to be executed and delivered, all such further agreements, documents and instruments in connection with this Section 5.01 as the Indenture Trustee may request from time to time for the purpose of giving effect to the terms of this Section 5.01.

5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation and the Payable Approved Amounts thereunder shall rank equally with the rights, interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section **[7.10]** of the Trust Indenture.

5.03 Intentionally Deleted

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
INDENTURE TRUSTEE MATTERS

6.01 Limited Recourse

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

6.02 Not Responsible for Recitals

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

6.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

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

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

(c) this Agreement has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 6.03(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Agreement shall not be affected in any manner whatsoever by reason only of such event.

ARTICLE VII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

7.01 Suspension Notice

Upon:

(a) a Program Breach;

(b) a default in the performance, or breach, of any covenants of OPG, as FSM, or OPG, in its corporate capacity, in each case to the Province in connection with its obligations to the Province pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligation and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as FSM or in its corporate capacity, to the Province in connection with its obligations to the Province and its internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations, proves to be incorrect in any material respect on the date made and the expiration of any applicable cure period; or

(d) the FSM no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the FSM as the Manager;

the Province may declare that the Limited Guarantee under this Agreement shall not apply to any Primary Obligations incurred on or after such declaration, excluding Post-Suspension Refinancings or Pre-Approved Refinancings, by delivering a written notice in the form of Exhibit C (a "**Suspension Notice**") to the Indenture Trustee, the FSM and the Financing Entity.

7.02 Suspension

If a Suspension Notice has been provided under Section 7.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary Obligation incurred, excluding Post-Suspension Refinancings ~~or Pre-Approved Refinancings~~, or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province, in each case, on or after the time such Suspension Notice is delivered.

7.03 Additional Right of the Province Regarding Post-Suspension Refinancings

Following the occurrence of a Suspension Event, the Limited Guarantee shall continue to apply in respect of any Post-Suspension Refinancing (for greater certainty, without regard to the satisfaction of any Adherence Conditions ~~thereto~~); provided that prior to the Financing Entity incurring any Primary Obligation constituting a Post-Suspension Refinancing, the Manager shall provide the Province with at least 30 days' notice of its intention to seek a Post-Suspension Refinancing and prior to incurrence, which notice shall describe the material covenants, events of default, representations and warranties and indemnities of the Financing Entity and other material terms, excluding financial terms, rates and levels, and that shall be in respect of the full amount of the amount becoming due and payable in respect of the applicable Primary Obligation less amounts otherwise available to the Financing Entity from other available or committed sources (the "**Proposal**"), and during such 30 day period the Province may, but is not obligated to, offer to fund such Post-Suspension Refinancing or arrange for another Person to fund such Post-Suspension Refinancing on the same terms as set out in the Proposal or on such other terms as may be considered by the Province to be not more onerous on the Financing Entity and that are acceptable on that basis to the Financing Entity, acting reasonably. If, within such 30-day period, the Province elects to offer to fund such Post-Suspension Refinancing as provided in the preceding sentence, the Manager shall accept such offer; however, if the Province does not elect to offer to fund such Post-Suspension Refinancing, the Manager shall cause the Financing Entity to incur Primary Obligations constituting such a Post-Suspension Refinancing on substantially the same terms as than those set out in the Proposal if the Post-Suspension Refinancing can be completed by the Financing Entity in compliance with the Act, or on such other terms as ~~may be considered by the Financing Entity to be not more onerous on the Province and that are acceptable on that basis to the Province, acting reasonably~~would not have a Material Effect.

7.04 No Impact on Adherence

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

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

This Agreement will continue until the later of: (a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee and (b) the date that no amount is or may become due and payable to the Province in respect of any Subrogation Amount.

8.02 Notices

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

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: (416) 981-9777
Email: corporatetrust.toronto@computershare.com

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: General Counsel
Fax: (416) 592-4189

(c) if to the Province:

Minister of Finance

[Address]

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

and

Minister of Energy

[Address]

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

With copies to:

Deputy Minister of Finance

[Address]

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

and

Deputy Minister of Energy

[Address]

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

(d) if to the Indenture Trustee:

[Address]

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

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

8.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

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

8.04 Enurement

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

8.05 FIPPA

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

8.06 No Petition

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

8.07 Notice to Rating Agencies

OPG, as FSM, shall deliver prompt written notice to the Rating Agencies of the occurrence of (i) a Protection Event; (ii) receipt of a Suspension Notice delivered by the Province pursuant to Section 7.01; and (iii) an assignment of this Agreement by any party pursuant to Section 8.03.

8.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

8.09 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS TRUSTEE OF FAIR HYDRO TRUST, AS ISSUER, BY ONTARIO POWER GENERATION INC., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration of a funding obligation" in the General Regulation.

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

"**Adherence Compliance Certificate**" means a certificate in the form attached hereto as Exhibit B delivered by the FSM in accordance with Section 4.02(a)ii.

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

"**Aggregate Approved Obligations Amount**" means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

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

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period for purposes of section 15(1) of the Act (in effect on the date hereof), including section 6.1 of the General Regulation (in effect on the date hereof), divided by the number of months in such Reference Period.

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

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

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

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

"**Certified Primary Obligations**" means Primary Obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest, including any Refinancing, other than a Post-Suspension Refinancing or a Pre-Approved Refinancing, of such a Primary Obligation (for greater certainty, including, in the case of any Certified Primary Obligation permitting funding transactions pursuant to a Funding Obligation Agreement applicable to the Certified Primary Obligation, each individual borrowing or funding utilization thereunder), (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not any individual trade confirmation other than a trade confirmation that modifies or purports to override the express terms or conditions of the related Master Agreement, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and expected (as determined by the Manager, acting reasonably) aggregate payments by the Financing Entity thereunder during the term of such contract are or would be in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).

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

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

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

~~"**Determination Date**" has the meaning ascribed thereto in clause 2.01(a)iv.~~

"**Executive Officer**" has the meaning ascribed to the term "executive officer" in National Instrument 51-102 – *Continuous Disclosure Obligations* of the Canadian Securities Administrators.

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

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

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

"**Financing Entity Trustee**" has the meaning ascribed thereto in the first paragraph of this Agreement until a successor Financing Entity Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and the Declaration of Trust, and thereafter "Financing Entity Trustee" means and includes such Person.

"**Financing Plan**" has the meaning ascribed to the term "Financing Plan" in the Act.

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Guarantee Payment Date**" has the meaning ascribed thereto in Section 2.01(a)i.

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

"**Holder**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

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

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

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

"**Liens**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

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

"**Master Agreement**" means an agreement in the form of a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Material Effect**" means ~~any change that could~~a material effect on the obligations (including as a result of a change in the nature, scope or extent of the Primary Obligation and the effect on the Province's obligations therefor under the Limited Guarantee) that could reasonably be expected to affect (i) the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization); (ii) the appointment, obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Financing Entity or the Financing Entity Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province as a Specified Creditor; (v) the limitations and requirements otherwise applicable to the capital structure of the Financing Entity under any existing Program Agreement; (vi) the payment provisions and associated priorities set forth in the Trust Indenture; (vii) the obligations or liability of the Financing Entity to pay any tax, (viii) compliance by the FSM with the then applicable Financing Plan; (ix) the circumstances in which a Protection Event could arise; (x) compliance by the FSM, the Financing Entity or IESO with the Act or the General Regulation; (xi) the nature or character of the payment obligations (but, subject to compliance with the Financing Plan, irrespective of the amount payable thereunder) that could become payable under the Limited Guarantee; or (xii) the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of this Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

"**Notes**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

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

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

"**Payable Approved Amounts**" has the meaning ascribed thereto in 2.01(a).

"**Payment Date**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

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

"**Post-Suspension Refinancing**" means a Funding Obligation that is an Obligation Secured and that is incurred on or after the occurrence of a Suspension Event in compliance with the requirements of Section 7.03, as a Refinancing of one or more Series of Approved Obligations (including any Pre-Approved Refinancing that is authorized to be incurred on or after the occurrence of a Suspension Event), in each case the proceeds of which ~~are used solely for the purpose of repaying one or more Funding Obligations that are~~, together with any other funds that may be available, in full such Series of Approved Obligations.

"**Pre-Approved Refinancing**" means a Refinancing of a Certified Primary Obligation in respect of which the Province has, prior to the ~~issuance~~incurrence of such Certified Primary Obligation, ~~consented to such Refinancing not being~~further agreed shall not be a Certified Primary Obligation ~~to which the Adherence Conditions would otherwise apply~~, subject to compliance with such conditions and requirements as may be specified in such further agreement.

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account or Finance Reserve Account; and (ii) any obligation to pay the Financing Entity or on the Financing Entity's direction any remaining amounts in the Collection Account pursuant to the Trust Indenture.

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

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

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

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

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

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

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

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

in each case, that (X) adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including ~~(i)~~ in any Finance Reserve Account, Capital Account or collateral posting account applicable under a Derivative Agreement, (ii) ~~under~~ the availability of any credit enhancement agreement to which the Financing Entity is a party and (iii) ~~after collecting the~~any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the ~~Reference Period during which~~occurrence of an event described in any of ~~subclauses (a)~~clauses (i) to ~~a~~(v) ~~occurs~~of this paragraph (a), or (Y) adversely ~~changes or adversely~~ affects the enforceability of, or adversely changes, the terms and conditions of this Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including ~~(i)~~ in any Finance Reserve Account, Capital Account or collateral posting account applicable under a Derivative Agreement, (ii) ~~under~~ the availability of any credit enhancement agreement to which the Financing Entity is a party and (iii) ~~after collecting the~~any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the ~~Reference Period during which~~occurrence of an event described in ~~this clause~~paragraph (b) ~~occurs~~.

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

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency" in the Trust

Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency Condition" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the Act as of the date hereof, as more particularly described and given meaning in the General Regulation as of the date hereof.

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

"**Specified Creditor**" has the meaning ascribed thereto in the Trust Indenture on the date hereof.

"**Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(B).

"**Subrogation Payment Date**" has the meaning ascribed thereto in clause 2.01(a)iv.

"**Suspension Event**" has the meaning ascribed thereto in Section 7.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 7.01.

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

"**True-up Amount**" has the meaning ascribed to the term "true up amount" in the Act as of the date hereof.

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

EXHIBIT A
FORM OF PAYMENT DEMAND

TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Pursuant to and in accordance with section 2.01(a) of the Change of the Law Protection Agreement, the Indenture Trustee hereby demands payment from the Province in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in the Change of Law Protection Agreement.

DATED as of the [■] day of [■], [■].

BNY TRUST COMPANY OF CANADA

By:
Name:
Title:

By:
Name:
Title:

EXHIBIT B
FORM OF ADHERENCE COMPLIANCE CERTIFICATE UNDER SECTION 4.02(a)

TO: **BNY TRUST COMPANY OF CANADA**, in its capacity as Indenture Trustee (the "**Indenture Trustee**") under the Master Trust Indenture dated as of December ●, 2017 between Fair Hydro Trust and the Indenture Trustee (the "**Master Trust Indenture**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province of Ontario, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust, Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Each of the undersigned, being the ● and ● of OPG acting in its capacity as FSM and holding the offices set forth under their names and signatures below, pursuant to and accordance with clause 4.02(a)ii of the Change of Law Protection Agreement, hereby certifies for and on behalf of OPG, in its capacity as Financial Services Manager, and not in such officer's personal capacity and intending that this certificate may be relied on by the addressees hereof without independent inquiry, that:

1. I have read and understand the provisions of the Change of Law Protection Agreement, the Master Trust Indenture and all other documents and materials necessary to enable me to deliver this certificate.
2. If the Certified Primary Obligation is a Refinancing, the proceeds of the Refinancing will be used solely for the purpose of repaying one or more Certified Primary Obligations in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied, including one or more other Refinancings in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied.
3. OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate was provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

DATED as of the [■] day of [■], [■].

Name: [3]	Name:
Office:	Office:

[3] This certificate must be signed by two officers of OPG being either (i) the Chief Financial Officer and the Treasurer, or (ii) any two Executive Officers (as defined in the Change of Law Protection Agreement) of OPG.

EXHIBIT C
SUSPENSION NOTICE

TO: Ontario Power Generation Inc., in its capacity as Financial Services Manager

AND TO: Fair Hydro Trust

AND TO: Computershare Trust Company of Canada, in its capacity as trustee of Fair Hydro Trust

AND TO: BNY Trust Company of Canada, as Indenture Trustee

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement. All references in this Suspension Notice to "Articles" or "Sections" refer to Articles or Sections of the Change of Law Protection Agreement.

The Province has a reasonable basis for concluding that an event described in clauses (a) to (d) of Section 7.01 has occurred. Pursuant to Section 7.01, the Province hereby declares that the Limited Guarantee shall hereby not apply in respect of (i) any Primary Obligation incurred, excluding Post-Suspension Refinancings or Pre-Approved Refinancings or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province, in each case, on or after delivery of this Suspension Notice.

This Suspension Notice is hereby delivered to the FSM, the Financing Entity and the Indenture Trustee in accordance with Section 8.02 of the Change of Law Protection Agreement.

* * * *

DATED as of the [■] day of [■], [■].

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

Document comparison by Workshare Compare on Tuesday, December 12, 2017 2:01:10 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23239360/29
Description	TOR_2528-#23239360-v29-Change_of_Law_Protection_Agreement
Document 2 ID	PowerDocs://TOR_2528/23239360/30
Description	TOR_2528-#23239360-v30-Change_of_Law_Protection_Agreement
Rendering set	Standard

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

Statistics:	
	Count
Insertions	45
Deletions	45
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	90

RE_ Fair Hydro - Change of Law Protection Agreement.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Milligan, Peter [PMilligan@osler.com]; Saulnier, Brett [bsaulnier@torys.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]
Subject: RE: Fair Hydro - Change of Law Protection Agreement
Date: Tuesday, December 12, 2017 15:09:11
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717489~201712121909330000~Z~00916B13416DAF8AD65471C662588801View the original item

Here is my mark-up of the matters raised by Oslers, in today’s mark-ups of during our call this morning. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com <mailto

Attachments:

image001.gif (1 KB)
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23239360-vpdf-Change of Law Protection Agreement.PDF (349 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717489~201712121909330000~Z~00916B13416DAF8AD65471C662588801&AttachmentId=623239360-vpdf-Change of Law Protection Agreement.PDF

RE_ Fair Hydro - Change of Law Protection Agreement.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Sebastiano, Rocco [RSebastiano@osler.com]; Saulnier, Brett [bsaulnier@torys.com]; Milligan, Peter [PMilligan@osler.com]; Mansoori, Nina [nmansoori@torys.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]; Conner, Robbin [Robbin.Conner@gs.com]
Subject: RE: Fair Hydro - Change of Law Protection Agreement
Date: Tuesday, December 12, 2017 10:44:41
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.gif
Attachment 4: image004.jpg
Attachment 5: TOR_2528-#23239360-v29-Change_of_Law_Protection_Agreement.DOCX
Attachment 6: 23239360-vpdf-Change of Law Protection Agreement.PDF

Here is my mark-up of the Protection Agreement. It remains subject to input from the Province. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Tuesday, December 12, 2017 9:37 AM
To: Saulnier, Brett; ASHBOURNE, STEPHEN; Milligan, Peter; Mansoori, Nina
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Fullerton, Rick; 'Mayman,

Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Olusoga, Yinka; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca); PALMER, AARON; VINER, JON; PRESTAGE, JA; Conner, Robbin
Subject: RE: Fair Hydro - Change of Law Protection Agreement

A bit rushed, but here are my comments on the revised Change of Law Protection Agreement:

- In section 4.02(c), add “a Post-Suspension Obligation or a Pre-Approved Refinancing” after “a Certified Primary Obligation”.

- In section 7.03, should this apply to both Post-Suspension Refinancings and Pre-Approved Refinancings”? Also, need to change the clause “the Manager shall accept such Proposal” as it was the Manage that submitted the Proposal to the Province. It should read “the Manager shall accept the Province’s proposal to provide such Post-Suspension Refinancing”. And change the final “;” to a comma before “provided that such Post-Suspension…”

- In section 7.04, add “or Pre-Approved Refinancing” to the end of the sentence.

- In the definition of “Post-Suspension Refinancing”, why is the term “one or more Series of Approved Obligations” being used? Why not simply “one or more Approved Obligations”?

- In the definition of “Pre-Approved Refinancing”, revise to read “… waived its right to object under the Change of Law Process Agreement or otherwise to such Refinancing being an Approved Obligation.”

- In the definition of “Protection Event”, in paragraph (a), change “an event described in

a(i) to a(v)" to "an event described in any of clauses (i) to (v) of this paragraph (a)". Also, it is not correct to say "after collecting the True-up Amount" because this would suggest having collected the True-up Amount". It should say, "and (ii) in respect of the True-up Amount for the Reference Period immediately following the occurrence of an event described in any of clauses (i) to (v) of this paragraph (a)".

- In the new definitions added which refer to "in the Act", change to "in the Act as of the date hereof" (e.g., "True-up Amount").

From: Saulnier, Brett [mailto:bsaulnier@torys.com]
Sent: Monday, December 11, 2017 11:35 PM
To: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Milligan, Peter <PMilligan@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro - Change of Law Protection Agreement

All,

Attached for your review is a revised draft of the Change of Law Protection Agreement, clean and blacklined to the last version circulated by Blakes and reflecting the meetings held earlier today. As discussed, we need to provide the attached to the rating agencies **by no later than noon tomorrow** in order to meet our end of year financing deadline. Accordingly, we will be circulating a calendar invite to this group for 10 a.m. tomorrow morning to confirm the parties are signed off. If Osler or Blakes have any comments on the attached, we would ask that they be circulated to this group prior to the 10 a.m. call.

Kind regards,

Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: December-08-17 3:16 PM
To: Milligan, Peter <PMilligan@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur

(nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro - Change of Law Protection Agreement

Hi,

Attached is a revised version of the Change of Law Protection Agreement. I believe that most of the changes reflected from last night's Osler version (blackline is attached) are of a drafting or conforming nature, other than: (1) the Province disagrees that Approved Refinancing terms should be unfettered by adherence conditions post-Suspension Event and (2) the proposed rating-based "materially and adversely" qualification in the definition of Protection Event (and in fact any such qualification) is not acceptable to the Province. With regard to (1), this version comes into line with the proposed approach (i.e., using a modified adherence condition) that was incorporated into the version of the Change of Law Process Agreement I circulated yesterday. A further turn of that Agreement, to conform the open item identified in section 3.02 to the revised Change of Law Protection Agreement, is also included here for your reference.

Please note that the Province is working through the drafting concurrently and so further drafting comments may be provided.

As mentioned yesterday, the Province would like to proceed with the Ministers sign-off briefing early next week, on the basis that these versions (minus the explanatory notes) are now in substantially final form. Please identify if you believe there are other 'must have' points (other than the 2 mentioned above).

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Milligan, Peter [mailto:PMilligan@osler.com]
Sent: Thursday, December 07, 2017 6:44 PM
To: ASHBOURNE, STEPHEN; Sebastiano, Rocco; Mansoori, Nina
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca); PALMER, AARON; VINER, JON; PRESTAGE, JA
Subject: Fair Hydro - Change of Law Protection Agreement

All,

Attached is a revised comment draft of the Change of Low Protection Agreement reflecting comments from Torys and Osler. In order to meet this transaction's timeline, this comment draft has not been reviewed by OPG or the Dealers and is delivered subject to any comments they may have.

Peter

Peter Milligan

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DIRECT

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FACSIMILE

pmilligan@osler.com

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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Thursday, December 07, 2017 4:27 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>;

'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro -- Change of Law Process Agreement

Hi,

Please find (attached) a further turn of the Change of Law Process Agreement, reflecting the Province's comments on the mark-up of the Agreement circulated yesterday afternoon by Torys. The attached blackline shows changes made to yesterday's Torys mark-up.

This version addresses concerns Rocco raised last night, to the extent the Province feels that the issues can be accommodated. For your information, I have set out below responses to Rocco's comments/observations (in CAPs).

The Province would like to proceed with the Ministers briefing early next week, on the basis that this version (minus the explanatory notes) is now in final form. If there are any critical revisions that the other parties believe reflect 'must have' priority, then the Province would like to have a call to discuss them as soon as possible.

Responses to Rocco's Points:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change

to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration. [AGREED. 7.01(b) and 7.01(c) will need to mirror the cure language we settle on in the Process Agreement (see my earlier comments). Perhaps the "which continues …" language in 7.01(B) can be revised to read: "to the extent that the Province would be entitled to provide a Suspension Notice in accordance with the terms of the agreement or agreements between the Province and OPG under which such obligations, requirements and processes arise". SIMILAR CHANGE FOR 7.01(C).

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings. [THAT IS THE INTENDED EFFECT. THE ADHERENCE CONDITIONS WOULD APPLY TO THE REFINANCING, SO IF THE REFINANCING TERMS DEVIATED MATERIALLY (BASED ON THE SUBSTANTIALLY IN THE FORM" THRESHOLD"), THEN OPG WOULD REQUIRE THE PROVINCE NOT TO OBJECT IN ORDER TO PROCEED WITH THOSE NEW TERMS. OTHERWISE, THE REFINANCING COULD INCORPORATE TERMS AND CONDITIONS, WHICH WOULD BIND THE PROVINCE UNDER THE LIMITED GUARANTEE, THAT WOULD BE UNCONSTRAINED AND WITHOUT ANY ACCOUNTABILITY TO THE PROVINCE. IN ROCCO'S EXAMPLE, THAT MIGHT MEAN THAT OPG WOULD NEED TO RESORT TO UNRATED DEBT, IF THE PROVINCE WAS UNWILLING TO ACCEPT THE NEW TERMS. PRESUMABLY EVERYONE WOULD ACT RATIONALLY. HOWEVER, AS A FAILSAFE, OPG COULD OFFER INCREASED PRICING IN ORDER TO ATTRACT INVESTORS TO ACCEPT THE EARLIER VETTED TERMS (BASED ON THE THEN ACCEPTED REVIEWED DOCUMENTATION).]

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2

above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable. [THE SUGGESTION REGARDING THE PROVINCE PREVENTING A REFINANCING IS ADDRESSED IN #2. IF THE REFINANCING TERMS WOULD EXCEED THE SCOPE OF THE TRANSACTION DOCUMENTS REVIEWED AND NOT OBJECTED TO BY THE PROVINCE, THEN THAT SUGGESTS THERE IS A MATERIAL EFFECT ON THE PROVINCE AND SO THE PROVINCE WOULD NEED THE ABILITY TO REVIEW AND CONSIDER THE PROPRIETY OF THOSE NEW TERMS FROM ITS PERSPECTIVE. AS FOR THE STANDALONE NATURE OF THE PROCESS AGREEMENT, THE INTENTION IS THAT THE PROCESS AGREEMENT BE UNCOUPLED AND NOT PART OF THE COLLATERAL, AND AS MICHAEL FELDMAN HAS EXPLAINED, LEAVE FUTURE FLEXIBILITY FOR THIS LONG-TERM STRUCTURE. TO ADDRESS ROCCO'S CONCERN THAT THE PROVINCE AND OPG COULD CHANGE THE UNDERLYING OBLIGATIONS APPLICABLE TO ADHERENCE IN RELATION TO A NEW OBLIGATION, REQUIREMENT OR PROCESS IN THE PROCESS AGREEMENT THAT WOULD MAKE A REFINANCING LESS LIKELY TO OCCUR, WE HAVE ADDED AND USED IN THE ATTACHED VERSION A NEW DEFFINTION:

"Approved Refinancing" means a Certified Primary Obligation proposed to be incurred as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions except that the certificate contemplated to be delivered under Section 4.02(b) shall instead confirm that OPG has delivered to the Province a certificate by its applicable officers confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of such existing Certified Primary Obligation." Various references to "Refinancing" in the Protection Agreement can also be revised to refer to "Approved Refinancing", as required.

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, December 06, 2017 7:45 PM
To: Mansoori, Nina; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN

PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Milligan, Peter; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka
Subject: RE: Fair Hydro -- Change of Law Process Agreement

I have reviewed the revised draft of the Change of Law Process Agreement that Torys has prepared and would like to pass along the following comments/observations:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration.

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings.

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of

ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Wednesday, December 06, 2017 4:38 PM
To: 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'JON.VINER@blakes.com' <JON.VINER@blakes.com>; 'JA.PRESTAGE@blakes.com' <JA.PRESTAGE@blakes.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>

Subject: Fair Hydro -- Change of Law Process Agreement

Blakes team,

Please find attached OPG and Torys' comments on the Process Agreement reflecting our discussions from yesterday's call. Please note that this draft is subject to continuing review and comment by Osler and the dealers. As discussed at the tail end of our call yesterday, the section in the Process Agreement that gives the Province the right to object to new and material changes to transaction documents dovetails with the Protection Agreement so additional comments from Oslers may be forthcoming on this draft.

We are working on getting you a revised draft of the Protection Agreement either later today or tomorrow. In the meantime, please let us know if you have any comments or questions on the Process Agreement.

Best Regards,

Nina

Nina Mansoori

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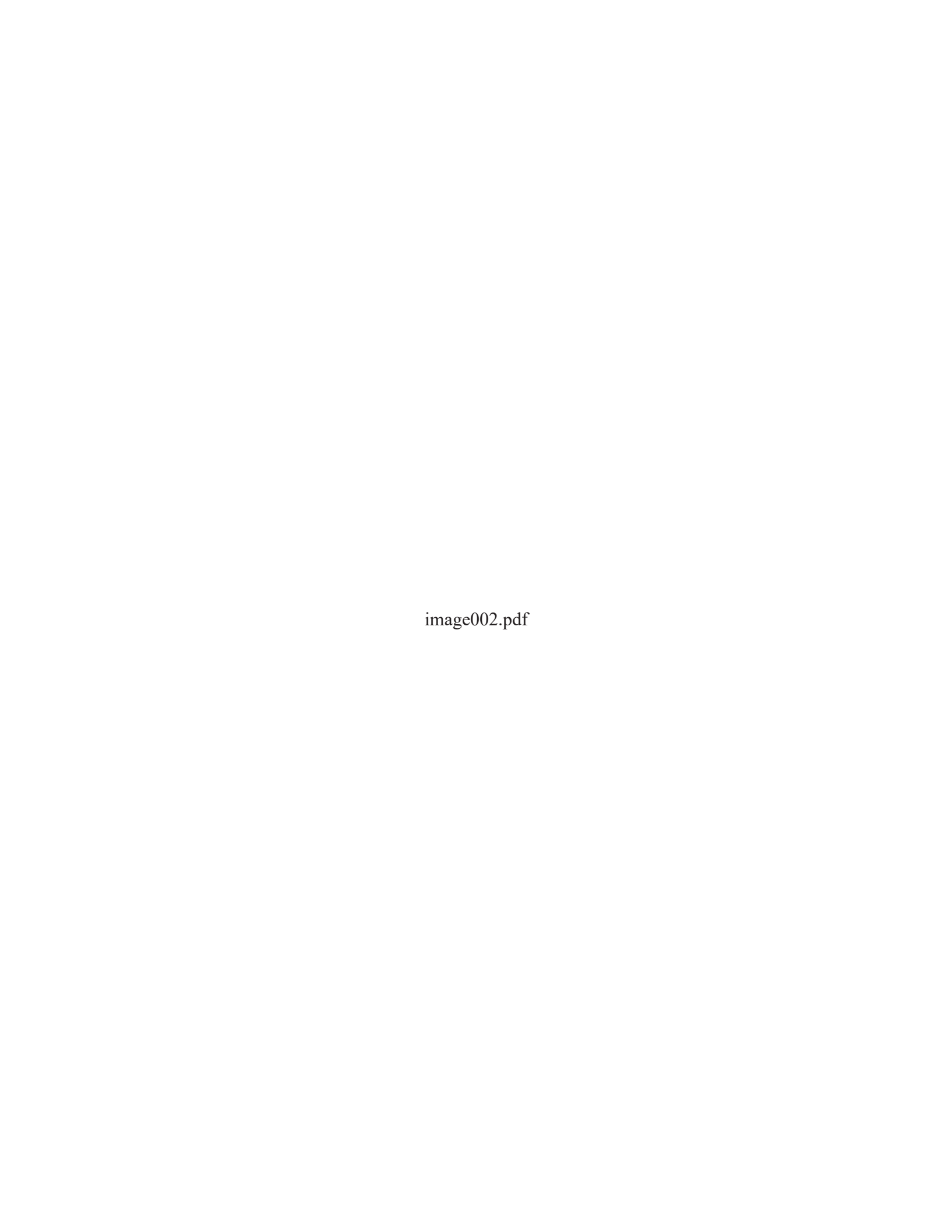
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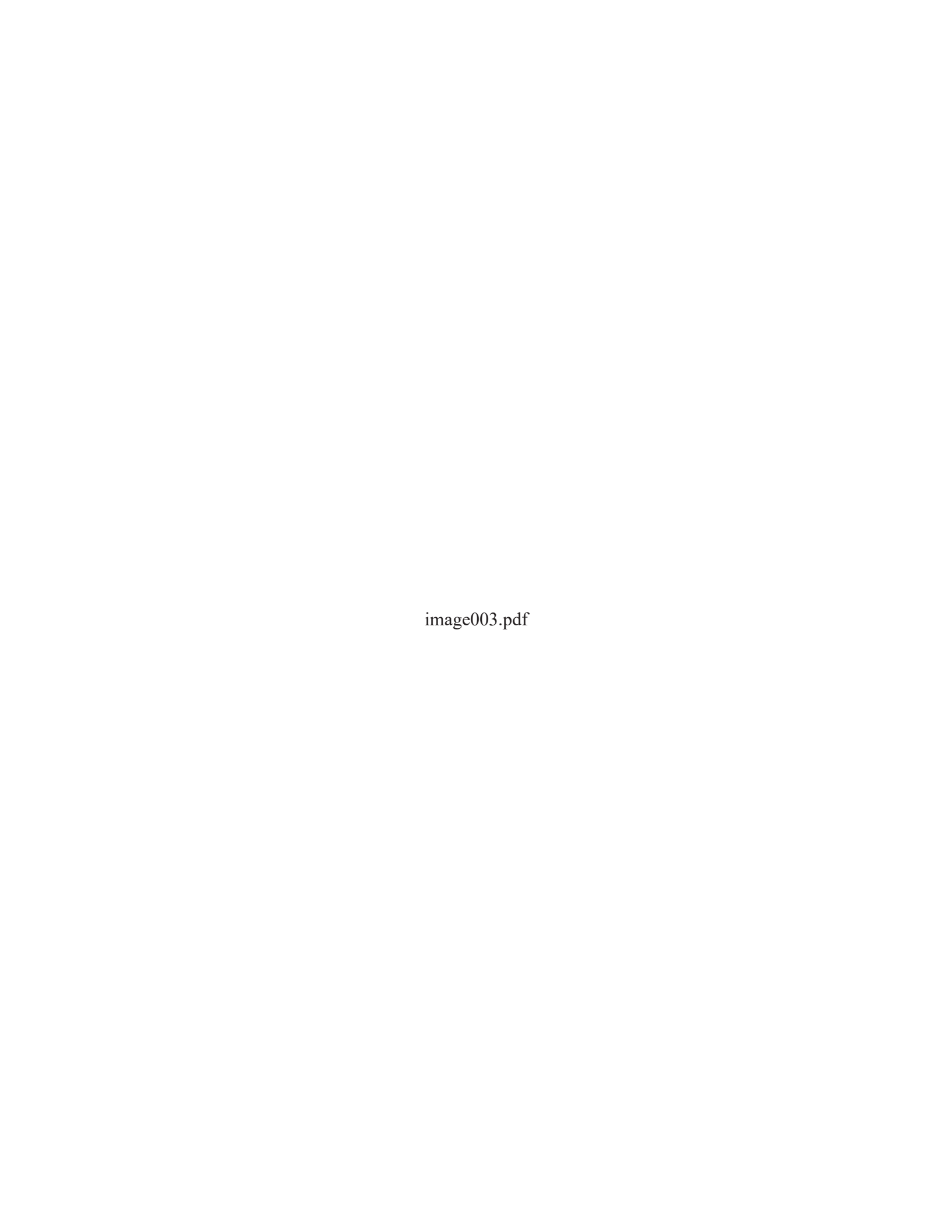
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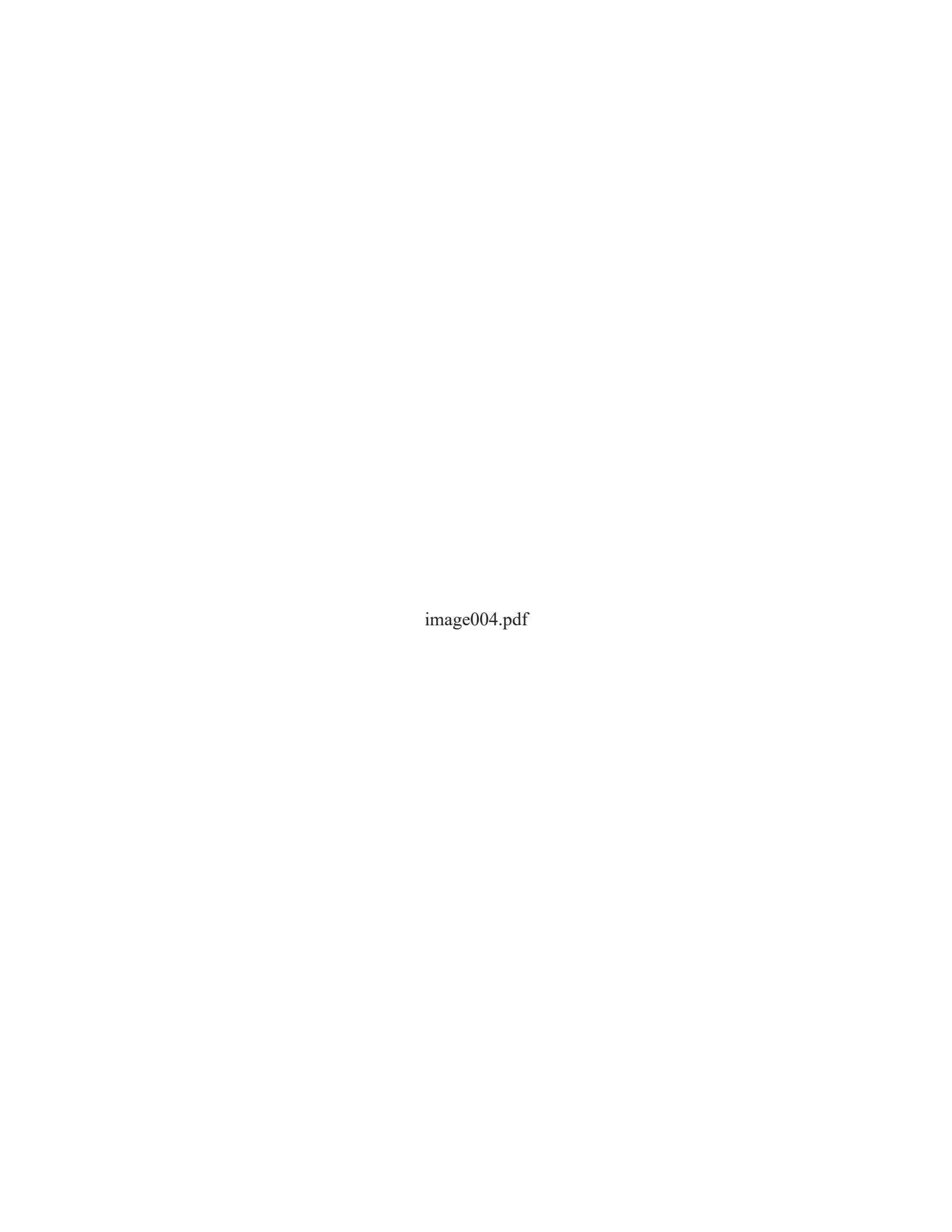
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Draft: December 12, 2017

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

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

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

RECITALS

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

Pursuant to an Order in Council 1981/2017 (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

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

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

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

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A, and any other capitalized terms not defined herein shall have the meanings assigned to them in the Trust Indenture;

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

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

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

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

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

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

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

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

1.02 Trustee to act in accordance with the Trust Indenture

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

1.03 Proof of Approved Obligations

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

Each statement delivered by the Manager under Section 2.01(a)i shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and each of the parties hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Manager shall act diligently in the preparation of each such statement and shall provide the Indenture Trustee and the Province with all supporting computations and calculations used by the Manager to prepare each such statement promptly following a request therefor made by the Indenture Trustee or the Province.

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture as of the date of this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

1.06 Effect of Headings

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

1.07 Successors and Assigns

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

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.09 Governing Law

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

1.10 Proceedings Against the Crown Act

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

1.11 Attornment

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

1.12 Counterparts; Electronic Delivery

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

electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

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

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

1.14 Non-Business Days

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

1.15 Waiver, Amendment

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

1.16 Interest Act

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

1.17 Currency

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

1.18 References to Acts of the Financing Entity

For greater certainty, where any reference is made in this Agreement, or in any other instrument executed pursuant hereto or contemplated hereby to which the Financing Entity or the

Financing Entity Trustee, as trustee of the Financing Entity, is party, to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against, or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to (i) the Financing Entity or (ii) the Financing Entity Trustee, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the Financing Entity) by or with respect to, the Financing Entity Trustee as trustee of the Financing Entity.

1.19 Judgment Currency

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

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

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as **[Exhibit A]** (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a

Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, and the following terms shall apply:

i. Not less than three (3) Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand (each such day, a "**Guarantee Payment Date**"), the Manager shall deliver a written statement setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of such written statement, and details regarding any default in performance by any party obligated thereunder.

ii. On each such Guarantee Payment Date, the Province shall deposit the Aggregate Approved Obligations Amount into the Protection Account.

iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the payment provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a "**Beneficiary Payee**" and each payment made to a Beneficiary Payee on a Guarantee Payment Date, a "**Guarantee Payment**").

iv. On the first Guarantee Payment Date and on each subsequent Guarantee Payment Date, Payment Date or other day on which any amount is required to be paid in respect of any Obligations Secured under the Trust Indenture (a "**Subrogation Payment Date**"), the Issuer and the Indenture

Trustee shall ensure that the applicable payment provisions of the Trust Indenture shall be applied and operate on the following basis[1]:

(A) If such day is a Guarantee Payment Date, then for each Approved Obligation for which amounts are paid to a Beneficiary Payee on such day pursuant to clause 2.01(a)iii in respect of principal, interest or any other amounts ("**Payable Approved Amounts**"), the amounts payable by the Financing Entity in respect of such amounts for such Approved Obligation shall be reduced by the respective amounts of such payments to the Beneficiary Payee, and equivalent amounts shall be payable by the Financing Entity to the Province as "**Subrogation Amounts**" in respect of such Approved Obligations, such Subrogation Amounts being payable in the same order of priority and with the same entitlements accruing to the Province as applied in respect of the related Payable Approved Amounts which were previously owing to the Beneficiary Payee, and to reflect this subrogation the payments set out in clause 2.01(a)iv(B) below shall be made by the Financing Entity.

(B) If the Province has made all deposits required to be made by it on each Guarantee Payment Date occurring on or before such day in accordance with clause 2.01(a)ii (or the related Approved Obligation Amounts have otherwise all been paid in full), then in respect of each Approved Obligation for which any related Subrogation Amounts have not yet been paid in full to the Province, the Financing Entity shall pay to the Province from amounts available under the Trust Indenture payment provisions and in accordance with the priority of payment provisions in the Trust Indenture the amount that would be payable on such date in satisfaction of the relevant Payable Approved Amounts, as determined without regard to any Guarantee Payment paid on any Guarantee Payment Date and also without regard to the corresponding reduction of the amounts owing to present and former Beneficiary Payees pursuant to subclause 2.01(a)iv(A) up to the amount of the unpaid related Subrogation Amounts.

(C) No Beneficiary having a right to be paid an amount in respect of an Approved Obligation, and no other Person entitled under an Obligation Secured, in each case that

[1] Explanatory Note: The deletion of the paramountcy provision is acceptable as long as section 2.01 if fully reflected in the Trust Indenture. To be confirmed.

ranks equal with or subordinate to the Payable Approved Amount in respect of which a Subrogation Amount is payable to the Province under subclause 2.01(a)iv(B), shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right of set-off, offset, reimbursement, contribution or indemnity) and no such Beneficiary or other Person shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of any such Subrogation Amount.

(D) For greater certainty, the entitlements of the Province in respect of Subrogation Amounts arising in respect of Payable Approved Obligations that are interest and principal obligations on Notes shall be treated for all purposes of the Trust Indenture as interest and principal obligations, respectively, arising under Notes having the same priority as and any applicable voting rights[2] under the related Approved Obligations, and accordingly the Province (and any successor, assignee or transferee of such entitlements) shall be entitled to all of the rights, entitlements, interests and privileges of a Holder of such a Notes in accordance with the Trust Indenture, as supplemented by the Supplemental Indenture or other indenture document under which the related Approved Obligations were issued.

(b) On each Guarantee Payment Date and upon demand by the Province, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay Guarantee Payments to Beneficiary Payees on the Guarantee Payment Date in accordance with clause 2.01(a)iii or that otherwise remains on deposit in the Protection Account on the relevant date.

(c) In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable under Section 2.01(a), if applicable.

(d) The Province shall, as a payee of Subrogation Amounts under clause 2.01(a)iv(B) and as a payee of any amounts payable under clause 2.01(a)v, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

[2] Explanatory Note: As discussed, the Province understands that voting rights may be muted by the "outstanding" language in the Trust Indenture. Nevertheless, if voting rights would arise under the Trust Indenture they should be available to the Province.

(e) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).

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

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

(h) Any amount payable to the Province in respect of a Subrogation Amount shall bear interest from and including the date of payment by the Province of the related Guarantee Payment to but excluding the date of payment of the Subrogation Amount to the Province, such interest to accrue at the rate equivalent to the applicable interest rate borne by the related Approved Obligation, and such interest amounts shall be added to their respective Subrogated Amounts and shall consequently be payable in the same priority as the relevant Subrogated Amount under clause 2.01(a)iv(B), all such accruing interest amounts to be calculated and added to the Subrogation Amounts by the Manager in its discretion acting in a commercially reasonable fashion.

(i) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under and in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

2.02 Intentionally Deleted.

2.03 Absence of Set-off

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

2.04 Payment into Protection Account in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section **[7.03]** of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Financing Entity and the Indenture Trustee shall ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an Approved Obligation are applied to pay the amounts due and payable to the Beneficiary Payee as and to the extent provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiary Payee as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiary Payee in respect of the applicable Approved Obligations, whereupon an affected Beneficiary Payee shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

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

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

(c) diligence; and

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

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

2.06 Additional Security

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

2.07 Continuing Liability of the Province

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

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations in accordance with Section 8.01.

2.09 Modifications of Approved Obligations

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

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

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

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

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

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

3.02 Acceptance of Trusts

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

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (i) the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred, (ii) the Province, in its sole discretion, designates in writing that it is an Approved Obligation or (iii) the Primary Obligation is a Post-Suspension Refinancing or a Pre-Approved Refinancing.

4.02 Adherence Conditions

(a) The following shall be the Adherence Conditions applicable in relation to each Certified Primary Obligation:

i. the Certified Primary Obligation when incurred is an Obligation Secured under the Trust Indenture; and

ii. OPG, as FSM, delivers an Adherence Compliance Certificate in the form attached hereto as Exhibit B signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, on or before the incurrence of the Certified Primary Obligation (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation); and

iii. the Province has not provided a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity.

(b) Without limiting any obligations of OPG to the Province arising other than pursuant to this Agreement, satisfaction of the Adherence Conditions for a Certified Primary Obligation shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under the Certified Primary Obligation, as such Certified Primary Obligation may be amended, restated, supplemented or modified from time to time.

(c) For greater certainty, there shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Certified Primary Obligation.

4.03 Evidence of Satisfaction

An Adherence Compliance Certificate delivered in accordance with clause 4.02(a)ii shall be determinative as to whether the applicable Adherence Condition with respect thereto has been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same. An Adherence Compliance Certificate that purports on its face to be signed by officers specified in clause 4.02(a)ii may be relied upon by any addressee without further enquiry or evidence as to the incumbency or signatures of such officers. If an Adherence Compliance Certificate is not delivered in accordance with the timing requirements of clause 4.02(a)ii such certificate may be delivered at a later date, and be effective as if it had been delivered in accordance with the timing requirement of clause 4.02(a)ii if at the time such certificate was otherwise required to be delivered OPG had delivered to the Province all certifications required by the Province in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's

rights and interests under and in respect of the Approved Obligation to the extent of such payment, and shall be entitled to (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including Sections **[7.04]** through **[7.11]** and **[8.13]** (Payment Priorities), Section **[7.12]** (Payments Held in Trust), Section **[8.11]** (Control by Controlling Class Creditors), Section **[8.12]** (Limitation on Suits), Section **[8.14]** (Limited Recourse), Article IX (The Indenture Trustee), including all limitations of liability thereunder, Section **[9.14]** (Communications to Specified Creditors) and Section **[16.01]** (No Petition); (ii) consents, requests and authorizes the Issuer and the Indenture Trustee to (x) add the Province to the register of Specified Creditors described in subsection **[13.13(b)]** of the Trust Indenture and (y) disseminate the notice details of the Province to other Specified Creditors for the purposes set out in subsection **[9.14(b)]** of the Trust Indenture, and (iii) confirms that it will execute and deliver, or cause to be executed and delivered, all such further agreements, documents and instruments in connection with this Section 5.01 as the Indenture Trustee may request from time to time for the purpose of giving effect to the terms of this Section 5.01.

5.02 <u>Priorities</u>

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation and the Payable Approved Amounts

thereunder shall rank equally with the rights, interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section **[7.10]** of the Trust Indenture.

5.03 Intentionally Deleted

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
INDENTURE TRUSTEE MATTERS

6.01 Limited Recourse

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

6.02 Not Responsible for Recitals

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

6.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

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

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

(c) this Agreement has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 6.03(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Agreement shall not be affected in any manner whatsoever by reason only of such event.

ARTICLE VII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

7.01 Suspension Notice

Upon:

(a) a Program Breach;

(b) a default in the performance, or breach, of any covenants of OPG, as FSM, or OPG, in its corporate capacity, in each case to the Province in connection with its obligations to the Province pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligation and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as FSM or in its corporate capacity, to the Province in connection with its obligations to the Province and its internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations, proves to be incorrect in any material respect on the date made and the expiration of any applicable cure period; or

(d) the FSM no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the FSM as the Manager;

the Province may declare that the Limited Guarantee under this Agreement shall not apply to any Primary Obligations incurred on or after such declaration, excluding Post-Suspension Refinancings or Pre-Approved Refinancings, by delivering a written notice in

the form of Exhibit C (a "**Suspension Notice**") to the Indenture Trustee, the FSM and the Financing Entity.

7.02 Suspension

If a Suspension Notice has been provided under Section 7.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary Obligation incurred, excluding Post-Suspension Refinancings or Pre-Approved Refinancings, or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province, in each case, on or after the time such Suspension Notice is delivered.

7.03 Additional Right of the Province Regarding Post-Suspension Refinancings

Following the occurrence of a Suspension Event, the Limited Guarantee shall continue to apply in respect of any Post-Suspension Refinancing (for greater certainty, without regard to the satisfaction of any Adherence Conditions thereto); provided that prior to the Financing Entity incurring any Primary Obligation constituting a Post-Suspension Refinancing, the Manager shall provide the Province with at least 30 days' notice of its intention to seek a Post-Suspension Refinancing and prior to incurrence, which notice shall describe the material covenants, events of default, representations and warranties and indemnities of the Financing Entity and other material terms, excluding financial terms, rates and levels (the "**Proposal**"), and during such 30 day period the Province may, but is not obligated to, offer to fund such Post-Suspension Refinancing or arrange for another Person to fund such Post-Suspension Refinancing on the same terms as set out in the Proposal or on such other terms as may be considered by the Province to be not more onerous on the Financing Entity and that are acceptable on that basis to the Financing Entity, acting reasonably. If, within such 30-day period, the Province elects to offer to fund such Post-Suspension Refinancing as provided in the preceding sentence, the Manager shall accept such offer; however, if the Province does not elect to offer to fund such Post-Suspension Refinancing, the Manager shall cause the Financing Entity to incur Primary Obligations constituting such a Post-Suspension Refinancing on substantially the same terms as than those set out in the Proposal if the Post-Suspension Refinancing can be completed by the Financing Entity in compliance with the Act, or on such other terms as may be considered by the Financing Entity to be not more onerous on the Province and that are acceptable on that basis to the Province, acting reasonably.

7.04 No Impact on Adherence

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

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

This Agreement will continue until the later of: (a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee and (b) the date that no amount is or may become due and payable to the Province in respect of any Subrogation Amount.

8.02 Notices

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

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity
Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: (416) 981-9777
Email: corporatetrust.toronto@computershare.com

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(c) if to the Province:

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

and

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

With copies to:

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

and

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

(d) if to the Indenture Trustee:

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

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

8.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

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

8.04 Enurement

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

8.05 FIPPA

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

8.06 No Petition

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

8.07 Notice to Rating Agencies

OPG, as FSM, shall deliver prompt written notice to the Rating Agencies of the occurrence of (i) a Protection Event; (ii) receipt of a Suspension Notice delivered by the Province pursuant to Section 7.01; and (iii) an assignment of this Agreement by any party pursuant to Section 8.03.

8.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

8.09 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER

By: _____
Name:
Title:

By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS TRUSTEE OF FAIR HYDRO TRUST, AS ISSUER, BY ONTARIO POWER GENERATION INC., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS MANAGER

By: _____
Name:
Title:

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration of a funding obligation" in the General Regulation.

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

"**Adherence Compliance Certificate**" means a certificate in the form attached hereto as Exhibit B delivered by the FSM in accordance with Section 4.02(a)ii.

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

"**Aggregate Approved Obligations Amount**" means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

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

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period for purposes of section 15(1) of the Act (in effect on the date hereof), including section 6.1 of the General Regulation (in effect on the date hereof), divided by the number of months in such Reference Period.

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

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

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

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

"**Certified Primary Obligations**" means Primary Obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest, including any Refinancing, other than a Post-Suspension Refinancing or a Pre-Approved Refinancing, of such a Primary Obligation (for greater certainty, including, in the case of any Certified Primary Obligation permitting funding transactions pursuant to a Funding Obligation Agreement applicable to the Certified Primary Obligation, each individual borrowing or funding utilization thereunder), (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not any individual trade confirmation other than a trade confirmation that modifies or purports to override the express terms or conditions of the related Master Agreement, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and expected (as determined by the Manager, acting reasonably) aggregate payments by the Financing Entity thereunder during the term of such contract are or would be in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).

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

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

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

"**Determination Date**" has the meaning ascribed thereto in clause 2.01(a)iv.

"**Executive Officer**" has the meaning ascribed to the term "executive officer" in National Instrument 51-102 – *Continuous Disclosure Obligations* of the Canadian Securities Administrators.

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

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

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

"**Financing Entity Trustee**" has the meaning ascribed thereto in the first paragraph of this Agreement until a successor Financing Entity Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and the Declaration of Trust, and thereafter "Financing Entity Trustee" means and includes such Person.

"**Financing Plan**" has the meaning ascribed to the term "Financing Plan" in the Act.

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Guarantee Payment Date**" has the meaning ascribed thereto in Section 2.01(a)i.

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

"**Holder**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

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

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

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

"**Liens**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

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

"**Master Agreement**" means an agreement in the form of a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Material Effect**" means any change that could affect (i) the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization); (ii) the appointment, obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Financing Entity or the Financing Entity Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province as a Specified Creditor; (v) the limitations and requirements otherwise applicable to the capital structure of the Financing Entity under any existing Program Agreement; (vi) the payment provisions and associated priorities set forth in the Trust Indenture; (vii) the obligations or liability of the Financing Entity to pay any tax, (viii) compliance by the FSM with the then applicable Financing Plan; (ix) the circumstances in which a Protection Event could arise; (x) compliance by the FSM, the Financing Entity or IESO with the Act or the General Regulation; (xi) the nature or character of the payment obligations (but, subject to compliance with the Financing Plan, irrespective of the amount payable thereunder) that could become payable under the Limited Guarantee; or (xii) the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of this Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

"**Notes**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

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

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

"**Payable Approved Amounts**" has the meaning ascribed thereto in 2.01(a).

"**Payment Date**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

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

"**Post-Suspension Refinancing**" means a Funding Obligation that is an Obligation Secured and that is incurred on or after the occurrence of a Suspension Event in compliance with the requirements of Section 7.03, as a Refinancing of one or more Series of Approved Obligations, in each case the proceeds of which are used solely for the purpose of repaying one or more Funding Obligations that are Approved Obligations.

"**Pre-Approved Refinancing**" means a Refinancing of a Certified Primary Obligation in respect of which the Province has, prior to the issuance of such Certified Primary Obligation, consented to such Refinancing not being a Certified Primary Obligation to which the Adherence Conditions would otherwise apply.

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account or Finance Reserve Account; and (ii) any obligation to pay the Financing Entity or on the Financing Entity's direction any remaining amounts in the Collection Account pursuant to the Trust Indenture.

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

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

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

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

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

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

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

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

in each case, that (X) adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations, in each case determined after taking into account and having regard to any funds available at such time, including (i) in any Finance Reserve Account, Capital Account or collateral posting account applicable under a Derivative Agreement, (ii) under any credit enhancement agreement to which the Financing Entity is a party and (iii) after collecting the True-up Amount in the Reference Period immediately following the Reference Period during which an event described in any of subclauses (a)(i) to a(v) occurs, or (Y) adversely changes or adversely affects the enforceability of the terms and conditions of this Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to any funds available at such time, including (i) in any Finance Reserve Account, Capital Account or collateral posting account applicable under a Derivative Agreement, (ii) under any credit enhancement agreement to which the Financing Entity is a party and (iii) after collecting the True-up Amount in the Reference Period immediately following the Reference Period during which an event described in this clause (b) occurs.

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

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency Condition" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the Act as of the date hereof, as more particularly described and given meaning in the General Regulation as of the date hereof.

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

"**Specified Creditor**" has the meaning ascribed thereto in the Trust Indenture on the date hereof.

"**Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(B).

"**Subrogation Payment Date**" has the meaning ascribed thereto in clause 2.01(a)iv.

"**Suspension Event**" has the meaning ascribed thereto in Section 7.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 7.01.

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

"**True-up Amount**" has the meaning ascribed to the term "true up amount" in the Act.

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

EXHIBIT A
FORM OF PAYMENT DEMAND

TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Pursuant to and in accordance with section 2.01(a) of the Change of the Law Protection Agreement, the Indenture Trustee hereby demands payment from the Province in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in the Change of Law Protection Agreement.

DATED as of the [■] day of [■], [■].

BNY TRUST COMPANY OF CANADA

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B
FORM OF ADHERENCE COMPLIANCE CERTIFICATE UNDER SECTION 4.02(a)

TO: **BNY TRUST COMPANY OF CANADA**, in its capacity as Indenture Trustee (the "**Indenture Trustee**") under the Master Trust Indenture dated as of December ●, 2017 between Fair Hydro Trust and the Indenture Trustee (the "**Master Trust Indenture**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province of Ontario, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust, Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Each of the undersigned, being the ● and ● of OPG acting in its capacity as FSM and holding the offices set forth under their names and signatures below, pursuant to and accordance with clause 4.02(a)ii of the Change of Law Protection Agreement, hereby certifies for and on behalf of OPG, in its capacity as Financial Services Manager, and not in such officer's personal capacity and intending that this certificate may be relied on by the addressees hereof without independent inquiry, that:

1. I have read and understand the provisions of the Change of Law Protection Agreement, the Master Trust Indenture and all other documents and materials necessary to enable me to deliver this certificate.
2. If the Certified Primary Obligation is a Refinancing, the proceeds of the Refinancing will be used solely for the purpose of repaying one or more Certified Primary Obligations in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied, including one or more other Refinancings in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied.
3. OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate was provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

DATED as of the [■] day of [■], [■].

Name: [3]	Name:
Office:	Office:

[3] This certificate must be signed by two officers of OPG being either (i) the Chief Financial Officer and the Treasurer, or (ii) any two Executive Officers (as defined in the Change of Law Protection Agreement) of OPG.

EXHIBIT C
SUSPENSION NOTICE

TO: Ontario Power Generation Inc., in its capacity as Financial Services Manager

AND TO: Fair Hydro Trust

AND TO: Computershare Trust Company of Canada, in its capacity as trustee of Fair Hydro Trust

AND TO: BNY Trust Company of Canada, as Indenture Trustee

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement. All references in this Suspension Notice to "Articles" or "Sections" refer to Articles or Sections of the Change of Law Protection Agreement.

The Province has a reasonable basis for concluding that an event described in clauses (a) to (d) of Section 7.01 has occurred. Pursuant to Section 7.01, the Province hereby declares that the Limited Guarantee shall hereby not apply in respect of (i) any Primary Obligation incurred, excluding Post-Suspension Refinancings or Pre-Approved Refinancings or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province, in each case, on or after delivery of this Suspension Notice.

This Suspension Notice is hereby delivered to the FSM, the Financing Entity and the Indenture Trustee in accordance with Section 8.02 of the Change of Law Protection Agreement.

* * * *

DATED as of the [■] day of [■], [■].

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

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

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

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

RECITALS

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

Pursuant to an Order in Council 1981/2017 (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

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

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

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

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A, and any other capitalized terms not defined herein shall have the meanings assigned to them in the Trust Indenture;

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

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

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

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

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

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

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

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

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

1.02 Trustee to act in accordance with the Trust Indenture

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

1.03 Proof of Approved Obligations

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

Each statement delivered by the Manager under Section 2.01(a)i shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and each of the parties hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Manager shall act diligently in the preparation of each such statement and shall provide the Indenture Trustee and the Province with all supporting computations and calculations used by the Manager to prepare each such statement promptly following a request therefor made by the Indenture Trustee or the Province.

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture as of the date of this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a

related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

1.06 Effect of Headings

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

1.07 Successors and Assigns

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

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.09 Governing Law

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

1.10 Proceedings Against the Crown Act

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

1.11 Attornment

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

1.12 Counterparts; Electronic Delivery

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

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

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

1.14 Non-Business Days

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

1.15 Waiver, Amendment

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

1.16 Interest Act

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

1.17 Currency

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

1.18 References to Acts of the Financing Entity

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

1.19 Judgment Currency

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

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

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as **[Exhibit A]** (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Amounts specified below, and the following terms shall apply:

i. Not less than three (3) Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand (each such day, a "**Guarantee Payment Date**"), the Manager shall deliver a written statement setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of such written statement, and details regarding any default in performance by any party obligated thereunder.

ii. On each such Guarantee Payment Date, the Province shall deposit the Aggregate Approved Obligations Amount into the Protection Account.

iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the

payment provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a "**Beneficiary Payee**" and each payment made to a Beneficiary Payee on a Guarantee Payment Date, a "**Guarantee Payment**").

iv. On the first Guarantee Payment Date and on each subsequent Guarantee Payment Date, Payment Date or other day on which any amount is required to be paid in respect of any Obligations Secured under the Trust Indenture (a "**Subrogation Payment Date**"), the Issuer and the Indenture Trustee shall ensure that the applicable payment provisions of the Trust Indenture shall be applied and operate on the following basis[1]:

(A) If such day is a Guarantee Payment Date, then for each Approved Obligation for which amounts are paid to a Beneficiary Payee on such day pursuant to clause 2.01(a)iii in respect of principal, interest or any other amounts ("**Payable Approved Amounts**"), the amounts payable by the ~~Issuer~~Financing Entity in respect of such amounts for such Approved Obligation shall be reduced by the respective amounts of such payments to the Beneficiary Payee, and equivalent amounts shall be payable by the ~~Issuer~~Financing Entity to the Province as "**Subrogation Amounts**" in respect of such Approved Obligations, such Subrogation Amounts being payable in the same order of priority and with the same entitlements accruing to the Province as applied in respect of the related Payable Approved Amounts which were previously owing to the Beneficiary Payee, and to reflect this subrogation the payments set out in clause 2.01(a)iv(B) below shall be made by the ~~Issuer~~Financing Entity.

(B) If the Province has made all deposits required to be made by it on each Guarantee Payment Date occurring on or before such day in accordance with clause 2.01(a)ii (or the related Approved Obligation Amounts have otherwise all been paid in full), then in respect of each Approved Obligation for which any related Subrogation Amounts have not yet been paid in full to the Province, the ~~Issuer~~Financing Entity shall pay to the Province from amounts available under the Trust Indenture payment

[1] Explanatory Note: The deletion of the paramountcy provision is acceptable as long as section 2.01 if fully reflected in the Trust Indenture. To be confirmed.

provisions and in accordance with the ~~applicable Payment Waterfalls~~priority of payment provisions in the Trust Indenture the amount that would be payable on such date in satisfaction of the relevant Payable Approved Amounts, as determined without regard to any Guarantee Payment paid on any Guarantee Payment Date and also without regard to the corresponding reduction of the amounts owing to present and former Beneficiary Payees pursuant to subclause 2.01(a)iv(A) up to the amount of the unpaid related Subrogation Amounts.

(C) No Beneficiary having a right to be paid an amount in respect of an Approved Obligation, and no other Person entitled under an Obligation Secured, in each case that ranks equal with or subordinate to the Payable Approved Amount in respect of which a Subrogation Amount is payable to the Province under subclause 2.01(a)iv(B), shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right of set-off, offset, reimbursement, contribution or indemnity) and no such Beneficiary or other Person shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of any such Subrogation Amount.

(D) For greater certainty, the entitlements of the Province in respect of Subrogation Amounts arising in respect of Payable Approved Obligations that are interest and principal obligations on Notes shall be treated for all purposes of the Trust Indenture as interest and principal obligations, respectively, arising under Notes having the same priority as and any applicable voting rights[2] under the related Approved Obligations, and accordingly the Province (and any successor, assignee or transferee of such entitlements) shall be entitled to all of the rights, entitlements, interests and privileges of a Holder of such a Notes in accordance with the Trust Indenture, as supplemented by the Supplemental Indenture or other indenture document under which the related Approved Obligations were issued.

[2] Explanatory Note: As discussed, the Province understands that voting rights may be muted by the "outstanding" language in the Trust Indenture. Nevertheless, if voting rights would arise under the Trust Indenture they should be available to the Province.

(b) ~~v.~~ On each Guarantee Payment Date and upon demand by the Province, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay Guarantee Payments to Beneficiary Payees on the Guarantee Payment Date in accordance with clause 2.01(a)iii or that otherwise remains on deposit in the Protection Account on the relevant date.

(c) ~~vi.~~ In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable under Section 2.01(a), if applicable.

(d) ~~vii.~~ The Province shall, as a payee of Subrogation Amounts under clause 2.01(a)iv(B) and as a payee of any amounts payable under clause 2.01(a)v, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(e) ~~viii.~~ For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).

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

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

(h) ~~xi.~~ Any amount payable to the Province in respect of a Subrogation Amount shall bear interest from and including the date of payment by the Province of the related Guarantee Payment to but excluding the date of payment of the Subrogation Amount to the Province, such interest to accrue at the rate equivalent to the applicable interest rate borne by the related Approved Obligation, and such interest amounts shall be added to their respective Subrogated Amounts and shall consequently be payable in the same priority as the relevant Subrogated Amount under clause 2.01(a)iv(B), all such accruing interest amounts to be calculated and added to the Subrogation Amounts by the Manager in its discretion acting in a commercially reasonable fashion.

(i) ~~xii.~~ The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under and in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

~~(b) The Province shall, as a payee of Subrogation Amounts under clause 2.01(a)iv(B), and as a payee of any amounts payable under clause 2.01(a)vi, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.~~

~~(c) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Amounts, set forth in Section 2.01(a).~~

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

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

~~(f) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under and in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.~~

2.02 Intentionally Deleted.

2.03 Absence of Set-off

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

2.04 Payment into Protection Account in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section **[7.03]** of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Financing Entity and the Indenture Trustee shall ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an Approved Obligation are applied to pay the amounts due and payable to the Beneficiary Payee as and to the extent provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiary Payee as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiary Payee in respect of the applicable Approved Obligations, whereupon an affected Beneficiary Payee shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Amounts and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

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

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

(c) diligence; and

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

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

2.06 Additional Security

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

2.07 Continuing Liability of the Province

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

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations in accordance with Section 8.01.

2.09 Modifications of Approved Obligations

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

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

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

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

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

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

3.02 Acceptance of Trusts

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

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (i) the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred, (ii) the Province, in its sole discretion, designates in writing that it is an Approved

Obligation or (iii) the Primary Obligation is a Post-Suspension Refinancing or a Pre-Approved Refinancing.

4.02 Adherence Conditions

(a) The following shall be the Adherence Conditions applicable in relation to each Certified Primary Obligation:

i. the Certified Primary Obligation when incurred is an Obligation Secured under the Trust Indenture; and

ii. OPG, as FSM, delivers an Adherence Compliance Certificate in the form attached hereto as Exhibit B~~-1~~ signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, on or before the incurrence of ~~a~~the Certified Primary Obligation (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation); and

iii. the Province has not provided a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity.

(b) ~~For greater certainty~~Without limiting any obligations of OPG to the Province arising other than pursuant to this Agreement, satisfaction of the Adherence Conditions for a Certified Primary Obligation shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under the Certified Primary Obligation, as such Certified Primary Obligation may be amended, restated, supplemented or modified from time to time~~, without limiting any obligations of OPG to the Province arising other than pursuant to this Agreement~~.

(c) For greater certainty, there shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Certified Primary Obligation.

4.03 Evidence of Satisfaction

An Adherence Compliance Certificate delivered in accordance with clause 4.02(a)ii shall be determinative as to whether the applicable Adherence ~~Conditions~~Condition with respect thereto ~~have~~has been satisfied, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same. An Adherence Compliance Certificate that purports on its face to be signed by officers specified in clause 4.02(a)ii may be relied upon by any addressee without further enquiry or evidence as to the incumbency or signatures of such officers. If an Adherence Compliance Certificate is not delivered in accordance with the timing requirements of clause 4.02(a)ii such certificate may be delivered at a later date, and be effective

as if it had been delivered in accordance with the timing requirement of clause 4.02(a)ii if at the time such certificate was otherwise required to be delivered OPG had delivered to the Province all certifications required by the Province in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, and shall be entitled to (i) the right and entitlement to be paid and receive the related Subrogation Amounts, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including Sections **[7.04]** through **[7.11]** and **[8.13]** (Payment Priorities), Section **[7.12]** (Payments Held in Trust), Section **[8.11]** (Control by Controlling Class Creditors),

Section **[8.12]** (Limitation on Suits), Section **[8.14]** (Limited Recourse), Article IX (The Indenture Trustee), including all limitations of liability thereunder, Section **[9.14]** (Communications to Specified Creditors) and Section **[16.01]** (No Petition); (ii) consents, requests and authorizes the Issuer and the Indenture Trustee to (x) add the Province to the register of Specified Creditors described in subsection **[13.13(b)]** of the Trust Indenture and (y) disseminate the notice details of the Province to other Specified Creditors for the purposes set out in subsection **[9.14(b)]** of the Trust Indenture, and (iii) confirms that it will execute and deliver, or cause to be executed and delivered, all such further agreements, documents and instruments in connection with this Section 5.01 as the Indenture Trustee may request from time to time for the purpose of giving effect to the terms of this Section 5.01.

5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation and the Payable Approved Amounts thereunder shall rank equally with the rights, interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section **[7.10]** of the Trust Indenture.

5.03 Intentionally Deleted

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
INDENTURE TRUSTEE MATTERS

6.01 Limited Recourse

No recourse may be taken, directly or indirectly, with respect to the obligations of the Financing Entity under this Agreement, or any certificate or other writing delivered in connection

herewith or therewith, against (a) the Financing Entity Trustee in its individual capacity, (b) any owner of a beneficial interest in the Financing Entity or (c) any partner, owner, beneficiary, agent, officer, director, employee or agent of the Financing Entity Trustee in its individual capacity, any holder of a beneficial interest in the Financing Entity or the Financing Entity Trustee or of any successor or assign of the Financing Entity Trustee in its individual capacity, except as any such Person may have expressly agreed (it being understood that the Financing Entity Trustee has no such obligations in its individual capacity).

6.02 Not Responsible for Recitals

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

6.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

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

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

(c) this Agreement has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 6.03(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Agreement shall not be affected in any manner whatsoever by reason only of such event.

ARTICLE VII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

7.01 Suspension Notice

Upon:

(a) a Program Breach;

(b) a default in the performance, or breach, of any covenants of OPG, as FSM, or OPG, in its corporate capacity, in each case to the Province in connection with its

obligations to the Province pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligation and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as FSM or in its corporate capacity, to the Province in connection with its obligations to the Province and its internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations, proves to be incorrect in any material respect on the date made and the expiration of any applicable cure period; or

(d) the FSM no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the FSM as the Manager;

the Province may declare that the Limited Guarantee under this Agreement shall not apply to any Primary Obligations incurred on or after such declaration, excluding Post-Suspension Refinancings or Pre-Approved Refinancings, by delivering a written notice in the form of Exhibit C (a "**Suspension Notice**") to the Indenture Trustee, the FSM and the Financing Entity.

7.02 Suspension

If a Suspension Notice has been provided under Section 7.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary Obligation incurred, excluding Post-Suspension Refinancings or Pre-Approved Refinancings, or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province, in each case, on or after the time such Suspension Notice is delivered.

7.03 Additional Right of the Province Regarding Post-Suspension Refinancings

Following the occurrence of a Suspension Event, the Limited Guarantee shall continue to apply in respect of any Post-Suspension Refinancing (for greater certainty, without regard to the satisfaction of any Adherence Conditions thereto); provided that prior to the Financing Entity incurring any Primary Obligation constituting a Post-Suspension Refinancing, the Manager shall provide the Province with at least 30 days' notice of its intention to seek a Post-Suspension Refinancing and prior to incurrence, which notice shall ~~include a summary of~~describe the material covenants, events of default, representations and warranties and indemnities of the Financing Entity and other material terms, excluding financial terms, rates and levels (the "**Proposal**"), and during such 30 day period the Province may, but is not obligated to, offer to ~~provide~~fund such Post-Suspension Refinancing or arrange for another Person to ~~provide~~fund such Post-Suspension Refinancing on the same~~, or better,~~ terms as set out in the Proposal or on such other terms as may be considered by the Province to be not more onerous on the Financing Entity and that are acceptable on that basis to the Financing Entity, acting reasonably. If, within such 30-day period, the Province elects to ~~provide~~offer to fund such Post-Suspension

Refinancing as provided in the preceding sentence, the Manager shall accept such ~~Proposal~~offer; however, if the Province does not elect to ~~provide~~offer to fund such Post-Suspension Refinancing, the Manager shall cause the Financing Entity to incur Primary Obligations constituting such a Post-Suspension Refinancing on substantially the same ~~or less onerous~~ terms as than those set out in the Proposal~~; provided that such~~ if the Post-Suspension Refinancing ~~is available on such terms~~can be completed by the Financing Entity in compliance with the Act, or on such other terms as may be considered by the Financing Entity to be not more onerous on the Province and that are acceptable on that basis to the Province, acting reasonably.

7.04 No Impact on Adherence

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

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

This Agreement will continue until the later of: (a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee and (b) the date that no amount is or may become due and payable to the Province in respect of any Subrogation Amount.

8.02 Notices

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

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: (416) 981-9777
Email: corporatetrust.toronto@computershare.com

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: General Counsel
Fax: (416) 592-4189

(c) if to the Province:

Minister of Finance

[Address]

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

and

Minister of Energy

[Address]

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

With copies to:

Deputy Minister of Finance

[Address]

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

and

Deputy Minister of Energy

[Address]

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

(d) if to the Indenture Trustee:

[Address]

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

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

8.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

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

8.04 Enurement

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

8.05 FIPPA

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

8.06 No Petition

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

8.07 Notice to Rating Agencies

OPG, as FSM, shall deliver prompt written notice to the Rating Agencies of the occurrence of (i) a Protection Event; (ii) receipt of a Suspension Notice delivered by the Province pursuant to Section 7.01; and (iii) an assignment of this Agreement by any party pursuant to Section 8.03.

8.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

8.09 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS TRUSTEE OF FAIR HYDRO TRUST, AS ISSUER, BY ONTARIO POWER GENERATION INC., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration of a funding obligation" in the General Regulation.

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

"**Adherence Compliance Certificate**" means a certificate in the form attached hereto as Exhibit B~~-1~~ delivered by the FSM in accordance with Section 4.02(a)ii.

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

"**Aggregate Approved Obligations Amount**" means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

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

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period for purposes of section 15(1) of the Act (in effect on the date hereof), including section 6.1 of the General Regulation (in effect on the date hereof), divided by the number of months in such Reference Period.

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

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

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

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

"**Certified Primary Obligations**" means Primary Obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest, including any Refinancing, other than a Post-Suspension Refinancing or a Pre-Approved Refinancing, of such a Primary Obligation (for greater certainty, including, in the case of any Certified Primary Obligation permitting funding transactions pursuant to a Funding Obligation Agreement applicable to the Certified Primary Obligation, each individual borrowing or funding utilization thereunder), (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not any individual trade confirmation other than a trade confirmation that modifies or purports to override the express terms or conditions of the related Master Agreement, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and expected (as determined by the Manager, acting reasonably) aggregate payments by the Financing Entity thereunder during the term of such contract are or would be in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).

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

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

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

"**Determination Date**" has the meaning ascribed thereto in clause 2.01(a)iv.

"**Executive Officer**" has the meaning ascribed to the term "executive officer" in National Instrument 51-102 – *Continuous Disclosure Obligations* of the Canadian Securities Administrators.

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

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

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

"**Financing Entity Trustee**" has the meaning ascribed thereto in the first paragraph of this Agreement until a successor Financing Entity Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and the Declaration of Trust, and thereafter "Financing Entity Trustee" means and includes such Person.

"**Financing Plan**" has the meaning ascribed to the term "Financing Plan" in the Act.

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Guarantee Payment Date**" has the meaning ascribed thereto in Section 2.01(a)i.

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

"**Holder**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

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

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

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

"**Liens**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

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

"**Master Agreement**" means an agreement in the form of a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Material Effect**" means any change that could affect (i) the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization)~~, or that could affect~~; (ii) the appointment, obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Financing Entity or the Financing Entity Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province as a Specified Creditor; (v) the limitations and requirements otherwise applicable to the capital structure of the Financing Entity under any existing Program Agreement; (vi) the payment provisions and associated priorities set forth in the Trust Indenture; (vii) the obligations or liability of the Financing Entity to pay any tax, (viii) compliance by the FSM with the then applicable Financing Plan; (ix) the circumstances in which a Protection Event could arise; (x) compliance by the FSM, the Financing Entity or IESO with the Act or the General Regulation; (xi) the nature or character of the payment obligations (but, subject to compliance with the Financing Plan, irrespective of the amount payable thereunder) that could become payable under the Limited Guarantee; or (xii) the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of this Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

"**Notes**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

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

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

"**Payable Approved Amounts**" has the meaning ascribed thereto in 2.01(a).

"**Payment Date**" has the meaning ascribed thereto in the Trust Indenture as of the date hereof.

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

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

"**Post-Suspension Refinancing**" means a ~~Primary~~Funding Obligation ~~proposed to be~~that is an Obligation Secured and that is incurred on or after the occurrence of a Suspension Event~~,~~ in compliance with the requirements of Section 7.03, as a Refinancing of one or more Series of Approved Obligations ~~or one or more such Refinancings.~~, in each case the proceeds of which are used solely for the purpose of repaying one or more Funding Obligations that are Approved Obligations.

"**Pre-Approved Refinancing**" means a Refinancing of a Certified Primary Obligation in respect of which the Province has, prior to the issuance of such Certified Primary Obligation, ~~waived its right to object~~consented to such Refinancing not being ~~an Approved~~a Certified Primary Obligation to which the Adherence Conditions would otherwise apply.

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account or Finance Reserve Account; and (ii) any obligation to pay the Financing Entity or on the Financing Entity's direction any remaining amounts in the Collection Account pursuant to the Trust Indenture.

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

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

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

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

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

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

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in

Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof;

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

in each case, that (X) adversely affects ~~(X)~~ the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations ~~Secured~~, in each case determined after taking into account and having regard to any funds available at such time, including (i) in any Finance Reserve Account ~~at such time and (ii~~, Capital Account or collateral posting account applicable under a Derivative Agreement, (ii) under any credit enhancement agreement to which the Financing Entity is a party and (iii) after collecting the True-up Amount in the Reference Period immediately following the ~~occurrence of~~Reference Period during which an event described in ~~a~~any of subclauses (a)(i) to a(v) occurs, or (Y) adversely changes or adversely affects the enforceability of the terms and conditions of this Agreement or of any of the agreements under which Approved Obligations ~~Secured~~ arise; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations ~~Secured~~ and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Approved Obligations ~~Secured~~ that have become due and payable, in each case determined after taking into account and having regard to any funds available at such time, including (i) in any Finance Reserve Account, Capital Account or collateral posting account applicable under a Derivative Agreement, (ii) under any credit enhancement agreement to which the Financing Entity is a party and (iii) after collecting the True-up Amount in the Reference Period immediately following the Reference Period during which an event described in this clause (b) occurs.

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

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency Condition" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Reference Period**" has the meaning ascribed to the term "reference period" in the Act.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the Act as of the date hereof, as more particularly described and given meaning in the General Regulation as of the date hereof.

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

"**Specified Creditor**" has the meaning ascribed thereto in the Trust Indenture on the date hereof.

"**Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(B).

"**Subrogation Payment Date**" has the meaning ascribed thereto in clause 2.01(a)iv.

"**Suspension Event**" has the meaning ascribed thereto in Section 7.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 7.01.

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

"**True-up Amount**" has the meaning ascribed to the term "true up amount" in the Act.

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

EXHIBIT A
FORM OF PAYMENT DEMAND

TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Pursuant to and in accordance with section 2.01(a) of the Change of the Law Protection Agreement, the Indenture Trustee hereby demands payment from the Province in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in the Change of Law Protection Agreement.

DATED as of the [■] day of [■], [■].

BNY TRUST COMPANY OF CANADA

By:
Name:
Title:

By:
Name:
Title:

EXHIBIT B~~-1~~
FORM OF ADHERENCE COMPLIANCE CERTIFICATE UNDER SECTION 4.02(a)

TO: **BNY TRUST COMPANY OF CANADA**, in its capacity as Indenture Trustee (the "**Indenture Trustee**") under the Master Trust Indenture dated as of December ●, 2017 between Fair Hydro Trust and the Indenture Trustee (the "**Master Trust Indenture**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province of Ontario, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust, Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Each of the undersigned, being the ● and ● of OPG acting in its capacity as FSM and holding the offices set forth under their names and signatures below, pursuant to and accordance with clause 4.02(a)ii of the Change of Law Protection Agreement, hereby certifies for and on behalf of OPG, in its capacity as Financial Services Manager, and not in such officer's personal capacity and intending that this certificate may be relied on by the addressees hereof without independent inquiry, that:

1. I have read and understand the provisions of the Change of Law Protection Agreement, the Master Trust Indenture and all other documents and materials necessary to enable me to deliver this certificate.
2. If the Certified Primary Obligation is a Refinancing, the proceeds of the Refinancing will be used solely for the purpose of repaying one or more Certified Primary Obligations in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied, including one or more other Refinancings in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied.
3. OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate was provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

DATED as of the [■] day of [■], [■].

Name: [13]	Name:
Office:	Office:

[13] This certificate must be signed by two officers of OPG being either (i) the Chief Financial Officer and the Treasurer, or (ii) any two Executive Officers (as defined in the Change of Law Protection Agreement) of OPG.

EXHIBIT C
SUSPENSION NOTICE

TO: Ontario Power Generation Inc., in its capacity as Financial Services Manager

AND TO: Fair Hydro Trust

AND TO: Computershare Trust Company of Canada, in its capacity as trustee of Fair Hydro Trust

AND TO: BNY Trust Company of Canada, as Indenture Trustee

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement. All references in this Suspension Notice to "Articles" or "Sections" refer to Articles or Sections of the Change of Law Protection Agreement.

The Province has a reasonable basis for concluding that an event described in clauses (a) to (d) of Section 7.01 has occurred. Pursuant to Section 7.01, the Province hereby declares that the Limited Guarantee shall hereby not apply in respect of (i) any Primary Obligation incurred, excluding Post-Suspension Refinancings or Pre-Approved Refinancings or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province, in each case, on or after delivery of this Suspension Notice.

This Suspension Notice is hereby delivered to the FSM, the Financing Entity and the Indenture Trustee in accordance with Section 8.02 of the Change of Law Protection Agreement.

* * * *

DATED as of the [■] day of [■], [■].

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

Document comparison by Workshare Compare on Tuesday, December 12, 2017 9:18:16 AM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23239360/28
Description	TOR_2528-#23239360-v28-Change_of_Law_Protection_Agreement
Document 2 ID	PowerDocs://TOR_2528/23239360/29
Description	TOR_2528-#23239360-v29-Change_of_Law_Protection_Agreement
Rendering set	Standard

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

Statistics:	
	Count
Insertions	83
Deletions	77
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	162

RE_ Fair Hydro - Change of Law Protection Agreement.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Sebastiano, Rocco [RSebastiano@osler.com]; Saulnier, Brett [bsaulnier@torys.com]; Milligan, Peter [PMilligan@osler.com]; Mansoori, Nina [nmansoori@torys.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]; Conner, Robbin [Robbin.Conner@gs.com]
Subject: RE: Fair Hydro - Change of Law Protection Agreement
Date: Tuesday, December 12, 2017 10:44:41
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717467~201712121445070000~Z~009168AD01CD290F82A9BEF3CFBFC0E1
View the original item

Here is my mark-up of the Protection Agreement. It remains subject to input from the Province. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com <mailto:stephen.

Attachments:

image001.gif (1 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717467~201712121445070000~Z~009168AD01CD290F82A9BEF3CFBFC0E1&AttachmentId=1image001.gif

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TOR_2528-#23239360-v29-Change_of_Law_Protection_Agreement.DOCX (74 KB)
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23239360-vpdf-Change of Law Protection Agreement.PDF (359 KB)
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RE_ Fair Hydro - Change of Law Protection Agreement.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Milligan, Peter [PMilligan@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Saulnier, Brett [bsaulnier@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]
Subject: RE: Fair Hydro - Change of Law Protection Agreement
Date: Friday, December 08, 2017 16:16:03
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.gif
Attachment 4: image004.jpg
Attachment 5: 23239360-v26-Change of Law Protection Agreement.DOCX
Attachment 6: 23239360-vpdf-Change of Law Protection Agreement.PDF
Attachment 7: 23239361-v24-Change of Law - Process Agreement.DOCX
Attachment 8: 23239361-vpdf-Change of Law - Process Agreement.PDF

Hi,

Attached is a revised version of the Change of Law Protection Agreement. I believe that most of the changes reflected from last night's Osler version (blackline is attached) are of a drafting or conforming nature, other than: (1) the Province disagrees that Approved Refinancing terms should be unfettered by adherence conditions post-Suspension Event and (2) the proposed rating-based "materially and adversely" qualification in the definition of Protection Event (and in fact any such qualification) is not acceptable to the Province. With regard to (1), this version comes into line with the proposed approach (i.e., using a modified adherence condition) that was incorporated into the version of the Change of Law Process Agreement I circulated yesterday. A further turn of that Agreement, to conform the open item identified in section 3.02 to the revised Change of Law Protection Agreement, is also included here for your reference.

Please note that the Province is working through the drafting concurrently and so further drafting comments may be provided.

As mentioned yesterday, the Province would like to proceed with the Ministers sign-off briefing early next week, on the basis that these versions (minus the explanatory notes) are now in substantially final form. Please identify if you believe there are other 'must have' points (other than the 2 mentioned above).

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Milligan, Peter [mailto:PMilligan@osler.com]
Sent: Thursday, December 07, 2017 6:44 PM
To: ASHBOURNE, STEPHEN; Sebastiano, Rocco; Mansoori, Nina
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca); PALMER, AARON; VINER, JON; PRESTAGE, JA
Subject: Fair Hydro - Change of Law Protection Agreement

All,

Attached is a revised comment draft of the Change of Low Protection Agreement

reflecting comments from Torys and Osler. In order to meet this transaction's timeline, this comment draft has not been reviewed by OPG or the Dealers and is delivered subject to any comments they may have.

Peter

Peter Milligan

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DIRECT

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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Thursday, December 07, 2017 4:27 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>;

'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro -- Change of Law Process Agreement

Hi,

Please find (attached) a further turn of the Change of Law Process Agreement, reflecting the Province's comments on the mark-up of the Agreement circulated yesterday afternoon by Torys. The attached blackline shows changes made to yesterday's Torys mark-up.

This version addresses concerns Rocco raised last night, to the extent the Province feels that the issues can be accommodated. For your information, I have set out below responses to Rocco's comments/observations (in CAPs).

The Province would like to proceed with the Ministers briefing early next week, on the basis that this version (minus the explanatory notes) is now in final form. If there are any critical revisions that the other parties believe reflect 'must have' priority, then the

Province would like to have a call to discuss them as soon as possible.

Responses to Rocco's Points:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration. [AGREED. 7.01(b) and 7.01(c) will need to mirror the cure language we settle on in the Process Agreement (see my earlier comments). Perhaps the "which continues …" language in 7.01(B) can be revised to read: "to the extent that the Province would be entitled to provide a Suspension Notice in accordance with the terms of the agreement or agreements between the Province and OPG under which such obligations, requirements and processes arise". SIMILAR CHANGE FOR 7.01(C).

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings. [THAT IS THE INTENDED EFFECT. THE ADHERENCE CONDITIONS WOULD APPLY TO THE REFINANCING, SO IF THE REFINANCING TERMS DEVIATED MATERIALLY (BASED ON THE SUBSTANTIALLY IN THE FORM" THRESHOLD"), THEN OPG WOULD REQUIRE THE PROVINCE NOT TO OBJECT IN ORDER TO PROCEED WITH THOSE NEW TERMS. OTHERWISE, THE REFINANCING COULD INCORPORATE TERMS AND CONDITIONS, WHICH WOULD BIND THE PROVINCE UNDER THE LIMITED GUARANTEE, THAT WOULD BE UNCONSTRAINED AND WITHOUT ANY ACCOUNTABILITY TO THE PROVINCE. IN ROCCO'S EXAMPLE, THAT MIGHT MEAN THAT OPG WOULD NEED TO RESORT TO UNRATED DEBT, IF THE PROVINCE WAS UNWILLING TO ACCEPT THE NEW TERMS. PRESUMABLY EVERYONE WOULD ACT RATIONALLY. HOWEVER, AS A FAILSAFE, OPG COULD OFFER INCREASED PRICING IN ORDER TO ATTRACT INVESTORS TO ACCEPT THE EARLIER VETTED TERMS (BASED ON THE THEN

ACCEPTED REVIEWED DOCUMENTATION).]

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable. [THE SUGGESTION REGARDING THE PROVINCE PREVENTING A REFINANCING IS ADDRESSED IN #2. IF THE REFINANCING TERMS WOULD EXCEED THE SCOPE OF THE TRANSACTION DOCUMENTS REVIEWED AND NOT OBJECTED TO BY THE PROVINCE, THEN THAT SUGGESTS THERE IS A MATERIAL EFFECT ON THE PROVINCE AND SO THE PROVINCE WOULD NEED THE ABILITY TO REVIEW AND CONSIDER THE PROPRIETY OF THOSE NEW TERMS FROM ITS PERSPECTIVE. AS FOR THE STANDALONE NATURE OF THE PROCESS AGREEMENT, THE INTENTION IS THAT THE PROCESS AGREEMENT BE UNCOUPLED AND NOT PART OF THE COLLATERAL, AND AS MICHAEL FELDMAN HAS EXPLAINED, LEAVE FUTURE FLEXIBILITY FOR THIS LONG-TERM STRUCTURE. TO ADDRESS ROCCO'S CONCERN THAT THE PROVINCE AND OPG COULD CHANGE THE UNDERLYING OBLIGATIONS APPLICABLE TO ADHERENCE IN RELATION TO A NEW OBLIGATION, REQUIREMENT OR PROCESS IN THE PROCESS AGREEMENT THAT WOULD MAKE A REFINANCING LESS LIKELY TO OCCUR, WE HAVE ADDED AND USED IN THE ATTACHED VERSION A NEW DEFFINTION:

"Approved Refinancing" means a Certified Primary Obligation proposed to be incurred as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions except that the certificate contemplated to be delivered under Section 4.02(b) shall instead confirm that OPG has delivered to the Province a certificate by its applicable officers confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with

the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of such existing Certified Primary Obligation." Various references to "Refinancing" in the Protection Agreement can also be revised to refer to "Approved Refinancing", as required.

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, December 06, 2017 7:45 PM
To: Mansoori, Nina; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Milligan, Peter; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka
Subject: RE: Fair Hydro -- Change of Law Process Agreement

I have reviewed the revised draft of the Change of Law Process Agreement that Torys has prepared and would like to pass along the following comments/observations:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration.

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings.

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Wednesday, December 06, 2017 4:38 PM
To: 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'JON.VINER@blakes.com' <JON.VINER@blakes.com>; 'JA.PRESTAGE@blakes.com' <JA.PRESTAGE@blakes.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>;

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Subject: Fair Hydro -- Change of Law Process Agreement

Blakes team,

Please find attached OPG and Torys' comments on the Process Agreement reflecting our discussions from yesterday's call. Please note that this draft is subject to continuing review and comment by Osler and the dealers. As discussed at the tail end of our call yesterday, the section in the Process Agreement that gives the Province the right to object to new and material changes to transaction documents dovetails with the Protection Agreement so additional comments from Oslers may be forthcoming on this draft.

We are working on getting you a revised draft of the Protection Agreement either later today or tomorrow. In the meantime, please let us know if you have any comments or questions on the Process Agreement.

Best Regards,

Nina

Nina Mansoori

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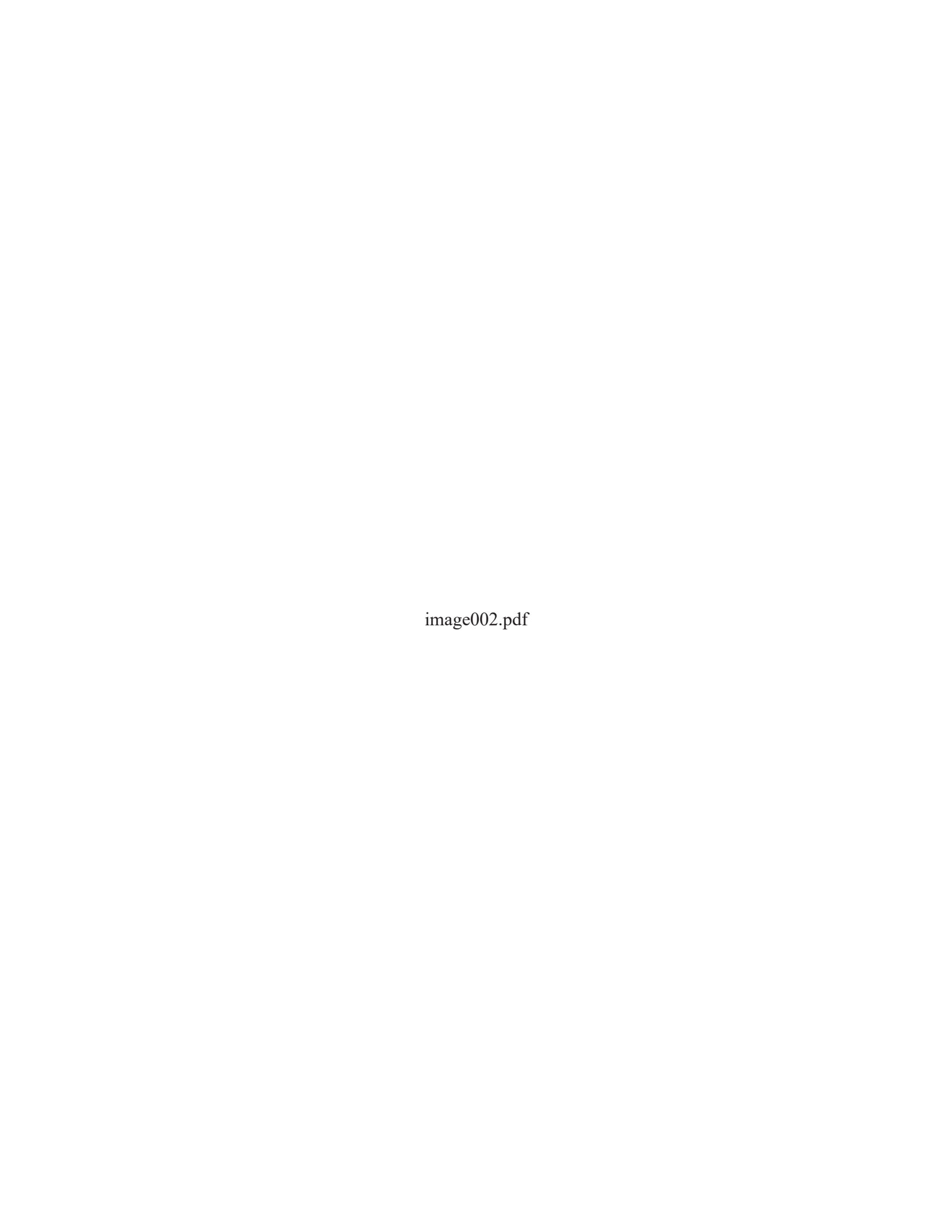
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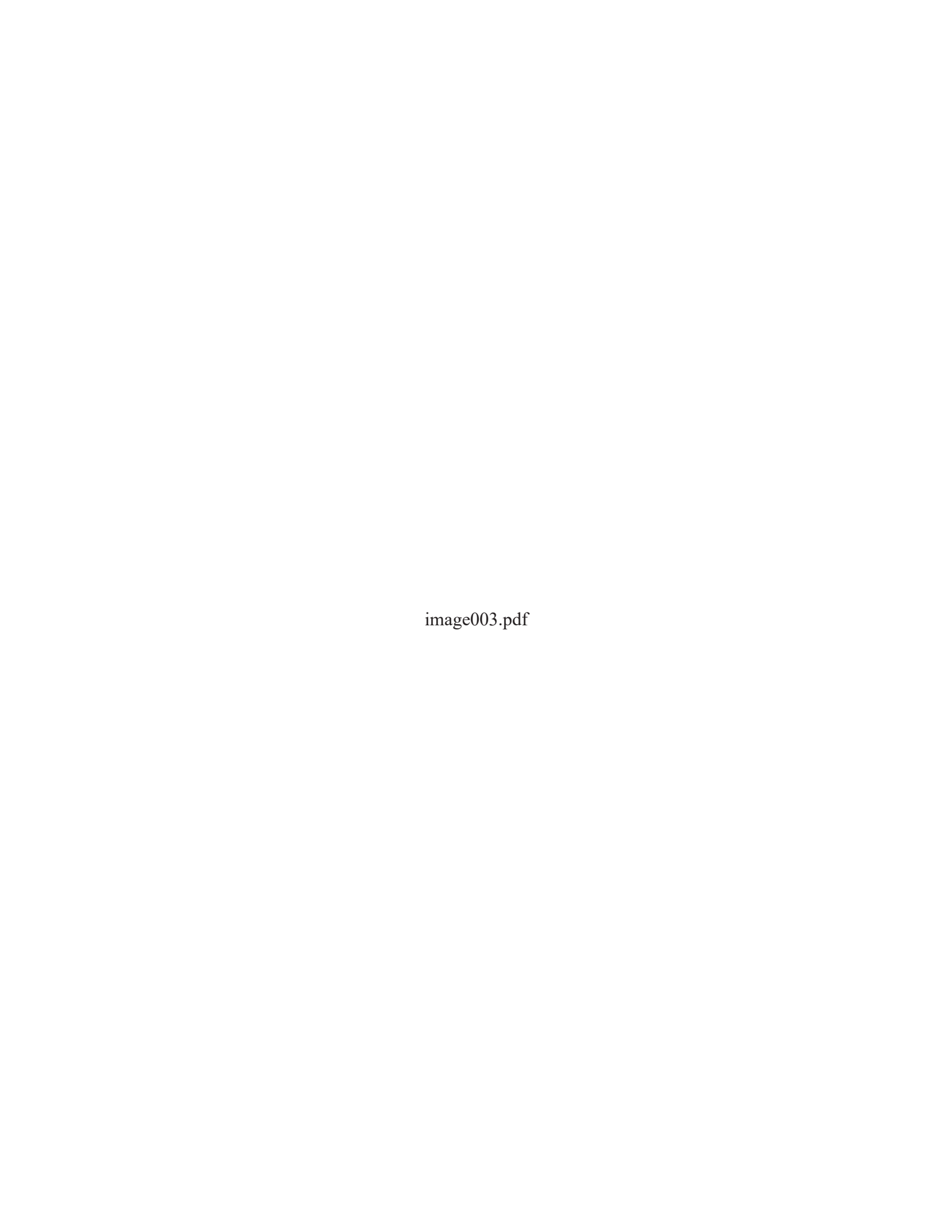
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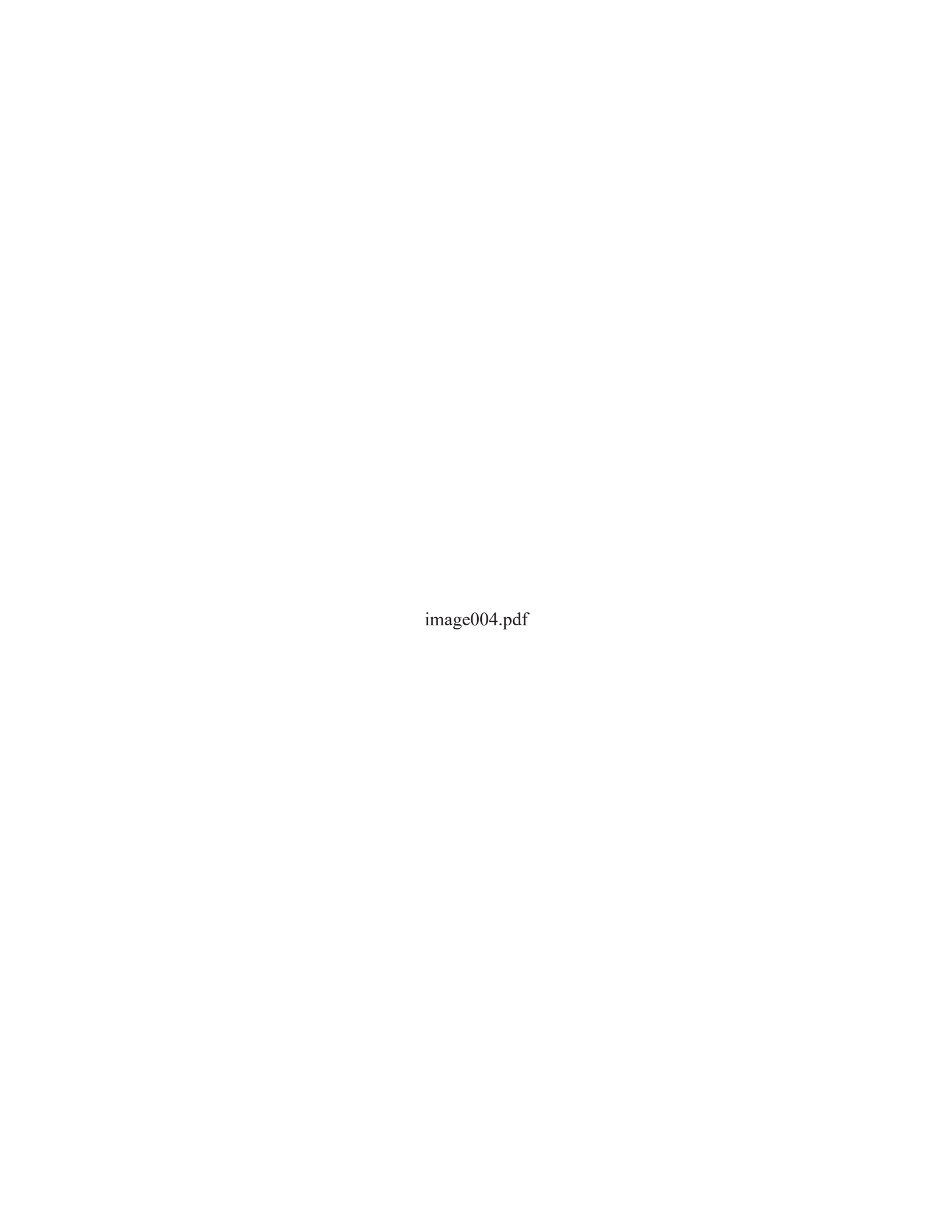
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TORYS
LLP

23239360-v26-Change of Law Protection Agreement.pdf

Draft: December 8, 2017

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

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

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

RECITALS

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

Pursuant to an Order in Council 1981/2017 (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

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

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

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

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

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

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

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

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

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

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

1.02 Trustee to act in accordance with the Trust Indenture

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

1.03 Proof of Approved Obligations

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

Each statement delivered by the Manager under Section 2.01(a)i shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and each of the parties hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Manager shall act diligently in the preparation of each such statement and shall provide the Indenture Trustee and the Province with all supporting computations and calculations used by the Manager to prepare each such statement promptly following a request therefor made by the Indenture Trustee or the Province.

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture as of the date of this Agreement.

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

1.06 Effect of Headings

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

1.07 Successors and Assigns

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

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.09 Governing Law

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

1.10 Proceedings Against the Crown Act

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

1.11 Attornment

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

1.12 Counterparts; Electronic Delivery

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

electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

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

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

1.14 Non-Business Days

Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day; provided, however, that if under the terms of an Approved Obligation an amount is stated to be due, a period of time would begin or end, a calculation is to be made or any other action to be taken thereunder shall be stated to be required to be taken, on a day other than a Business Day, any amount payable hereunder that is to be determined by reference to such Approved Obligation shall be determined by reference to such terms.

1.15 Waiver, Amendment

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

1.16 Interest Act

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

1.17 Currency

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

1.18 References to Acts of the Financing Entity

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

1.19 Judgment Currency

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

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

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), and the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Entitlements specified below:

i. Not less than 3 Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand (each such day, a "**Guarantee Payment Date**"), the Manager shall deliver a written statement setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of such written statement, and details regarding any default in performance by any party obligated thereunder.

ii. On each such Guarantee Payment Date, the Province shall deposit the Aggregate Approved Obligations Amount into the Protection Account.

iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the payment provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a "**Beneficiary Payee**" and each payment made to a Beneficiary Payee on a Guarantee Payment Date, a "**Guarantee Payment**").

iv. On any Guarantee Payment Date on which an amount is paid by the Province pursuant to clause 2.01(a)ii, the applicable payment provisions of the Trust Indenture shall, notwithstanding any express terms of such provisions set forth in the Trust Indenture to the contrary, be applied and operate on the following basis:

(A) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available under such payment provisions on such Guarantee Payment Date shall be reduced by the amount of the Guarantee Payment paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on such Guarantee Payment Date;

(B) the Province shall be paid the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available to pay the Beneficiary Payee under such payment provisions on the Guarantee Payment Date, determined without regard to the Guarantee Payment paid on such Guarantee Payment Date and the corresponding reduction of the amount owing to the Beneficiary Payee pursuant to subclause 2.01(a)iv(A) (each such amount payable to the Province being a "**Subrogation Amount**"); and

(C) no Beneficiary having a right to be paid an amount in respect of an Approved Obligation, and no other Person entitled under an Obligation Secured, in each case that ranks equal with or subordinate to an Approved Obligation in respect of which a Subrogation Amount is payable to the Province under subclause 2.01(a)iv(B), shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right of set-off, offset, reimbursement, contribution or indemnity) and no such Beneficiary or other Person shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of any such Subrogation Amount.

v. On the first day on which a payment is required to be made in respect of any Obligations Secured under the Trust Indenture that occurs after the day on which all amounts payable under all Approved Obligations have been paid in full (whether pursuant to Guarantee Payments, payments made pursuant to the payment provisions of the Trust Indenture, any combination thereof or otherwise) (the "**Determination Date**"), the applicable payment provisions of the Trust Indenture shall,

notwithstanding any express terms of such provisions set forth in the Trust Indenture to the contrary, be applied and operate on the following basis:

(A) the Manager shall calculate each of the following amounts as of and by reference to the Determination Date:

(I) the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including the Determination Date in respect of Approved Obligations that at the time of payment ranked equally with or prior to interest amounts payable on Senior Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture at such time, plus (y) an amount determined to reflect interest accruing on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount was paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture[1] and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of all Subrogation Amounts paid to the Province up to and including such day (such amount, the "**Senior Interest Final Subrogation Amount**");

(II) the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including the Determination Date in respect of Approved Obligations that at the time of payment ranked equally with or prior to principal amounts payable on Senior Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture at such time, plus (y) an amount determined to reflect interest accruing on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount was paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust

[1] Methodology to be confirmed.

Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the amount determined under (I), above (such amount, the "**Senior Principal Final Subrogation Amount**");

(III) the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including the Determination Date in respect of Approved Obligations that at the time of payment ranked equally with or prior to interest amounts payable on Subordinate Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture at such time, plus (y) an amount determined to reflect interest accruing on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount was paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the sum of the amounts determined under (I) and (II), above (such amount, the "**Subordinated Interest Final Subrogation Amount**");

(IV) the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including the Determination Date in respect of Approved Obligations that at the time of payment ranked equally with or prior to principal amounts payable on Subordinated Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture at such time, plus (y) an amount determined to reflect interest accruing on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the

date a Subrogation Amount is paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the sum of the amounts determined under (I), (II) and (III) (such amount, the "**Subordinated Principal Final Subrogation Amount**");

(V) the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including the Determination Date in respect of Approved Obligations that at the time of payment ranked equally with or prior to interest amounts payable on Junior Subordinated Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture at such time, plus (y) an amount determined to reflect interest accruing on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount was paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the sum of the amounts determined under (I), (II), (III) and (IV), above (such amount, the "**Junior Subordinated Interest Final Subrogation Amount**");

(VI) the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including the Determination Date in respect of Approved Obligations that at the time of payment ranked equally with or prior to principal amounts payable on Junior Subordinated Funding Obligations in accordance with the

applicable payment provisions of the Trust Indenture at such time, plus (y) an amount determined to reflect interest accruing on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount is paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the sum of the amounts determined under (I), (II), (III), (IV) and (V) (such amount, the "**Junior Subordinated Principal Final Subrogation Amount**"); and

(VII) the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including the Determination Date in respect of all Approved Obligations, plus (y) an amount determined to reflect interest accruing on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount is paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the sum of the amounts determined under (I), (II), (III), (IV), (V) and (VI) (such amount, the "**Residual Final Subrogation Amount**" and, together with the Senior Interest Final Subrogation Amount, the Senior Principal Final Subrogation Amount, the Subordinated Interest Final Subrogation Amount, the Subordinated Principal Final Subrogation Amount, the Junior Subordinated Interest Final Subrogation Amount, the Junior Subordinated Principal Final

Subrogation Amount, collectively, the "**Final Subrogation Amounts**");

(B) as of the Determination Date (and thereafter on each subsequent day when any payment or payments are to be made in respect of Obligations Secured, until paid in full), the Province shall be entitled to be paid by the Financing Entity, and the Financing Entity shall be obligated to pay the Province in accordance with the applicable payment provisions of the Trust Indenture, the following amounts in the priorities set forth below:

(I) as an amount ranking equally with interest amounts payable on Senior Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture, the Senior Interest Final Subrogation Amount;

(II) as an amount ranking equally with principal amounts payable on Senior Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture, the Senior Principal Final Subrogation Amount;

(III) as an amount ranking equally with interest amounts payable on Subordinated Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture, the Subordinated Interest Final Subrogation Amount;

(IV) as an amount ranking equally with principal amounts payable on Subordinated Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture, the Subordinated Principal Final Subrogation Amount;

(V) as an amount ranking equally with interest amounts payable on Junior Subordinated Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture, the Junior Subordinated Interest Final Subrogation Amount;

(VI) as an amount ranking equally with principal amounts payable on Junior Subordinated

Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture, the Junior Subordinated Principal Final Subrogation Amount; and

(VII) as an amount ranking equally with amounts payable on the Obligations Secured having the lowest payment ranking in accordance with the applicable payment provisions of the Trust Indenture to Persons other than OPG, the Residual Final Subrogation Amount;

(C) the payment entitlements of the Province described in subclause 2.01(a)v(B) shall, on and after the Determination Date, be treated for all purposes of the Trust Indenture as follows:

(I) the payment entitlements described in sub-subclauses 2.01(a)v(B)(I) and (II) shall constitute and be treated as interest and principal obligations, as the context requires, arising under a [Series of Notes] constituting Senior Funding Obligations issued by the Financing Entity to the Province on the Determination Date and conferring upon the Province (and any successor, assignee or transferee of such entitlements), all of the rights, entitlements, interests and privileges of a [Holder] of such a [Series of Notes][2] in accordance with the Trust Indenture, as supplemented by *[Describe applicable Senior Series Supplemental Indenture]*;

(II) the payment entitlements described in sub-subclauses 2.01(a)v(B)(III) and (IV) shall constitute and be treated as interest and principal obligations, as the context requires, arising under a Series of Notes constituting Subordinated Funding Obligations issued by the Financing Entity to the Province on the Determination Date and conferring upon the Province (and any successor, assignee or transferee of such entitlements), all of the rights, entitlements, interests and privileges of a Holder of such a Series of Notes in accordance with the Trust

[2] Conform defined terms to the Trust Indenture.

Indenture, as supplemented by *[Describe applicable Subordinated Series Supplemental Indenture]*;

(III) the payment entitlements described in sub-subclauses 2.01(a)v(B)(V) and (VI) shall constitute and be treated as interest and principal obligations, as the context requires, arising under a Series of Notes constituting Junior Subordinated Funding Obligations issued by the Financing Entity to the Province on the Determination Date and conferring upon the Province (and any successor, assignee or transferee of such entitlements), all of the rights, entitlements, interests and privileges of a Holder of such a Series of Notes in accordance with the Trust Indenture, as supplemented by *[Describe applicable Junior Subordinated Series Supplemental Indenture]*;

(IV) and the payment entitlements described in sub-subclause 2.01(a)v(B)(VII) shall constitute and be treated as a payment obligation without any additional rights, entitlements, interests or privileges, other than the right to receive payment in accordance with the applicable payment provisions of the Trust Indenture applicable to Obligations Secured ranking equally with amounts payable on the Obligations Secured having the lowest payment ranking in accordance with the applicable payment provisions of the Trust Indenture to any Person other than OPG; and

(D) no Person entitled under an Obligation Secured that ranks equal with or subordinate to a Final Subrogation Amount shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province in respect of such Final Subrogation Amount and no such Person shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of any such Final Subrogation Amount.

vi. On any Guarantee Payment Date and on the Determination Date, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay Guarantee Payments to Beneficiary Payees on

the Guarantee Payment Date in accordance with clause 2.01(a)iii or that otherwise remains on deposit in the Protection Account on the Determination Date.

vii. In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable under Section 2.01(a).

(b) The Province shall, as a payee of Subrogation Amounts under clause 2.01(a)iv(B), as a payee of each Final Subrogation Amount under clause 2.01(a)v and as a payee of any amounts payable under clause 2.01(a)vi, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(c) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Entitlements, set forth in Section 2.01(a).

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

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

(f) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under and in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

2.02 Intentionally Deleted.

2.03 <u>Absence of Set-off</u>

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

2.04 Payment into Protection Account in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section **[7.03]** of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Financing Entity and the Indenture Trustee shall ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an Approved Obligation are applied to pay the amounts due and payable to the Beneficiaries as and to the extent provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the applicable Approved Obligations, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Entitlements and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

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

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

(c) diligence; and

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

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

2.06 Additional Security

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

2.07 Continuing Liability of the Province

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

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations in accordance with Section 8.01.

2.09 Modifications of Approved Obligations

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

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

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

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

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

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

3.02 Acceptance of Trusts

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

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (i) the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred, or (ii) the Province, in its sole discretion, designates in writing that it is an Approved Obligation.

4.02 Adherence Conditions

(a) The following shall be the Adherence Conditions applicable in relation to each Certified Primary Obligation:

i. the Certified Primary Obligation when incurred is an Obligation Secured under the Trust Indenture; and

ii. OPG, as FSM, delivers an Adherence Compliance Certificate in the form attached hereto as Exhibit B-1 signed by the Chief Financial Officer and

the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, on or before the incurrence of a Certified Primary Obligation (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation); and

iii. the Province has not provided a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity.

(b) The following shall be the Adherence Conditions applicable in relation to each Approved Refinancing:

i. such Approved Refinancing when incurred is an Obligation Secured under the Trust Indenture; and

ii. OPG, as FSM, delivers an Adherence Compliance Certificate in the form attached hereto as Exhibit B-2 signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee and the Province, on or before the incurrence of the Approved Refinancing (provided that delivery may not be more than 5 Business Days before the incurrence of such Approved Refinancing).

(c) For greater certainty, satisfaction of the Adherence Conditions for a Certified Primary Obligation or an Approved Refinancing shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under the Certified Primary Obligation or the Approved Refinancing, as applicable.

(d) Without limiting any obligations of OPG to the Province arising other than pursuant to this Agreement, a Certified Primary Obligation may be amended, restated, supplemented or otherwise modified from time to time.

(e) An Approved Refinancing may not be amended, restated, supplemented or otherwise modified without the consent of the Province.

(f) For greater certainty, there shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Certified Primary Obligation or an Approved Refinancing.

4.03 Evidence of Satisfaction

An Adherence Compliance Certificate delivered in accordance with clause 4.02(a)ii or in accordance with clause 4.02(b)ii, as the case may be, shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied, notwithstanding that

such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same. An Adherence Compliance Certificate that purports on its face to be signed by officers specified in clause 4.02(a)ii or clause 4.02(b)ii, as applicable, may be relied upon by any addressee without further enquiry or evidence as to the incumbency or signatures of such officers. If an Adherence Compliance Certificate is not delivered in accordance with the timing requirements of clause 4.02(a)ii or clause 4.02(b)ii, as applicable, such certificate may be delivered at a later date, and be effective as if it had been delivered in accordance with the timing requirement of clause 4.02(a)ii or clause 4.02(b)ii, as applicable, if at the time such certificate was required to be delivered OPG had delivered to the Province all certifications required by the Province in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation or the Approved Refinancing.

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Entitlements, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with

Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including Sections **[7.04]** through **[7.11]** and **[8.13]** (Payment Priorities), Section **[7.12]** (Payments Held in Trust), Section **[8.11]** (Control by Controlling Class Creditors), Section **[8.12]** (Limitation on Suits), Section **[8.14]** (Limited Recourse), Article IX (The Indenture Trustee), including all limitations of liability thereunder, Section **[9.14]** (Communications to Specified Creditors) and Section **[16.01]** (No Petition); (ii) consents, requests and authorizes the Issuer and the Indenture Trustee to (x) add the Province to the register of Specified Creditors described in subsection **[13.13(b)]** of the Trust Indenture and (y) disseminate the notice details of the Province to other Specified Creditors for the purposes set out in subsection **[9.14(b)]** of the Trust Indenture, and (iii) confirms that it will execute and deliver, or cause to be executed and delivered, all such further agreements, documents and instruments in connection with this Section 5.01 as the Indenture Trustee may request from time to time for the purpose of giving effect to the terms of this Section 5.01.

5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section **[7.10]** of the Trust Indenture.

5.03 Intentionally Deleted

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
INDENTURE TRUSTEE MATTERS

6.01 Limited Recourse

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

6.02 Not Responsible for Recitals

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

6.03 Representations and Covenants of the Indenture Trustee

The Indenture Trustee represents, warrants and covenants that:

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

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

(c) this Agreement has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 6.03(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Agreement shall not be affected in any manner whatsoever by reason only of such event.

ARTICLE VII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

7.01 Suspension Notice

Upon:

(a) a Program Breach;

(b) a default in the performance, or breach, of any covenants of OPG, as FSM, or OPG, in its corporate capacity, in each case to the Province in connection with its obligations to the Province pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligation and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as FSM or in its corporate capacity, to the Province in connection with its obligations to the Province and its internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations, proves to be incorrect in any material respect on the date made and the expiration of any applicable cure period; or

(d) the FSM no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the FSM as the Manager,

the Province may declare that the Limited Guarantee under this Agreement shall not apply to any Primary Obligations incurred on or after such declaration, other than any Approved Refinancing, by delivering a written notice in the form of Exhibit C (a "**Suspension Notice**") to the Indenture Trustee, the FSM and the Financing Entity.

7.02 Suspension

If a Suspension Notice has been provided under Section 7.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary Obligation incurred or amended on or after the time such Suspension Notice is delivered, other than any Approved Refinancing.

7.03 No Impact on Adherence

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

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

This Agreement will continue until the later of: (a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee and (b) the date that no amount is or may become due and payable to the Province in respect of any Subrogation Entitlement.

8.02 Notices

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

(a) if to the Financing Entity:

Fair Hydro Trust
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: (416) 981-9777
Email: corporatetrust.toronto@computershare.com

(b) if to the FSM:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(c) if to the Province:

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

and

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

With copies to:

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

and

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

(d) if to the Indenture Trustee:

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

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

8.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) The rights, entitlements and interests of the Province described under subclause 2.01(a)(v) shall be freely assignable and transferrable without any requirement for notice to or the consent of any of the other parties, subject to any limitations or restrictions as may be prescribed with respect to such an assignment or transfer pursuant to the Trust Indenture.

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

8.04 Enurement

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

8.05 FIPPA

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

8.06 No Petition

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

8.07 Notice to Rating Agencies

OPG, as FSM, shall deliver prompt written notice to the Rating Agencies of the occurrence of (i) a Protection Event; (ii) receipt of a Suspension Notice delivered by the Province pursuant to Section 7.01; and (iii) an assignment of this Agreement by any party pursuant to Section 8.03.

8.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

8.09 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER

By: _____
Name:
Title:

By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS TRUSTEE OF FAIR HYDRO TRUST, AS ISSUER, BY ONTARIO POWER GENERATION INC., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS MANAGER

By: _____
Name:
Title:

By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration of a funding obligation" in the General Regulation.

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

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

"**Adherence Compliance Certificate**" means a certificate in the form attached hereto as Exhibit B-1 or Exhibit B-2, as applicable, delivered by the FSM in accordance with Section 4.02(a)ii or Section 4.02(b)ii.

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

"**Aggregate Approved Obligations Amount**" means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

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

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period for purposes of section 15(1) of the Act (in effect on the date hereof), including section 6.1 of the General Regulation (in effect on the date hereof), divided by the number of months in such Reference Period.

"**Approved Refinancing**" means a Certified Primary Obligation proposed to be incurred on or after the occurrence of a Suspension Event, as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions set forth in Subsection 4.02(a) had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions set forth in Subsection 4.02(b).

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

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

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

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

"**Certified Primary Obligations**" means Primary Obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest, including any Refinancing of such a Primary Obligation (for greater certainty, including, in the case of any Certified Primary Obligation permitting funding transactions pursuant to a Funding Obligation Agreement applicable to the Certified Primary Obligation, each individual borrowing or funding utilization thereunder), (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not any individual trade confirmation other than a trade confirmation that modifies or purports to override the express terms or conditions of the related Master Agreement, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and expected (as determined by the Manager, acting reasonably) aggregate payments by the Financing Entity thereunder during the term of such contract are or would be in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).

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

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of

these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Determination Date**" has the meaning ascribed thereto in clause 2.01(a)v.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

"**Executive Officer**" has the meaning ascribed to the term "executive officer" in National Instrument 51-102 – *Continuous Disclosure Obligations* of the Canadian Securities Administrators.

"**Final Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(D).

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

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

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

"**Financing Entity Trustee**" has the meaning ascribed thereto in the first paragraph of this Agreement until a successor Financing Entity Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and the Declaration of Trust, and thereafter "Financing Entity Trustee" means and includes such Person.

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Guarantee Payment Date**" has the meaning ascribed thereto in Section 2.01(a)i.

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

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

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

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Issuer Funding Obligation**" has the meaning ascribed thereto in the Trust Indenture.

"**Junior Subordinated Interest Final Subrogation Amount**" has the meaning ascribed thereto in clause 2.01(a)v.

"**Junior Subordinated Principal Final Subrogation Amount**" has the meaning ascribed thereto in clause 2.01(a)v.

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

"**Lien**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

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

"**Master Agreement**" means an agreement in the form of a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account or Finance Reserve Account; and (ii) any obligation to pay the Financing Entity or on the Financing Entity's direction any remaining amounts in the Collection Account pursuant to the Trust Indenture.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

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

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

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

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

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

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

in each case, that materially and adversely affects[3] (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects[4] the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Obligations Secured that have become due and payable.

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

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency Condition" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Reference Period**" has the meaning ascribed thereto in the Act.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the Act as of the date hereof, as more particularly described and given meaning in the General Regulation as of the date hereof.

"**Residual Final Subrogation Amount**" has the meaning ascribed thereto in clause 2.01(a)v.

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

"**Senior Interest Final Subrogation Amount**" has the meaning ascribed thereto in clause 2.01(a)v.

"**Senior Principal Final Subrogation Amount**" has the meaning ascribed thereto in clause 2.01(a)v.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

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[3] Explanatory Note: This is required by the Province, without qualification.

[4] Explanatory Note: This is required by the Province, without qualification.

"**Subordinated Interest Final Subrogation Amount**" has the meaning ascribed thereto in clause 2.01(a)v.

"**Subordinated Principal Final Subrogation Amount**" has the meaning ascribed thereto in clause 2.01(a)v.

"**Subrogation Entitlement**" means each Subrogation Amount and each Final Subrogation Amount.

"**Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(B).

"**Supplemental Indenture**" has the meaning ascribed in the Trust Indenture.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

"**Suspension Event**" has the meaning ascribed thereto in Section 7.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 7.01.

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

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

EXHIBIT A
FORM OF PAYMENT DEMAND

TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Pursuant to and in accordance with section 2.01(a) of the Change of the Law Protection Agreement, the Indenture Trustee hereby demands payment from the Province in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in the Change of Law Protection Agreement.

DATED as of the [■] day of [■], [■].

BNY TRUST COMPANY OF CANADA

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT B-1
FORM OF ADHERENCE COMPLIANCE CERTIFICATE UNDER SECTION 4.02(a)

TO: **BNY TRUST COMPANY OF CANADA**, in its capacity as Indenture Trustee (the "**Indenture Trustee**") under the Master Trust Indenture dated as of December ●, 2017 between Fair Hydro Trust and the Indenture Trustee (the "**Master Trust Indenture**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province of Ontario, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust, Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Each of the undersigned, being the ● and ● of OPG acting in its capacity as FSM and holding the offices set forth under their names and signatures below, pursuant to and accordance with clause 4.02(a)ii of the Change of Law Protection Agreement, hereby certifies for and on behalf of OPG, in its capacity as Financial Services Manager, and not in such officer's personal capacity and intending that this certificate may be relied on by the addressees hereof without independent inquiry, that:

1. I have read and understand the provisions of the Change of Law Protection Agreement, the Master Trust Indenture and all other documents and materials necessary to enable me to deliver this certificate.
2. If the Certified Primary Obligation is a Refinancing, the proceeds of the Refinancing will be used solely for the purpose of repaying one or more Certified Primary Obligations in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied, including one or more other Refinancings in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied.
3. OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate was provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

DATED as of the [■] day of [■], [■].

Name: [5]	Name:
Office:	Office:

[5] This certificate must be signed by two officers of OPG being either (i) the Chief Financial Officer and the Treasurer, or (ii) any two Executive Officers (as defined in the Change of Law Protection Agreement) of OPG.

EXHIBIT B-2
FORM OF ADHERENCE COMPLIANCE CERTIFICATE UNDER SECTION 4.02(b)

TO: **BNY TRUST COMPANY OF CANADA**, in its capacity as Indenture Trustee (the "**Indenture Trustee**") under the Master Trust Indenture dated as of December ●, 2017 between Fair Hydro Trust and the Indenture Trustee (the "**Master Trust Indenture**")

AND TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust, Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Each of the undersigned, being the ● and ● of OPG acting in its capacity as FSM and holding the offices set forth under their names and signatures below, pursuant to and accordance with clause 4.02(b)ii of the Change of Law Protection Agreement, hereby certifies for and on behalf of OPG, in its capacity as Financial Services Manager, and not in such officer's personal capacity and intending that this certificate may be relied on by the addressees hereof without independent inquiry, that:

1. I have read and understand the provisions of the Change of Law Protection Agreement, the Master Trust Indenture and all other documents and materials necessary to enable me to deliver this certificate.
2. The proceeds of the Approved Refinancing will be used solely for the purpose of repaying one or more Certified Primary Obligations (including any Refinancing) in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied, or one or more Approved Refinancings in respect of which the Adherence Conditions in Subsection 4.02(b) of the Change of Law Protection Agreement had been satisfied.
3. OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate was provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of the Certified Primary Obligation subject to repayment using the proceeds of the Approved Refinancing.

DATED as of the [■] day of [■], [■].

Name: [6]	Name:
Office:	Office:

[6] This certificate must be signed by two officers of OPG being either (i) the Chief Financial Officer and the Treasurer, or (ii) any two Executive Officers (as defined in the Change of Law Protection Agreement) of OPG.

EXHIBIT C
SUSPENSION NOTICE

TO: Ontario Power Generation Inc., in its capacity as Financial Services Manager

AND TO: Fair Hydro Trust

AND TO: Computershare Trust Company of Canada, in its capacity as trustee of Fair Hydro Trust

AND TO: BNY Trust Company of Canada, as Indenture Trustee

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement. All references in this Suspension Notice to "Articles" or "Sections" refer to Articles or Sections of the Change of Law Protection Agreement.

The Province has a reasonable basis for concluding that an event described in clauses (a) to (d) of Section 7.01 has occurred. Pursuant to Section 7.01, the Province hereby declares that the Limited Guarantee shall not apply in respect of any Primary Obligation incurred or amended on or after the delivery of this Suspension Notice, other than an Approved Refinancing in respect of which the Adherence Conditions set forth in Subsection 4.02(b) have been satisfied.

The Limited Guarantee shall hereby not apply in respect of (i) any Primary Obligation incurred or (ii) any amendment of any Primary Obligation that results in an increase to the principal amount of such Primary Obligation, in each case, on or after delivery of this Suspension Notice, other than any Approved Refinancing in respect of which the Adherence Conditions set forth in Subsection 4.02(b) have been satisfied.

This Suspension Notice is hereby delivered to the FSM, the Financing Entity and the Indenture Trustee in accordance with Section 8.02 of the Change of Law Protection Agreement.

* * * *

DATED as of the [■] day of [■], [■].

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE[1]

AND

COMPUTERSHARE TRUST COMPANY OF CANADA, AS TRUSTEE OF FAIR HYDRO TRUST

AND

ONTARIO POWER GENERATION INC., AS FINANCIAL SERVICES MANAGER AND AS MANAGER OF FAIR HYDRO TRUST

AND

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE

CHANGE OF LAW PROTECTION AGREEMENT

Dated as of [■], 2017

[1] ~~Explanatory Note: Logistics of closing are under consideration by the Province.~~

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

RECITALS

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

Pursuant to an Order in Council 1981/2017 (the "**OIC**"), the Lieutenant Governor in Council has, among other things, authorized the Minister of Energy and the Minister of Finance, acting together on behalf of the Province of Ontario, to enter into one or more agreements to guarantee or indemnify the debts, obligations, securities or undertakings of one or more financing entities established or caused to be established pursuant to Subsection 22(2) of the Act by the FSM and that may incur Funding Obligations in connection with one or more Investment Interests.

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

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

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

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

AGREEMENT OF THE PARTIES

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

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

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

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

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

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

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

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

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

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

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

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

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

1.02 Trustee to act in accordance with the Trust Indenture

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

1.03 Proof of Approved Obligations

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

Each statement delivered by the Manager under Section 2.01(a)i shall constitute *prima facie* evidence of the amount which, as at the date of the statement so prepared, is due and payable by the Financing Entity to the Beneficiaries and/or the Indenture Trustee and each of the ~~Province~~parties hereby acknowledges and agrees that, absent manifest error, it shall be bound by each such statement. The Manager ~~agrees to~~shall act diligently in the preparation of each such statement and shall provide the Indenture Trustee and the Province with ~~the~~all supporting computations and calculations used by the Manager to prepare each such statement promptly following a request therefor made by the Indenture Trustee or the Province.[2]

1.04 Limitation on Rights of and Actions by Specified Creditors

Specified Creditors, as Beneficiaries, shall not have or be permitted to exercise any rights, interests, or elections under this Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Trust Indenture as of the date of this Agreement.

[2] ~~This language was reinserted as the guarantee statements required to be delivered by the Manager should be binding on the Province.~~

1.05 Province Retains Rights of Beneficiaries

Without limiting any rights of subrogation or succession that arise pursuant to applicable law or pursuant to the Province's rights as an assignee, subrogee or pursuant to Section 2.01 or Section 5.01, all of the rights, interests, elections and privileges that would arise in favour of a Beneficiary under the Trust Indenture or other Funding Obligation Agreement under which a related Primary Obligation arises shall automatically arise, vest in and be available to the Province to the extent of the performance by the Province of the Primary Obligation.

1.06 Effect of Headings

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

1.07 Successors and Assigns

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

1.08 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.09 Governing Law

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

1.10 Proceedings Against the Crown Act

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

1.11 Attornment

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

1.12 Counterparts; Electronic Delivery

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

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

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

1.14 Non-Business Days

~~Unless otherwise provided for under the terms of any Approved Obligation, whenever any payment to be made hereunder shall be stated to be due, any~~ period of time would begin or ~~end, any~~ calculation is to be made or any other action to be taken ~~hereunder~~ shall be stated to be ~~required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day.~~Whenever any payment to be made hereunder shall be stated to be due, any period of time would begin or end, any calculation is to be made or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such payment shall be made, such period of time shall begin or end, such calculations shall be made and such other action shall be taken on the next succeeding Business Day; provided, however, that if under the terms of an Approved Obligation an amount is stated to be due, a period of time would begin or end, a calculation is to be made or any other action to be taken thereunder shall be stated to be required to be taken, on a day other than a Business Day, any amount payable hereunder that is to be determined by reference to such Approved Obligation shall be determined by reference to such terms.

1.15 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No

waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

1.16 Interest Act

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

1.17 Currency

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

1.18 References to Acts of the Financing Entity

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

1.19 Judgment Currency

(a) If for the purpose of obtaining judgment in any court or for any other purposes (other than conversions specifically provided for in the agreement under which an Approved Obligation arises), it is necessary to convert any amount due under this Agreement from the currency in which it is due (the "**Original Currency**") into another currency (the "**Second Currency**"), the rate of exchange applied shall be that at which, in

accordance with normal banking procedures, the purchaser could purchase, in the New York foreign exchange market, the Original Currency with the Second Currency on the date on which judgment is given. The obligation of the Province in respect of any Original Currency due from it to the Indenture Trustee under this Agreement shall, notwithstanding any judgment or payment in such other currency, be discharged only to the extent that, on the Business Day following receipt of any sum so paid or adjudged to be due under this Agreement in the Second Currency, the Indenture Trustee may, in accordance with normal banking procedures, purchase in the New York foreign exchange market the Original Currency with the amount of the Second Currency so paid or so adjudged to be due; and if the amount of the Original Currency so purchased is less than the amount originally due in the Original Currency, the Province shall indemnify the Indenture Trustee against such loss.

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

ARTICLE II
AGREEMENT TO PERFORM APPROVED OBLIGATIONS

2.01 Limited Guarantee

(a) Upon the occurrence of a Protection Event, the Indenture Trustee may deliver a written demand, substantially in the form attached as Exhibit A (a "**Payment Demand**"), to the Province requiring the Province to make payments in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in this Agreement. From and after such delivery of a Payment Demand, the Province shall make the following payments in respect of the Approved Obligations (the "**Limited Guarantee**"), and the Financing Entity shall pay, and the Province shall be entitled to be paid, the Subrogation Entitlements specified below:

i. Not less than 3 Business Days prior to each day when any payment or payments are to be made in respect of one or more Approved Obligations occurring after such delivery of a Payment Demand (each such day, a "**Guarantee Payment Date**"), the Manager shall deliver a written statement setting forth the Aggregate Approved Obligations Amount, if any, in respect of the Approved Obligations that are due and payable on such Guarantee Payment Date, together with a detailed description identifying such

Approved Obligations and the nature and amount of payments due and payable thereunder on the Guarantee Payment Date, the aggregate outstanding amount payable by the Financing Entity under such Approved Obligations as of the date of such written statement, and details regarding any default in performance by any party obligated thereunder.

ii. On each such Guarantee Payment Date, the Province shall deposit the Aggregate Approved Obligations Amount into the Protection Account.

iii. On each such Guarantee Payment Date, the Financing Entity and the Indenture Trustee shall ensure that the amounts on deposit in the Protection Account are applied to pay each Beneficiary to whom an amount is due and payable under an Approved Obligation on the Guarantee Payment Date the Approved Obligation Amount for such Beneficiary in respect of such Approved Obligation on such Guarantee Payment Date; provided that if the amount deposited pursuant to clause 2.01(a)ii is insufficient to pay all such Approved Obligation Amounts in full, the amount on deposit in the Protection Account on the Guarantee Payment Date shall be applied to pay Beneficiaries in the order of priority in which such Approved Obligations are payable under the payment provisions of the Trust Indenture applicable to the making of such payments on the Guarantee Payment Date (each, a "**Beneficiary Payee**" and each payment made to a Beneficiary Payee on a Guarantee Payment Date, a "**Guarantee Payment**").

iv. On any Guarantee Payment Date on which an amount is paid by the Province pursuant to clause 2.01(a)ii, the applicable payment provisions of the Trust Indenture shall, notwithstanding ~~the~~any express terms of such provisions set forth in the Trust Indenture to the contrary, be applied and operate on the following basis:

(A) the amount payable to a Beneficiary Payee in respect of an Approved Obligation from amounts available under such payment provisions on such Guarantee Payment Date shall be reduced by the amount of the Guarantee Payment paid to the Beneficiary Payee pursuant to clause 2.01(a)iii in respect of such Approved Obligation on such Guarantee Payment Date;

(B) the Province shall be paid the amount payable to a Beneficiary Payee in respect of an Approved

Obligation from amounts available to pay the Beneficiary Payee under such payment provisions on the Guarantee Payment Date, determined without regard to the Guarantee Payment paid on such Guarantee Payment Date and the corresponding reduction of the amount owing to the Beneficiary Payee pursuant to subclause 2.01(a)iv(A) (each such amount payable to the Province being a "**Subrogation Amount**"); and

(C) no Beneficiary having a right to be paid an amount in respect of an Approved Obligation, and no other Person entitled under an Obligation Secured, in each case that ranks equal with or subordinate to an Approved Obligation in respect of which a Subrogation Amount is payable to the Province under subclause 2.01(a)iv(B), shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province under such subclause (including any right of set-off, offset, reimbursement, contribution or indemnity) and no such Beneficiary or other Person shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of any such Subrogation Amount~~;~~.

v. ~~(D) on~~On the first day ~~when any~~on which a payment ~~or payments are~~is required to be made in respect of any Obligations Secured under the Trust Indenture that occurs after the ~~date~~day on which all amounts payable under all Approved Obligations have been paid in full~~,~~ (whether pursuant to Guarantee Payments ~~or~~, payments made pursuant to the payment provisions of the Trust Indenture ~~or any combination thereof, the Province shall be entitled to be paid from amounts available to pay Obligations Secured on such day (and thereafter on each subsequent day when any payment or payments are to be made in respect of Obligations Secured, until paid in full), in each case in accordance with~~, any combination thereof or otherwise) (the "**Determination Date**"), the applicable payment provisions of the Trust Indenture ~~on such day, the following amounts, in each case in the priorities specified below:~~shall, notwithstanding any express terms of such provisions set forth in the Trust Indenture to the contrary, be applied and operate on the following basis:

(A) the Manager shall calculate each of the following amounts as of and by reference to the Determination Date:

(I) ~~as an amount ranking equally with principal amounts of Senior Funding Obligations,~~ the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including ~~such day~~the Determination Date in respect of Approved Obligations ~~ranking~~that at the time of payment ranked equally with or prior to ~~principal~~interest amounts ~~of~~payable on Senior Funding Obligations~~, plus (y) the sum of amounts determined in respect of~~ in accordance with the applicable payment provisions of the Trust Indenture at such time, plus (y) an amount determined to reflect interest accruing on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount ~~is~~was paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture[1] and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of all Subrogation Amounts paid to the Province up to and including such day (such amount, the "**Senior Interest Final Subrogation Amount**");

(II) ~~as an amount ranking equally with principal amounts of Subordinated Funding Obligations,~~ the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including ~~such day~~the Determination Date in respect of Approved Obligations ~~ranking~~that at the time of payment ranked equally with or prior to principal amounts ~~of Subordinated~~payable

[1] Methodology to be confirmed.

on Senior Funding Obligations~~, plus (y) the sum of amounts determined in respect of~~ in accordance with the applicable payment provisions of the Trust Indenture at such time, plus (y) an amount determined to reflect interest accruing on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount ~~is~~was paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the amount determined under (I), above (such amount, the "~~**Subordinated Final Subrogation Amount**~~"); and**Senior Principal Final Subrogation Amount**");

(III) the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including the Determination Date in respect of Approved Obligations that at the time of payment ranked equally with or prior to interest amounts payable on Subordinate Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture at such time, plus (y) an amount determined to reflect interest accruing on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount was paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid

to the Province up to and including such day, plus (y) the sum of the amounts determined under (I) and (II), above (such amount, the "**Subordinated Interest Final Subrogation Amount**");

(IV) the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including the Determination Date in respect of Approved Obligations that at the time of payment ranked equally with or prior to principal amounts payable on Subordinated Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture at such time, plus (y) an amount determined to reflect interest accruing on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount is paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the sum of the amounts determined under (I), (II) and (III) (such amount, the "**Subordinated Principal Final Subrogation Amount**");

(V) the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including the Determination Date in respect of Approved Obligations that at the time of payment ranked equally with or prior to interest amounts payable on Junior Subordinated Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture at such time, plus (y) an amount determined to reflect interest accruing on each such

Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount was paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the sum of the amounts determined under (I), (II), (III) and (IV), above (such amount, the "**Junior Subordinated Interest Final Subrogation Amount**");

(VI) the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including the Determination Date in respect of Approved Obligations that at the time of payment ranked equally with or prior to principal amounts payable on Junior Subordinated Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture at such time, plus (y) an amount determined to reflect interest accruing on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount is paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the sum of the amounts determined under (I), (II), (III), (IV) and (V) (such amount, the "**Junior Subordinated**

Principal Final Subrogation Amount"); and

(VII) ~~(III) as an amount ranking equally with principal amounts of Junior Subordinated Obligations,~~ the amount by which (1) the sum of (x) all Guarantee Payments paid by the Province up to and including ~~such day~~the Determination Date in respect of all Approved Obligations ~~ranking equally with or prior to principal amounts of Junior Subordinated Funding Obligations, plus (y) the sum of amounts~~, plus (y) an amount determined ~~in respect of~~to reflect interest accruing on each such Guarantee Payment from and including the date of its payment by the Province to but excluding the date a Subrogation Amount is paid to the Province in respect of such Guarantee Payment, as attributed to such Guarantee Payment in accordance with the Trust Indenture and calculated based on the applicable interest rate borne by the Approved Obligation to which such Guarantee Payment related, exceeds (2) the sum of (x) all Subrogation Amounts paid to the Province up to and including such day, plus (y) the sum of the amounts determined under (I) ~~plus (z) the sum of the amounts determined under (II~~, (II), (III), (IV), (V) and (VI) (such amount, the "~~**Junior Subordinated**~~**Residual Final Subrogation Amount**" and, together with the Senior ~~Final Subrogation Amount and the Subordinated~~Interest Final Subrogation Amount, the Senior Principal Final Subrogation Amount, the Subordinated Interest Final Subrogation Amount, the Subordinated Principal Final Subrogation Amount, the Junior Subordinated Interest Final Subrogation Amount, the Junior Subordinated Principal Final Subrogation

Amount, collectively, the "**Final Subrogation Amounts**")[3];

(B) as of the Determination Date (and thereafter on each subsequent day when any payment or payments are to be made in respect of Obligations Secured, until paid in full), the Province shall be entitled to be paid by the Financing Entity, and the Financing Entity shall be obligated to pay the Province in accordance with the applicable payment provisions of the Trust Indenture, the following amounts in the priorities set forth below:

(I) as an amount ranking equally with interest amounts payable on Senior Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture, the Senior Interest Final Subrogation Amount;

(II) as an amount ranking equally with principal amounts payable on Senior Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture, the Senior Principal Final Subrogation Amount;

(III) as an amount ranking equally with interest amounts payable on Subordinated Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture, the Subordinated Interest Final Subrogation Amount;

(IV) as an amount ranking equally with principal amounts payable on Subordinated Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture, the Subordinated Principal Final Subrogation Amount;

(V) as an amount ranking equally with interest amounts payable on Junior Subordinated

[3] ~~Separate definitions were included to facilitate inserting these amounts into Trust Indenture priority of payment provisions.~~

Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture, the Junior Subordinated Interest Final Subrogation Amount;

(VI) as an amount ranking equally with principal amounts payable on Junior Subordinated Funding Obligations in accordance with the applicable payment provisions of the Trust Indenture, the Junior Subordinated Principal Final Subrogation Amount; and

(VII) as an amount ranking equally with amounts payable on the Obligations Secured having the lowest payment ranking in accordance with the applicable payment provisions of the Trust Indenture to Persons other than OPG, the Residual Final Subrogation Amount;

(C) the payment entitlements of the Province described in subclause 2.01(a)v(B) shall, on and after the Determination Date, be treated for all purposes of the Trust Indenture as follows:

(I) the payment entitlements described in sub-subclauses 2.01(a)v(B)(I) and (II) shall constitute and be treated as interest and principal obligations, as the context requires, arising under a [Series of Notes] constituting Senior Funding Obligations issued by the Financing Entity to the Province on the Determination Date and conferring upon the Province (and any successor, assignee or transferee of such entitlements), all of the rights, entitlements, interests and privileges of a [Holder] of such a [Series of Notes][2] in accordance with the Trust Indenture, as supplemented by *[Describe applicable Senior Series Supplemental Indenture]*;

(II) the payment entitlements described in sub-subclauses 2.01(a)v(B)(III) and (IV) shall constitute and be treated as interest

[2] Conform defined terms to the Trust Indenture.

and principal obligations, as the context requires, arising under a Series of Notes constituting Subordinated Funding Obligations issued by the Financing Entity to the Province on the Determination Date and conferring upon the Province (and any successor, assignee or transferee of such entitlements), all of the rights, entitlements, interests and privileges of a Holder of such a Series of Notes in accordance with the Trust Indenture, as supplemented by *[Describe applicable Subordinated Series Supplemental Indenture]*;

(III) the payment entitlements described in sub-subclauses 2.01(a)v(B)(V) and (VI) shall constitute and be treated as interest and principal obligations, as the context requires, arising under a Series of Notes constituting Junior Subordinated Funding Obligations issued by the Financing Entity to the Province on the Determination Date and conferring upon the Province (and any successor, assignee or transferee of such entitlements), all of the rights, entitlements, interests and privileges of a Holder of such a Series of Notes in accordance with the Trust Indenture, as supplemented by *[Describe applicable Junior Subordinated Series Supplemental Indenture]*;

(IV) and the payment entitlements described in sub-subclause 2.01(a)v(B)(VII) shall constitute and be treated as a payment obligation without any additional rights, entitlements, interests or privileges, other than the right to receive payment in accordance with the applicable payment provisions of the Trust Indenture applicable to Obligations Secured ranking equally with amounts payable on the Obligations Secured having the lowest payment ranking in accordance with the applicable payment provisions of the Trust Indenture to any Person other than OPG; and

(D) ~~(E)~~ no Person entitled under an Obligation Secured that ranks equal with or subordinate to a Final Subrogation Amount shall be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province in respect of such Final Subrogation Amount and no such Person shall have any right or interest in, to or under the Collateral or any proceeds therefrom in respect of any such Final Subrogation Amount.

vi. ~~v.~~ On any Guarantee Payment Date and on the Determination Date, the Indenture Trustee shall release and pay to the Province free and clear of any Liens any amount remaining on deposit in the Protection Account that has not been applied to pay Guarantee Payments to Beneficiary Payees on the Guarantee Payment Date in accordance with clause 2.01(a)iii or that otherwise remains on deposit in the Protection Account on the Determination Date.

vii. ~~vi.~~ In preparing any payment instructions under the Trust Indenture, the Manager shall reflect the amounts payable under Section 2.01(a).

(b) The Province shall, as a payee of Subrogation Amounts under clause 2.01(a)iv(B), as a payee of each Final Subrogation Amount under clause 2.01(a)~~(iv)(D)~~v and as a payee of any amounts payable under clause 2.01(a)vi, be a "Specified Creditor" under the Trust Indenture and have the benefit of the Collateral thereunder.

(c) For greater certainty, the Limited Guarantee will not apply to any amount or obligation of the Financing Entity that is not or does not arise under an Approved Obligation and will be limited to the right to receive the Approved Obligation Amounts, if any, for payment to Beneficiary Payees and will be subject to the priorities and to the Province's rights to Subrogation Entitlements, set forth in Section 2.01(a).

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

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

(f) The right to deliver a Payment Demand and thereupon enforce the Limited Guarantee shall constitute the only remedy available to the Indenture Trustee (and to the Beneficiaries, to the extent they are permitted to exercise any rights, interests, or elections under and in accordance with the Trust Indenture) under this Agreement. Under no circumstances shall the Province be obligated to pay or indemnify the Indenture Trustee or any Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits; provided that, for greater certainty, economic loss shall not include any amount in respect of any amount due and payable to a Beneficiary Payee under the Limited Guarantee.

2.02 Intentionally Deleted.

2.03 Absence of Set-off

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

2.04 Payment into Protection Account in Satisfaction

(a) On or before the date of delivery of a Payment Demand to the Province, the Indenture Trustee shall cause to be established and maintained an Eligible Deposit Account (the "**Protection Account**") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the Beneficiaries. The Protection Account shall be under the control of the Indenture Trustee for the benefit of the Beneficiaries. If, at any time, the institution holding the Protection Account ceases to be an Eligible Institution, the FSM shall notify the Indenture Trustee, and the Indenture Trustee upon being notified in writing of such ineligibility (or the FSM on its behalf) shall within 30 days (or such longer period, not to exceed 45 days, so long as the Rating Agency Condition is satisfied) establish a new Protection Account that is an Eligible Deposit Account and shall transfer any funds or other property from such Protection Account to such new Protection Account. From the date each such new Protection Account is established, it shall be the "Protection Account" for purposes of this Agreement. Funds credited to the Protection Account will be invested and held in accordance with Section **[7.03]** of the Trust Indenture on the basis that it is an Issuer Account.

(b) Notwithstanding the priority of payment requirements set forth in the Trust Indenture and any legal rule concerning the imputation of payments, the Financing Entity and the Indenture Trustee shall ensure that all amounts paid by the Province into the Protection Account on a Guarantee Payment Date in respect of an

Approved Obligation are applied to pay the amounts due and payable to the Beneficiaries as and to the extent provided for in Section 2.01(a). Upon a payment having been made by or on behalf of the Province into the Protection Account, the amounts so paid shall for all purposes be considered to have been applied to pay the applicable Beneficiaries as provided for in Section 2.01(a) and thereby reduce the amount due and payable to such Beneficiaries in respect of the applicable Approved Obligations, whereupon an affected Beneficiary shall have no continuing rights, interests or entitlements (including rights as a secured party) in respect of the Approved Obligation to the extent so paid. For greater certainty, the obligations arising in respect of an applicable Approved Obligation shall not be reduced by such payment as the Province shall become entitled to be paid related Subrogation Entitlements and the rights contemplated under Section 2.01(a) and Section 5.01 in relation to such continuing obligations.

2.05 Certain Waivers

The Province hereby waives:

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

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

(c) diligence; and

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

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

2.06 Additional Security

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

2.07 Continuing Liability of the Province

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

2.08 Continuance of the Limited Guarantee

Subject to Section 2.07, the Limited Guarantee shall continue in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations in accordance with Section 8.01.

2.09 Modifications of Approved Obligations

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

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

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

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

ARTICLE III
THE INDENTURE TRUSTEE

3.01 The Indenture Trustee

This Agreement is made in favour of the Indenture Trustee in its capacity as trustee under the Trust Indenture. Accordingly, in the event of a new trustee being appointed under the Trust Indenture, such new trustee shall thereupon become and be the Indenture Trustee hereunder, but

nevertheless, the Indenture Trustee shall forthwith assign, transfer and make over to the new trustee hereunder this Agreement. All provisions of the Trust Indenture for the protection of the Indenture Trustee or for facilitating the administration of the trusts or otherwise relating to the Indenture Trustee solely as to its holding of the rights thereunder shall apply *mutatis mutandis* to this Agreement and the Indenture Trustee's duties hereunder.

3.02 Acceptance of Trusts

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

ARTICLE IV
APPROVED OBLIGATIONS

4.01 Approval Process

A Primary Obligation shall constitute an Approved Obligation if (i) the Adherence Conditions applicable thereto have been satisfied at the time the Primary Obligation was incurred, or (ii) the Province, in its sole discretion, designates in writing that it is an Approved Obligation.

4.02 Adherence Conditions

(a) The following shall be the Adherence Conditions applicable in relation to each Certified Primary Obligation:

i. the Certified Primary Obligation when incurred is an Obligation Secured under the Trust Indenture; and

ii. OPG, as FSM, delivers an Adherence Compliance Certificate in the form attached hereto as Exhibit B-1 signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee, on or before the incurrence of a Certified Primary Obligation (provided that delivery may not be more than 5 Business Days before the incurrence of the Certified Primary Obligation);[4] and

iii. the Province has not provided a Suspension Notice to the Indenture Trustee, OPG and the Financing Entity.

[4] ~~Given the importance of this certificate, the form of the Adherence Compliance Certificate is set out in Exhibit B-1 to this Agreement and accordingly this language has been deleted from this para (ii) and is reproduced in the form of certificate attached as Exhibit B-1.~~

(b) The following shall be the Adherence Conditions applicable in relation to each Approved Refinancing:

i. such Approved Refinancing when incurred is an Obligation Secured under the Trust Indenture; and

ii. OPG, as FSM, delivers an Adherence Compliance Certificate in the form attached hereto as Exhibit B-2 signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Indenture Trustee and the Province, on or before the incurrence of the Approved Refinancing (provided that delivery may not be more than 5 Business Days before the incurrence of such Approved Refinancing).[5]

(c) For greater certainty, ~~(y)~~ satisfaction of the Adherence Conditions for a Certified Primary Obligation or ~~a~~an Approved Refinancing shall be deemed satisfaction of the Adherence Conditions in respect of all principal, interest and other amounts owing under the Certified Primary Obligation or the Approved Refinancing, as applicable~~, as such Certified Primary Obligation or Refinancing may be amended, restated, supplemented or otherwise modified from time to time, and (z) there shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Certified Primary Obligation or a Refinancing~~.

(d) Without limiting any obligations of OPG to the Province arising other than pursuant to this Agreement, a Certified Primary Obligation may be amended, restated, supplemented or otherwise modified from time to time.

(e) An Approved Refinancing may not be amended, restated, supplemented or otherwise modified without the consent of the Province.

(f) For greater certainty, there shall be no Adherence Conditions applicable in relation to a Primary Obligation that is not a Certified Primary Obligation or an Approved Refinancing.

4.03 Evidence of Satisfaction

An Adherence Compliance Certificate delivered in accordance with ~~Section~~clause 4.02(a)ii or in accordance with ~~Section~~clause 4.02(b)ii, as the case may be, shall be determinative as to whether the applicable Adherence Conditions with respect thereto have been satisfied,

[5] ~~Given the importance of this certificate, the form of the Adherence Compliance Certificate is set out in Exhibit B-2 to this Agreement.~~

notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such closing certificate may be relied upon by any addressee as conclusive evidence of same. An Adherence Compliance Certificate that purports on its face to be signed by officers specified in ~~Section~~clause 4.02(a)ii or ~~Section~~clause 4.02(b)ii, as applicable, may be relied upon by any addressee without further enquiry or evidence as to the incumbency or signatures of such officers. If an Adherence Compliance Certificate is not delivered in accordance with the timing requirements of ~~Section~~clause 4.02(a)ii or ~~Section~~clause 4.02(b)ii, as applicable, such certificate may be delivered at a later date, and be effective as if it had been delivered in accordance with the timing requirement of ~~Section~~clause 4.02(a)ii or ~~Section~~clause 4.02(b)ii, as applicable, if at the time such certificate was required to be delivered OPG had delivered to the Province all certifications required by the Province in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation or the Approved Refinancing.

ARTICLE V
PROVINCE MATTERS

5.01 Assignment and Subrogation

(a) Upon paying an amount in respect of an Approved Obligation to or at the direction of the Indenture Trustee in satisfaction of the Limited Guarantee, the Province (in addition to and without prejudice to any rights it otherwise has in law or equity) shall be subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation to the extent of such payment, including (i) the right and entitlement to be paid and receive the related Subrogation Entitlements, (ii) the benefits of the related Collateral and (iii) all proceeds therefrom. The Province shall have and be entitled to enforce all rights and interests (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)), under and in respect of such Approved Obligation to the extent of the payment by the Province in respect of the Approved Obligation as an absolute assignee of the applicable Beneficiary, with effect from and after the time of such payment, without any further requirement for notice to or acceptance by the Financing Entity of such absolute assignment and without any reduction, set-off or counterclaim on account of any amounts that may, at or after the time of payment, be or become owing by the Beneficiary to the Financing Entity and unaffected by any other rights or equities that arise thereafter as between the Beneficiary and the Financing Entity. The Indenture Trustee shall recognize the Province as being entitled to all of the rights, interests and entitlements of the Beneficiary (including as a Specified Creditor under the Trust Indenture on the basis contemplated in Section 5.01(b)) in respect and to the extent of the Approved Obligation so paid, determined as of the time of payment, for all purposes under the Trust Indenture, and the Province shall be treated as a Specified Creditor

in respect thereof for all purposes under the Trust Indenture and any other agreement under which the Approved Obligation arises.

(b) The Province (i) acknowledges and agrees in favour of the Indenture Trustee that, upon being subrogated and entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Approved Obligation in accordance with Section 5.01(a), the Province, in its capacity as a Specified Creditor, will be subject to the provisions applicable to Specified Creditors under the Trust Indenture, including Sections **[7.04]** through **[7.11]** and **[8.13]** (Payment Priorities), Section **[7.12]** (Payments Held in Trust), Section **[8.11]** (Control by Controlling Class Creditors), Section **[8.12]** (Limitation on Suits), Section **[8.14]** (Limited Recourse), Article IX (The Indenture Trustee), including all limitations of liability thereunder, Section **[9.14]** (Communications to Specified Creditors) and Section **[16.01]** (No Petition); (ii) consents, requests and authorizes the Issuer and the Indenture Trustee to (x) add the Province to the register of Specified Creditors described in subsection **[13.13(b)]** of the Trust Indenture and (y) disseminate the notice details of the Province to other Specified Creditors for the purposes set out in subsection **[9.14(b)]** of the Trust Indenture, and (iii) confirms that it will execute and deliver, or cause to be executed and delivered, all such further agreements, documents and instruments in connection with this Section 5.01 as the Indenture Trustee may request from time to time for the purpose of giving effect to the terms of this Section 5.01.

5.02 Priorities

For greater certainty, the rights, interests and entitlements of the Province as an assignee and subrogee of and with respect to an Approved Obligation shall rank equally with the rights, interests and entitlements of a Beneficiary to whom a Limited Guarantee payment is made in respect of, and to the extent of the payment made to satisfy, the Approved Obligation and the Province shall not be subject to postponement or subordination with respect thereto except to the extent of the priorities established in relation to the Approved Obligation under the Trust Indenture in the manner and to the extent contemplated in Section **[7.10]** of the Trust Indenture.

5.03 Intentionally Deleted

5.04 Representations and Warranties

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
INDENTURE TRUSTEE MATTERS

6.01 Limited Recourse

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

6.02 Not Responsible for Recitals

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

6.03 Representations and Covenants of the Indenture Trustee[6]

The Indenture Trustee represents, warrants and covenants that:

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

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

(c) this Agreement has been duly executed and delivered by the Indenture Trustee and constitutes its legal, valid and binding obligation in accordance with its terms; and

[6] ~~Explanatory Note: Indenture Trustee representations have been conformed to the MTI and are subject to review and sign off by the Indenture Trustee.~~

(d) the Indenture Trustee is authorized to carry on the business of a trust company in each of the provinces and territories of Canada. If, notwithstanding the provisions of this subsection 6.03(d), the Indenture Trustee ceases to be so authorized to carry on business, the validity and enforceability of this Agreement shall not be affected in any manner whatsoever by reason only of such event.

ARTICLE VII
SUSPENSION OF ADHERENCE FOR NEW PRIMARY OBLIGATIONS

7.01 Suspension Notice

Upon:

(a) a Program Breach;

(b) a default in the performance, or breach, of any covenants of OPG, as FSM, or OPG, in its corporate capacity, in each case to the Province in connection with its obligations to the Province pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to ~~the~~or in respect of any Certified Primary ~~Obligations~~Obligation and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as FSM or in its corporate capacity, to the Province in connection with its obligations to the Province ~~pursuant to~~and its internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to ~~the~~or in respect of any Certified Primary Obligations, proves to be incorrect in any material respect on the date made and~~, if curable, is not cured within thirty (30) days after written notice by the Province to OPG of such misrepresentation~~ the expiration of any applicable cure period; or

(d) the FSM no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the FSM as the Manager,

the Province may declare that the Limited Guarantee under this Agreement shall not apply to any Primary Obligations incurred on or after such declaration, other than any Approved Refinancing~~ of an Approved Obligation in respect of which the Adherence Conditions had previously been satisfied or if such Refinancing is otherwise an Approved Obligation~~, by delivering a written notice in the form of Exhibit C (a "**Suspension Notice**") to the Indenture Trustee, the FSM and the Financing Entity.[7]

[7] ~~The paragraph that was deleted from Section 7.01 was modified slightly and moved to the form of the Adherence Compliance Certificate set out in Exhibit B-2 as the Adherence Condition for the Refinancing so that it is clear what conditions have to be satisfied for a Refinancing to be an Approved Obligation. As discussed in our meeting with the principals and in response to the DBRS comments, debt issued on a refinancing of protected debt should continue to be protected debt.~~

7.02 Suspension

If a Suspension Notice has been provided under Section 7.01 (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary Obligation incurred or ~~(ii) any amendment of any Primary Obligation that results in an increase to the principal amount of such Primary Obligation, in each case,~~amended on or after the time such Suspension Notice is delivered, other than any Approved Refinancing ~~of an Approved Obligation in respect of which the Adherence Conditions had previously been satisfied or if such Refinancing is otherwise an Approved Obligation~~.

7.03 No Impact on Adherence

For greater certainty, the occurrence of a Suspension Event or a failure by the FSM or the Financing Entity to perform its covenants under this Agreement will not invalidate or extinguish the obligations of the Province under the Limited Guarantee in respect of Approved Obligations in existence prior to the occurrence of the Suspension Event or in respect of any Approved Refinancing ~~of an Approved Obligation in respect of which the Adherence Conditions had previously been satisfied or if such Refinancing is otherwise an Approved Obligation~~.

ARTICLE VIII
MISCELLANEOUS

8.01 Term of Agreement

This Agreement will continue until the later of: (a) the date that no amount is or may become due and payable by the Province under the Limited Guarantee and (b) the date that no amount is or may become due and payable to the Province in respect of any Subrogation Entitlement.

8.02 Notices

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

communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to the Financing Entity:

Fair Hydro Trust

700 University Avenue

Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

with copies to:

Computershare Trust Company of Canada, in its capacity as Financing Entity Trustee for Fair Hydro Trust
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1
Attention: Manager, Corporate Trust
Fax: (416) 981-9777
Email: corporatetrust.toronto@computershare.com

(b) if to the FSM:

Ontario Power Generation Inc.

700 University Avenue

Toronto, Ontario M5G 1X6

Attention: General Counsel
Fax: (416) 592-4189

(c) if to the Province:

~~Ministry~~Minister of Finance

[Address]

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

and

~~Ministry~~Minister of Energy

[Address]

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

With copies to:

Deputy Minister of Finance

[Address]

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

and

Deputy Minister of Energy

[Address]

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

(d) if to the Indenture Trustee:

[Address]

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

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

8.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties, except as otherwise provided for herein.

(b) The rights, entitlements and interests of the Province described under subclause 2.01(a)(v) shall be freely assignable and transferrable without any requirement for notice to or the consent of any of the other parties, subject to any limitations or restrictions as may be prescribed with respect to such an assignment or transfer pursuant to the Trust Indenture.

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

8.04 Enurement

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

8.05 FIPPA

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

8.06 No Petition

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

8.07 Notice to Rating Agencies

OPG, as FSM, shall deliver prompt written notice to the Rating Agencies of the occurrence of (i) a Protection Event; (ii) receipt of a Suspension Notice delivered by the Province pursuant to Section 7.01; and (iii) an assignment of this Agreement by any party pursuant to Section 8.03.

8.08 Third Party Rights

This Agreement is not intended to create rights for any Person not party to this Agreement. Beneficiaries derive their benefits hereunder through the Indenture Trustee and shall be subject to the provisions applicable to Specified Creditors in the Trust Indenture.

8.09 Delivery of Executed Copies

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

[Signature page to follow]

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

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC., AS FSM AND AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

COMPUTERSHARE TRUST COMPANY OF CANADA, IN ITS CAPACITY AS TRUSTEE OF FAIR HYDRO TRUST, AS ISSUER, BY ONTARIO POWER GENERATION INC., NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS MANAGER

By: _____
Name:
Title:
By: _____
Name:
Title:

BNY TRUST COMPANY OF CANADA, AS INDENTURE TRUSTEE AND NOT IN ITS INDIVIDUAL CAPACITY

By: _____
Name:
Title:

By: _____
Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Acceleration**" has the meaning ascribed to the term "acceleration of a funding obligation" in the General Regulation.

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

"**Action**" has the meaning ascribed thereto under the Trust Indenture.

"**Adherence Compliance Certificate**" means a certificate in the form attached hereto as Exhibit B-1 or Exhibit B-2, as applicable, delivered by the FSM in accordance with Section 4.02(a)ii or Section 4.02(b)ii.

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

"**Aggregate Approved Obligations Amount**" means, in respect of a Guarantee Payment Date, the aggregate of the Approved Obligation Amounts for such Guarantee Payment Date.

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

"**Approved Obligation Amount**" means, for a Beneficiary in respect of an Approved Obligation under which an amount is due and payable on a Guarantee Payment Date:

(a) if no Acceleration has occurred in respect of any Obligation Secured on or before the Guarantee Payment Date, the amount due and payable to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation (for greater certainty, determined on the assumption that there are adequate amounts available under the applicable payment provisions of the Trust Indenture to pay in full all amounts referred to in such payment provisions that are due and payable on the Guarantee Payment Date); and

(b) if an Acceleration has occurred in respect of any Obligations Secured on or before the Guarantee Payment Date, the amount that would be available to be paid to the Beneficiary on such Guarantee Payment Date in respect of the Approved Obligation under the applicable payment provisions of the Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period for purposes of section 15(1) of the Act (in effect on the date hereof), including section 6.1 of the General Regulation (in effect on the date hereof), divided by the number of months in such Reference Period.

"**Approved Refinancing**" means a Certified Primary Obligation proposed to be incurred on or after the occurrence of a Suspension Event, as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions set forth in Subsection 4.02(a) had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions set forth in Subsection 4.02(b).

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

"**Beneficiary Payee**" has the meaning ascribed thereto in Section 2.01(a)iii.

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

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

"**Certified Primary Obligations**" means Primary Obligations that are: (i) incurred by or on behalf of the Financing Entity to fund its ownership of an Investment Interest, ~~in which~~including any Refinancing of such a Primary Obligation (for greater certainty, including, in the case ~~the~~of any Certified Primary Obligation ~~therefor shall be the~~permitting funding transactions pursuant to a Funding Obligation Agreement applicable to ~~such Funding~~the Certified Primary Obligation ~~and not~~, each individual borrowing or funding utilization thereunder), (ii) incurred by or on behalf of the Financing Entity upon the Financing Entity entering into a Derivative Agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such Derivative Agreement and not ~~each~~any individual trade confirmation other than a trade confirmation that modifies or purports to override the express terms or conditions of the related Master Agreement, or (iii) incurred by or on behalf of the Financing Entity upon entering into a contract that has a term of more than three (3) years which is not terminable by the Financing Entity giving three (3) years' notice or less and expected (as determined by the Manager, acting reasonably) aggregate ~~minimum~~ payments by the Financing Entity thereunder during the term of such contract ~~is~~are or would be in excess of C$5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above)~~; provided that "Certified Primary Obligations" shall not include any Refinancing~~.

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

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Determination Date**" has the meaning ascribed thereto in clause 2.01(a)v.

"**Eligible Deposit Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Eligible Institution**" has the meaning ascribed thereto in the Trust Indenture.

"**Executive Officer**" has the meaning ascribed to the term "executive officer" in National Instrument 51-102 – *Continuous Disclosure Obligations* of the Canadian Securities Administrators.

"**Final Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(D).

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

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

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

"**Financing Entity Trustee**" has the meaning ascribed thereto in the first paragraph of this Agreement until a successor Financing Entity Trustee shall have become such pursuant to the applicable provisions of the Trust Indenture and the Declaration of Trust, and thereafter "Financing Entity Trustee" means and includes such Person.

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

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**Funding Obligation Agreement**" has the meaning ascribed thereto in the Trust Indenture.

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

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

"**Guarantee Payment Date**" has the meaning ascribed thereto in Section 2.01(a)i.

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

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

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

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Issuer Account**" has the meaning ascribed thereto in the Trust Indenture.

"**Issuer Funding Obligation**" has the meaning ascribed thereto in the Trust Indenture.

"**Junior Subordinated Interest Final Subrogation Amount**" has the meaning ascribed thereto in ~~subclause 2.01(a)iv(D).~~ clause 2.01(a)v.

"**Junior Subordinated Principal Final Subrogation Amount**" has the meaning ascribed thereto in clause 2.01(a)v.

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

"**Lien**" has the meaning ascribed thereto in the Trust Indenture.

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

"**Management Agreement**" means the management agreement dated [■], 2017 between the Manager and the Financing Entity, as amended, supplemented, restated or otherwise modified from time to time.

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

"**Master Agreement**" means an agreement in the form of a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

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

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

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

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

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

"**Primary Obligations**" means any Obligation Secured (a) that is a Funding Obligation or (b) that otherwise is a payment obligation of the Financing Entity that gives rise to a Finance Amount, in each case other than (i) any amounts required to be deposited by or on behalf of the Financing Entity into any Capital Account or Finance Reserve Account; and (ii) any obligation to pay the Financing Entity or on the Financing Entity's direction any remaining amounts in the Collection Account pursuant to the Trust Indenture.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" means an acceleration of Funding Obligations in accordance with the provisions of the Trust Indenture or an event of default, early amortization event[8], termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement, including under this Agreement, the Trust Indenture, the Master Transfer and Servicing Agreement or any Derivative Agreement.

"**Protection Account**" has the meaning ascribed to such term in Section 2.04(a).

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

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

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

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

[8] ~~Explanatory Note: Early amortization events may be included in a supplemental indenture, so retaining that concept makes sense.~~

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

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

in each case, that materially and adversely affects[3] (a) the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured, or (b) this Agreement or any of the agreements under which Obligations Secured arise; or

(b) a court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that materially and adversely affects[4] the ability of the Financing Entity to receive amounts in respect of its Investment Interest so that it can pay Obligations Secured and that has the effect of the Financing Entity not in fact having sufficient funds to pay such Obligations Secured that have become due and payable.

~~For clarity, for purposes of the definition of "Protection Event", the occurrence of an event described in any of clauses (i) to (v) of paragraph (a) or a determination by a court of competent jurisdiction described in paragraph (b) which (x) results, or could reasonably be expected to result, in a rating downgrade or withdrawal of a rating by a Rating Agency, or (y) results in a Rating Agency publicly announcing that it has placed under surveillance or review, with possible negative implications, its rating of any Approved Obligation in effect prior to the occurrence of such event or court determination shall be sufficient to establish the required "materially and adversely" threshold.~~

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

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency" in the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Rating Agency Condition**" has the meaning ascribed thereto in the Trust Indenture, except that the reference to "Issuer Funding Obligation" in the definition of "Rating Agency Condition" in

[3] Explanatory Note: This is required by the Province, without qualification.
[4] Explanatory Note: This is required by the Province, without qualification.

the Trust Indenture shall be replaced with a reference to an Issuer Funding Obligation that is an Approved Obligation.

"**Reference Period**" has the meaning ascribed thereto in the Act.

"**Refinancing**"[9] has the meaning ascribed to the term "refinancing" in the Act as of the date hereof, as more particularly described and given meaning in the General Regulation as of the date hereof.[10]

"**Residual Final Subrogation Amount**" has the meaning ascribed thereto in clause 2.01(a)v.

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

"**Senior Interest Final Subrogation Amount**" has the meaning ascribed thereto in ~~subclause 2.01(a)iv(D).~~ clause 2.01(a)v.

"**Senior Principal Final Subrogation Amount**" has the meaning ascribed thereto in clause 2.01(a)v.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Subordinated Interest Final Subrogation Amount**" has the meaning ascribed thereto in ~~subclause 2.01(a)iv(D).~~ clause 2.01(a)v.

"**Subordinated Principal Final Subrogation Amount**" has the meaning ascribed thereto in clause 2.01(a)v.

"**Subrogation Entitlement**" means each Subrogation Amount and each Final Subrogation Amount.

"**Subrogation Amount**" has the meaning ascribed thereto in subclause 2.01(a)iv(B).

"**Supplemental Indenture**" has the meaning ascribed in the Trust Indenture.

"**Supplemental Reserve Account**" has the meaning ascribed in the Trust Indenture.

"**Suspension Event**" has the meaning ascribed thereto in Section 7.02.

"**Suspension Notice**" has the meaning ascribed thereto in Section 7.01.

[9] ~~Explanatory Note: This relates to a refinancing of an existing debt obligation; not an undrawn commitment to fund.~~

[10] ~~Explanatory Note: The General Regulation provides that debt can be considered a "Refinancing" when incurred within the 6 months prior to the maturity date of a funding obligation. The Act/Regulation's definition doesn't require that "Refinancings" be simultaneous with the repayment of existing Approved Obligations. We have added a certificate mechanic in 7.01 by which there can be certainty when an obligation is incurred that if the obligation is intended to be a refinancing, it will be covered by the guarantee.~~

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

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

EXHIBIT A
FORM OF PAYMENT DEMAND

TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Pursuant to and in accordance with section 2.01(a) of the Change of the Law Protection Agreement, the Indenture Trustee hereby demands payment from the Province in respect of the Approved Obligations at the times, in the amounts and subject to the requirements specified in the Change of Law Protection Agreement.

DATED as of the [■] day of [■], [■].

BNY TRUST COMPANY OF CANADA

By:
Name:
Title:

By:
Name:
Title:

EXHIBIT B-1
FORM OF ADHERENCE COMPLIANCE CERTIFICATE UNDER SECTION 4.02(a)

TO: **BNY TRUST COMPANY OF CANADA**, in its capacity as Indenture Trustee (the "**Indenture Trustee**") under the Master Trust Indenture dated as of December ●, 2017 between Fair Hydro Trust and the Indenture Trustee (the "**Master Trust Indenture**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province of Ontario, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust, Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Each of the undersigned, being the ● and ● of OPG acting in its capacity as FSM and holding the offices set forth under their names and signatures below, pursuant to and accordance with ~~section~~clause 4.02(a)ii of the Change of Law Protection Agreement, hereby certifies for and on behalf of OPG, in its capacity as Financial Services Manager, and not in such officer's personal capacity and intending that this certificate may be relied on by the addressees hereof without independent inquiry, that:

1. I have read and understand the provisions of the Change of Law Protection Agreement, the Master Trust Indenture and all other documents and materials necessary to enable me to deliver this certificate.
2. If the Certified Primary Obligation is a Refinancing, the proceeds of the Refinancing will be used solely for the purpose of repaying one or more Certified Primary Obligations in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied, including one or more other Refinancings in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied.
3. ~~2.~~ OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate was provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation.

DATED as of the [■] day of [■], [■].

Name: ~~11~~5	Name:
Office:	Office:

~~11~~5 This certificate must be signed by two officers of OPG being either (i) the Chief Financial Officer and the Treasurer, or (ii) any two Executive Officers (as defined in the Change of Law Protection Agreement) of OPG.

EXHIBIT B-2
FORM OF ADHERENCE COMPLIANCE CERTIFICATE UNDER SECTION 4.02(b)

TO: **BNY TRUST COMPANY OF CANADA**, in its capacity as Indenture Trustee (the "**Indenture Trustee**") under the Master Trust Indenture dated as of December ●, 2017 between Fair Hydro Trust and the Indenture Trustee (the "**Master Trust Indenture**")

AND TO: Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**")

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust, Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement.

Each of the undersigned, being the ● and ● of OPG acting in its capacity as FSM and holding the offices set forth under their names and signatures below, pursuant to and accordance with ~~section~~clause 4.02(b)ii of the Change of Law Protection Agreement, hereby certifies for and on behalf of OPG, in its capacity as Financial Services Manager, and not in such officer's personal capacity and intending that this certificate may be relied on by the addressees hereof without independent inquiry, that:

1. I have read and understand the provisions of the Change of Law Protection Agreement, the Master Trust Indenture and all other documents and materials necessary to enable me to deliver this certificate.
2. The proceeds of the Approved Refinancing will be used solely for the purpose of repaying one or more Certified Primary Obligations (including any Refinancing) in respect of which the Adherence Conditions in ~~Section~~Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied, or one or more Approved Refinancings in respect of which the Adherence Conditions in ~~section~~Subsection 4.02(b) of the Change of Law Protection Agreement had been satisfied.
3. OPG has delivered to the Province a certificate signed by the Chief Financial Officer and the Treasurer of OPG, or any two Executive Officers of OPG (for clarity, such certificate was provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of the Certified Primary Obligation subject to repayment using the proceeds of the Approved Refinancing.

DATED as of the [■] day of [■], [■].

Name: ~~12~~6	Name:
Office:	Office:

~~12~~6 This certificate must be signed by two officers of OPG being either (i) the Chief Financial Officer and the Treasurer, or (ii) any two Executive Officers (as defined in the Change of Law Protection Agreement) of OPG.

EXHIBIT C
SUSPENSION NOTICE

TO: Ontario Power Generation Inc., in its capacity as Financial Services Manager

AND TO: Fair Hydro Trust

AND TO: Computershare Trust Company of Canada, in its capacity as trustee of Fair Hydro Trust

AND TO: BNY Trust Company of Canada, as Indenture Trustee

Reference is made to the Change of Law Protection Agreement dated [■], 2017 among the Province, Computershare Trust Company of Canada, as trustee of Fair Hydro Trust (the "**Financing Entity**"), Ontario Power Generation Inc., in its capacity as Manager of the Financing Entity and in its capacity as the Financial Services Manager under the *Fair Hydro Plan Act, 2017*, and the Indenture Trustee (the "**Change of Law Protection Agreement**"). Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Change of Law Protection Agreement. All references in this Suspension Notice to "Articles" or "Sections" refer to Articles or Sections of the Change of Law Protection Agreement.

The Province has a reasonable basis for concluding that an event described in clauses (a) to (d) of Section 7.01 has occurred. Pursuant to Section 7.01, the Province hereby declares that the Limited Guarantee shall not apply in respect of any Primary Obligation incurred or amended on or after the delivery of this Suspension Notice, other than ~~any~~an Approved Refinancing in respect of which the Adherence Conditions ~~had previously~~set forth in Subsection 4.02(b) have been satisfied~~, in accordance with the terms and conditions in Article VII~~.

The Limited Guarantee shall hereby not apply in respect of (i) any Primary Obligation incurred or (ii) any amendment of any Primary Obligation that results in an increase to the principal amount of such Primary Obligation, in each case, on or after delivery of this Suspension Notice, other than any Approved Refinancing~~ of an Approved Obligation~~ in respect of which the Adherence Conditions ~~had previously~~set forth in Subsection 4.02(b) have been satisfied~~ of if such Refinancing is otherwise an Approved Obligation~~.

This Suspension Notice is hereby delivered to the FSM, the Financing Entity and the Indenture Trustee in accordance with Section 8.02 of the Change of Law Protection Agreement.

* * * *

DATED as of the [■] day of [■], [■].

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

By: _____
Name:
Title:

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

By: _____
Name:
Title:

Document comparison by Workshare Compare on Friday, December 08, 2017 2:56:40 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23239360/24
Description	TOR_2528-#23239360-v24-Change_of_Law_Protection_Agreement
Document 2 ID	PowerDocs://TOR_2528/23239360/26
Description	TOR_2528-#23239360-v26-Change_of_Law_Protection_Agreement
Rendering set	Standard

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

Statistics:	
	Count
Insertions	215
Deletions	153
Moved from	10
Moved to	10
Style change	0
Format changed	0
Total changes	388

23239361-v24-Change of Law - Process Agreement.pdf

Draft: December 8, 2017

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

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

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

RECITALS

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

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

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

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the applicable Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with the final forms of certain of the Transaction Documents, as described on Exhibit "A", and the Province has not objected to such forms and hereby confirms to OPG that such Transaction Documents will constitute "Reference Documentation" for purposes of this Agreement.

Prior to entering into this Agreement, OPG, as the FSM, provided the Minister of Energy, in compliance with the Act, with the initial Financing Plan, which includes the initial forecast (the "**Initial Forecast**") setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Obligations Secured to be incurred during the 24 month period from December 1, 2017 to November 30, 2019 (the "**Initial Forecast Period**"). Prior to entering into this Agreement, OPG provided the Province with the initial Protection Agreement Maximum (the "**Initial Protection Agreement Maximum**"). The Province has received the initial Financing Plan and has not disagreed with the Initial Forecast or the Initial Protection Agreement Maximum on the basis of an apparent inaccuracy in the Initial Forecast, an inconsistency between the Initial Forecast and the initial Financing Plan, or as a result of the Initial Protection Agreement Maximum being more than the Initial Forecast.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the

applicable Adherence Conditions have been satisfied and maintaining information related to the Program Agreements and the Approved Obligations.

All things necessary to make this Agreement a valid and legally binding agreement of OPG and the Province, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall"; the word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed; the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 References to the Financing Entity

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT (ONTARIO).

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days, or such lesser period as the Province may agree to in writing, prior to:

(i) any proposed change in the terms or conditions applicable to a Primary Obligation in a previously provided Transaction Document becoming effective or otherwise being used that could reasonably be expected to have a Material Effect[1]; provided, however, that a proposed change in particular financial terms, rates and levels would not be such a material change other than a proposed change to any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the previously provided Transaction Document and that would have a Material Effect, and

(ii) any additional, supplemental[2] or replacement Transaction Document becoming effective or otherwise being used,

OPG shall deliver to the Province a copy of such proposed change to the Transaction Document and any such additional, supplemental or replacement Transaction Document.

(c) Without limiting Subsection 2.01(b), promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional, supplemental or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

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[1] Explanatory Note: New term to encapsulate and consistently use the materiality language previously incorporated in the "Substantially in the Form" provision.

[2] Explanatory Note: Supplement (e.g., indenture supplement) needs to be captured. Supplement concept has been reinserted.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not (unless waived in writing by the Province):

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement, replacement, waiver or consent could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any supplementation, amendment, modification, restatement, replacement, waiver or consent of, to or in respect of particular financial terms, rates and levels other than a supplementation, amendment, modification, restatement, replacement, waiver or consent to or in respect of any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the applicable Program Agreement and that would have a Material Effect;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any such action taken in respect of particular financial terms, rates and levels other than such an action taken in respect of any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the applicable Program Agreement and that would have a Material Effect; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iv) notify the Province of (1) the occurrence of any Breach Event and any Program Breach, in each case within 2 Business Days of any such occurrence, and (2) any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Breach Event or a Program Breach, in each case within 1 Business Day of OPG first becoming aware of such event or circumstance; and[3]

(v) after the occurrence of any Protection Event (or any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

[3] Explanatory Note: This is especially needed in light of Province's passive role and reliance on OPG.

(c) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement between the Province and OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") are not amended by this Agreement and continue in full force and effect, notwithstanding that this Agreement is entered into subsequent to the Indemnity Agreement.

(d) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement are not amended by the Change of Law Protection Agreement and continue in full force and effect, notwithstanding that the Change of Law Protection Agreement was entered into subsequent to the Indemnity Agreement.

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Province, on or before the incurrence or any amendment of a Funding Obligation, other than any Funding Obligation under which not more than $5,000,000 in the aggregate may become payable by the Financing Entity (provided that delivery may not be more than 5 Business Days before the incurrence or amendment of the Funding Obligation), setting out the following with respect to such Funding Obligation:

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, OPG's best estimate of the expected notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Funding Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reference Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering

and sale of notes, bonds or other securities is Substantially in the Form of the Reference Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum applicable on the date that the Process Certificate is delivered; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

3.02 Acknowledgement regarding delivery of certificate under Change of Law Protection Agreement

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) are authorized to deliver the certificate referred to in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with adherence of the Limited Guarantee to the incurrence of the Certified Primary Obligations in respect of which the certificate in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement is being delivered; provided that, upon receipt of a Suspension Notice under the Change of Law

Protection Agreement, OPG covenants not to deliver any further certificates to the Indenture Trustee under Subsection 4.02(a)(ii) of the Change of Law Protection Agreement but, for greater certainty, OPG, as FSM, may deliver a certificate referred to in Subsection 4.02(b)(ii) of the Change of Law Protection Agreement to the Indenture Trustee and the Province in connection with an Approved Refinancing.

3.03 Acknowledgement regarding delivery of Suspension Notice

The parties acknowledge and agree that the Province is entitled to deliver a Suspension Notice under Section 7.01 of the Change of Law Protection Agreement if a Program Breach or Breach Event has occurred. The Province agrees not to deliver a Suspension Notice pursuant to Section 7.01 of the Change of Law Protection Agreement unless a Program Breach or a Breach Event has occurred.

3.04 Meaning of "Reference Documentation"

For the purposes of Subsection 3.01(c), the term "Reference Documentation" shall mean each Transaction Document that, at the relevant time:

(a) is a Transaction Document listed on Exhibit "A"; or

(b) is a Transaction Document (including any amended or amended and restated Transaction Document) provided to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is provided to the Province.

3.05 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation that could have a Material Effect; provided, however, that the foregoing does not apply to any particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reference Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reference Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is more than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(c) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
BREACH EVENTS

6.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, by OPG of Section 2.01(b)(i), Section 2.02(b)(iv)[4] or Section 3.01[5];

(b) a default in the performance, or breach, of any other covenants of OPG under this Agreement (excluding Section 2.01(b)(i), Section 2.02(b)(iv) and Section 3.01), which, if curable in a way such that the default or breach would not have or have had a Material Effect[6], is not so cured within thirty (30) days;

(c) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Subsection 4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and which, if curable in a way such that the incorrect representation or warranty may be remedied without any Material Effect[7] having occurred as a result of the Province's reliance thereon, is not so cured within thirty (30) days; or

(d) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

ARTICLE VII
MISCELLANEOUS

7.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

7.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated

[4] Explanatory Note: This recognizes that a failure to notify the Province of an event that would allow it to deliver a Suspension Notice cannot itself be cured since that would create a self-defeating loop from the Province's standpoint.

[5] Explanatory Note: This recognizes that a failure to deliver a Process Certificate when required cannot be cured, as this goes to the workability of the corresponding provisions in the Protection Agreement. It would defeat the structure to allow a Protection Agreement certificate to be delivered to satisfy the adherence conditions based on the idea that a default cure period had not yet lapsed in connection with a failure to deliver a Process Certificate.

[6] Explanatory Note: This recognizes that a cure period will only be reasonable if the consequence of a possible cure would be that no Material Effect would be/have been created.

[7] Explanatory Note: Same.

below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(b) if to the Province:

Deputy Minister of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Deputy Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 7.02.

7.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 7.03 shall be null and void.

7.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

7.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

7.06 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____

Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement, and, for greater certainty, will include any Approved Refinancing.

"**Approved Refinancing**" means a Certified Primary Obligation proposed to be incurred on or after the occurrence of a Suspension Event, as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions except that the certificate contemplated to be delivered under Section 4.02(b) shall instead confirm that OPG has delivered to the Province a certificate by its applicable officers confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of such existing Certified Primary Obligation.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 6.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Certified Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, OPG (as the FSM and the Manager) and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Executive Officer**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**IESO Security Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast Period**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Protection Agreement Maximum**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Material Effect**" means a material effect on the obligations (including as a result of a change in the nature, scope or extent of the Primary Obligation and the effect on the Province's obligations therefor under the Limited Guarantee) or rights of the Province under the Limited Guarantee, the Change of Law Protection Agreement or this Agreement, including any proposed change that could affect the timing of or circumstances under which related payments would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that could affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Section 4.01.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Documentation**" has the meaning ascribed thereto in Section 3.04.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.05.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial

obligation or that could affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

EXHIBIT "A"
INITIAL REFERENCE DOCUMENTATION[8]

- Declaration of Trust;
- Management Agreement;
- Master Transfer and Servicing Agreement;
- Acknowledgement and indemnity agreement dated as of [■], 2017 made by IESO in favour of the Indenture Trustee;
- IESO Security Agreement;
- Trust Indenture;
- Warehouse Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017; and
- [Warehouse Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.][9]

[8] Explanatory Note: The Province is limiting this to the documents required to complete the warehouse financing. Term issuance related documents will be considered by the Province once received under 2.01(b)(ii) and become part of the Reviewed Documentation in accordance with 3.04(b).

[9] Explanatory Note: This should be deleted unless it will be used in the initial transaction.

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**") is made and entered into as of [■], 2017.

RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the applicable Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with the final forms of certain of the Transaction Documents, as described on Exhibit "A", and the Province has not objected to such forms and hereby confirms to OPG that such Transaction Documents will constitute "Reference Documentation" for purposes of this Agreement.

Prior to entering into this Agreement, OPG, as the FSM, provided the Minister of Energy, in compliance with the Act, with the initial Financing Plan, which includes the initial forecast (the "**Initial Forecast**") setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Obligations Secured to be incurred during the 24 month period from December 1, 2017 to November 30, 2019 (the "**Initial Forecast Period**"). Prior to entering into this Agreement, OPG provided the Province with the initial Protection Agreement Maximum (the "**Initial Protection Agreement Maximum**"). The Province has received the initial Financing Plan and has not disagreed with the Initial Forecast or the Initial Protection Agreement Maximum on the basis of an apparent inaccuracy in the Initial Forecast, an inconsistency between the Initial Forecast and the initial Financing Plan, or as a result of the Initial Protection Agreement Maximum being more than the Initial Forecast.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the

applicable Adherence Conditions have been satisfied and maintaining information related to the Program Agreements and the Approved Obligations.

All things necessary to make this Agreement a valid and legally binding agreement of OPG and the Province, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall"; the word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed; the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 References to the Financing Entity

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT (ONTARIO).

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days, or such lesser period as the Province may agree to in writing, prior to:

(i) any proposed change in the terms or conditions applicable to a Primary Obligation in a previously provided Transaction Document becoming effective or otherwise being used that could reasonably be expected to have a Material Effect[1]; provided, however, that a proposed change in particular financial terms, rates and levels would not be such a material change other than a proposed change to any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the previously provided Transaction Document and that would have a Material Effect, and

(ii) any additional, supplemental[2] or replacement Transaction Document becoming effective or otherwise being used,

OPG shall deliver to the Province a copy of such proposed change to the Transaction Document and any such additional, supplemental or replacement Transaction Document.

(c) Without limiting Subsection 2.01(b), promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional, supplemental or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver

[1] Explanatory Note: New term to encapsulate and consistently use the materiality language previously incorporated in the "Substantially in the Form" provision.

[2] Explanatory Note: Supplement (e.g., indenture supplement) needs to be captured. Supplement concept has been reinserted.

to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not (unless waived in writing by the Province):

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement, replacement, waiver or consent could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any supplementation, amendment, modification, restatement, replacement, waiver or consent of, to or in respect of particular financial terms, rates and levels other than a supplementation, amendment, modification, restatement, replacement, waiver or consent to or in respect of any specific requirements, limitations or parameters with respect to such

financial terms, rates and levels that were set forth in the applicable Program Agreement and that would have a Material Effect;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any such action taken in respect of particular financial terms, rates and levels other than such an action taken in respect of any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the applicable Program Agreement and that would have a Material Effect; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iv) notify the Province of (1) the occurrence of any Breach Event and any Program Breach, in each case within 2 Business Days of any such occurrence, and (2) any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Breach Event or a Program Breach, in each case within 1 Business Day of OPG first becoming aware of such event or circumstance; and[3]

(v) after the occurrence of any Protection Event (or any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the

[3] Explanatory Note: This is especially needed in light of Province's passive role and reliance on OPG.

Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement between the Province and OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") are not amended by this Agreement and continue in full force and effect, notwithstanding that this Agreement is entered into subsequent to the Indemnity Agreement.

(d) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement are not amended by the Change of Law Protection Agreement and continue in full force and effect, notwithstanding that the Change of Law Protection Agreement was entered into subsequent to the Indemnity Agreement.

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Province, on or before the incurrence or any amendment of a Funding Obligation, other than any Funding Obligation under which not more than $5,000,000 in the aggregate may become payable by the Financing Entity (provided that delivery may not be more than 5 Business Days before the incurrence or amendment of the Funding Obligation), setting out the following with respect to such Funding Obligation:

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, OPG's best estimate of the expected notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Funding Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reference Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar

circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reference Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum applicable on the date that the Process Certificate is delivered; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

3.02 Acknowledgement regarding delivery of certificate under Change of Law Protection Agreement

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) are authorized to deliver the certificate referred to in Subsection ~~[~~4.02(a)(ii)~~]~~[4] of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has complied with all of its

[4] ~~Section change to be confirmed once Protection Agreement is recirculated.~~

obligations to the Province and internal requirements and processes in connection with adherence of the Limited Guarantee to the incurrence of the Certified Primary Obligations in respect of which the certificate in Subsection ~~[~~4.02(a)(ii)~~]~~ of the Change of Law Protection Agreement is being delivered; provided that, upon receipt of a Suspension Notice under the Change of Law Protection Agreement, OPG covenants not to deliver any further certificates to the Indenture Trustee under Subsection ~~[~~4.02(a)(ii)~~]~~ of the Change of Law Protection Agreement ~~[~~but, for greater certainty, OPG, as FSM, may deliver a certificate referred to in Subsection ~~[~~4.02(b)(ii)~~]~~ of the Change of Law Protection Agreement to the Indenture Trustee and the Province in connection with an Approved Refinancing~~ of a Primary Obligation in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied at the time such Primary Obligation was incurred.]~~[5].

3.03 Acknowledgement regarding delivery of Suspension Notice

The parties acknowledge and agree that the Province is entitled to deliver a Suspension Notice under Section 7.01 of the Change of Law Protection Agreement if a Program Breach or Breach Event has occurred. The Province agrees not to deliver a Suspension Notice pursuant to Section 7.01 of the Change of Law Protection Agreement unless a Program Breach or a Breach Event has occurred.

3.04 Meaning of "Reference Documentation"

For the purposes of Subsection 3.01(c), the term "Reference Documentation" shall mean each Transaction Document that, at the relevant time:

(a) is a Transaction Document listed on Exhibit "A"; or

(b) is a Transaction Document (including any amended or amended and restated Transaction Document) provided to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is provided to the Province.

3.05 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation that could have a Material Effect; provided, however, that the foregoing does not apply to any particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of

[5] ~~Explanatory Note: The changes proposed to be made to the Protection Agreement have not yet been circulated to the Province, so we are unable to understand the nature of the changes made to this provision.~~

Reference Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reference Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is more than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(c) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in

the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
BREACH EVENTS

6.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, by OPG of Section 2.01(b)(i), Section 2.02(b)(iv)[64] or Section 3.01[75];

(b) a default in the performance, or breach, of any other covenants of OPG under this Agreement (excluding Section 2.01(b)(i), Section 2.02(b)(iv) and Section 3.01), which, if curable in a way such that the default or breach would not have or have had a Material Effect[86], is not so cured within thirty (30) days;

(c) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Subsection 4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and which, if curable in a way such that the incorrect representation or warranty may be remedied without any Material Effect[97] having occurred as a result of the Province's reliance thereon, is not so cured within thirty (30) days; or

(d) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

ARTICLE VII
MISCELLANEOUS

7.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

[64] Explanatory Note: This recognizes that a failure to notify the Province of an event that would allow it to deliver a Suspension Notice cannot itself be cured since that would create a self-defeating loop from the Province's standpoint.

[75] Explanatory Note: This recognizes that a failure to deliver a Process Certificate when required cannot be cured, as this goes to the workability of the corresponding provisions in the Protection Agreement. It would defeat the structure to allow a Protection Agreement certificate to be delivered to satisfy the adherence conditions based on the idea that a default cure period had not yet lapsed in connection with a failure to deliver a Process Certificate.

[86] Explanatory Note: This recognizes that a cure period will only be reasonable if the consequence of a possible cure would be that no Material Effect would be/have been created.

[97] Explanatory Note: Same.

7.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(b) if to the Province:

Deputy Minister of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Deputy Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 7.02.

7.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 7.03 shall be null and void.

7.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

7.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

7.06 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____

Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement, and, for greater certainty, will include any Approved Refinancing.

"**Approved Refinancing**" means a Certified Primary Obligation proposed to be incurred on or after the occurrence of a Suspension Event, as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions except that the certificate contemplated to be delivered under Section 4.02(b) shall instead confirm that OPG has delivered to the Province a certificate by its applicable officers confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of such existing Certified Primary Obligation.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 6.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Certified Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, OPG (as the FSM and the Manager) and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Executive Officer**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**IESO Security Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast Period**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Protection Agreement Maximum**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Material Effect**" means a material effect on the obligations (including as a result of a change in the nature, scope or extent of the Primary Obligation and the effect on the Province's obligations therefor under the Limited Guarantee) or rights of the Province under the Limited Guarantee, the Change of Law Protection Agreement or this Agreement, including any proposed change that could affect the timing of or circumstances under which related payments would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that could affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Section 4.01.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Documentation**" has the meaning ascribed thereto in Section 3.04.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.05.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial

obligation or that could affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

EXHIBIT "A"
INITIAL REFERENCE DOCUMENTATION[10][8]

- Declaration of Trust;
- Management Agreement;
- Master Transfer and Servicing Agreement;
- Acknowledgement and indemnity agreement dated as of [■], 2017 made by IESO in favour of the Indenture Trustee;
- IESO Security Agreement;
- Trust Indenture;
- Warehouse Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017; and
- [Warehouse Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.][11][9]

[10][8] Explanatory Note: The Province is limiting this to the documents required to complete the warehouse financing. Term issuance related documents will be considered by the Province once received under 2.01(b)(ii) and become part of the Reviewed Documentation in accordance with 3.04(b).

[11][9] Explanatory Note: This should be deleted unless it will be used in the initial transaction.

Document comparison by Workshare Compare on Friday, December 08, 2017 2:55:14 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23239361/23
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Document 2 ID	PowerDocs://TOR_2528/23239361/24
Description	TOR_2528-#23239361-v24-Change_of_Law_-_Process_Agreement
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	24
Deletions	35
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	59

RE_ Fair Hydro - Change of Law Protection Agreement.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Milligan, Peter [PMilligan@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Saulnier, Brett [bsaulnier@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]
Subject: RE: Fair Hydro - Change of Law Protection Agreement
Date: Friday, December 08, 2017 16:16:03
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801095534053~201712082016260000~Z~E098EA4914A20BAEC81870EEDB4197B1
View the original item

Hi,

Attached is a revised version of the Change of Law Protection Agreement. I believe that most of the changes reflected from last night’s Osler version (blackline is attached) are of a draf

Attachments:

image001.gif (1 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801095534053~201712082016260000~Z~E098EA4914A20BAEC81870EEDB4197B1&AttachmentId=1image001.gif

image002.gif (1 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801095534053~201712082016260000~Z~E098EA4914A20BAEC81870EEDB4197B1&AttachmentId=2image002.gif

image003.gif (1 KB)

https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801095534053~201712082016260000~Z~E098EA4914A20BAEC81870EEDB4197B1&AttachmentId=3image003.gif

image004.jpg (5 KB)
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23239360-v26-Change of Law Protection Agreement.DOCX (77 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801095534053~201712082016260000~Z~E098EA4914A20BAEC81870EEDB4197B1&AttachmentId=523239360-v26-Change of Law Protection Agreement.DOCX

23239360-vpdf-Change of Law Protection Agreement.PDF (440 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801095534053~201712082016260000~Z~E098EA4914A20BAEC81870EEDB4197B1&AttachmentId=623239360-vpdf-Change of Law Protection Agreement.PDF

23239361-v24-Change of Law - Process Agreement.DOCX (51 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801095534053~201712082016260000~Z~E098EA4914A20BAEC81870EEDB4197B1&AttachmentId=723239361-v24-Change of Law - Process Agreement.DOCX

23239361-vpdf-Change of Law - Process Agreement.PDF (249 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801095534053~201712082016260000~Z~E098EA4914A20BAEC81870EEDB4197B1&AttachmentId=823239361-vpdf-Change of Law - Process Agreement.PDF

RE_ Fair Hydro - Change of Law Protection Agreement.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Ramchandani, Rima [rramchandani@torys.com]; Milligan, Peter [PMilligan@osler.com]; Saulnier, Brett [bsaulnier@torys.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]
Subject: RE: Fair Hydro - Change of Law Protection Agreement
Date: Tuesday, December 12, 2017 16:47:41
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.gif
Attachment 4: image004.jpg

The Province is okay with these changes. Thanks.

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: Tuesday, December 12, 2017 3:29 PM
To: ASHBOURNE, STEPHEN; Milligan, Peter; Saulnier, Brett; Sebastiano, Rocco; Mansoori, Nina
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur

(nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Olusoga, Yinka; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca); PALMER, AARON; VINER, JON; PRESTAGE, JA
Subject: RE: Fair Hydro - Change of Law Protection Agreement

Attached is a revised draft of the Change of Law Protection Agreement, clean and blacklined to the Blakes draft circulated below. Except for the definition of "Material Effect", we believe this draft to be in final form and would ask that each of Blakes and Osler please confirm their sign off as soon as possible.

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: December-12-17 2:09 PM
To: Milligan, Peter <PMilligan@osler.com>; Saulnier, Brett <bsaulnier@torys.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur

(nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro - Change of Law Protection Agreement

Here is my mark-up of the matters raised by Oslers, in today's mark-ups of during our call this morning. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Milligan, Peter [mailto:PMilligan@osler.com]
Sent: Tuesday, December 12, 2017 1:43 PM
To: Saulnier, Brett; ASHBOURNE, STEPHEN; Sebastiano, Rocco; Mansoori, Nina
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Olusoga, Yinka; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca); PALMER, AARON; VINER, JON; PRESTAGE, JA
Subject: RE: Fair Hydro - Change of Law Protection Agreement

All,

Further to our call this morning, attached is a comparison document showing our comments on “Post-Suspension Refinancing” and “Protection Event”.

We will comment on Material Effect after we see what comes back from the accountants.

Peter

From: Milligan, Peter
Sent: Tuesday, December 12, 2017 9:09 AM
To: 'Saulnier, Brett' <bsaulnier@torys.com>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>;

Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro - Change of Law Protection Agreement

All,

Attached are changed pages with my comments on the Change of Law Protection Agreement. This does not represent input from any dealer. I will follow up to see if the dealers have any additional comments but given the plan to have a call at 10, I pass along these comments now.

Peter

From: Saulnier, Brett [mailto:bsaulnier@torys.com]
Sent: Monday, December 11, 2017 11:35 PM
To: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Milligan, Peter <PMilligan@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew'

<Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro - Change of Law Protection Agreement

All,

Attached for your review is a revised draft of the Change of Law Protection Agreement, clean and blacklined to the last version circulated by Blakes and reflecting the meetings held earlier today. As discussed, we need to provide the attached to the rating agencies **by no later than noon tomorrow** in order to meet our end of year financing deadline. Accordingly, we will be circulating a calendar invite to this group for 10 a.m. tomorrow morning to confirm the parties are signed off. If Osler or Blakes have any comments on the attached, we would ask that they be circulated to this group prior to the 10 a.m. call.

Kind regards,

Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: December-08-17 3:16 PM
To: Milligan, Peter <PMilligan@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>;

'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro - Change of Law Protection Agreement

Hi,

Attached is a revised version of the Change of Law Protection Agreement. I believe that most of the changes reflected from last night's Osler version (blackline is attached) are of a drafting or conforming nature, other than: (1) the Province disagrees that Approved Refinancing terms should be unfettered by adherence conditions post-Suspension Event and (2) the proposed rating-based "materially and adversely" qualification in the definition of Protection Event (and in fact any such qualification) is not acceptable to the Province. With regard to (1), this version comes into line with the proposed approach (i.e., using a modified adherence condition) that was incorporated into the version of the Change of Law Process Agreement I circulated yesterday. A further turn of that Agreement, to conform the open item identified in section 3.02 to the revised Change of Law Protection Agreement, is also included here for your reference.

Please note that the Province is working through the drafting concurrently and so further drafting comments may be provided.

As mentioned yesterday, the Province would like to proceed with the Ministers sign-off briefing early next week, on the basis that these versions (minus the explanatory notes) are now in substantially final form. Please identify if you believe there are other 'must have' points (other than the 2 mentioned above).

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Milligan, Peter [mailto:PMilligan@osler.com]
Sent: Thursday, December 07, 2017 6:44 PM
To: ASHBOURNE, STEPHEN; Sebastiano, Rocco; Mansoori, Nina
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca); PALMER, AARON; VINER, JON; PRESTAGE, JA
Subject: Fair Hydro - Change of Law Protection Agreement

All,

Attached is a revised comment draft of the Change of Low Protection Agreement reflecting comments from Torys and Osler. In order to meet this transaction's timeline, this comment draft has not been reviewed by OPG or the Dealers and is delivered subject to any comments they may have.

Peter

Peter Milligan

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DIRECT

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Sent: Thursday, December 07, 2017 4:27 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)'

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Subject: RE: Fair Hydro -- Change of Law Process Agreement

Hi,

Please find (attached) a further turn of the Change of Law Process Agreement, reflecting the Province's comments on the mark-up of the Agreement circulated yesterday afternoon by Torys. The attached blackline shows changes made to yesterday's Torys mark-up.

This version addresses concerns Rocco raised last night, to the extent the Province feels that the issues can be accommodated. For your information, I have set out below responses to Rocco's comments/observations (in CAPs).

The Province would like to proceed with the Ministers briefing early next week, on the basis that this version (minus the explanatory notes) is now in final form. If there are

any critical revisions that the other parties believe reflect 'must have' priority, then the Province would like to have a call to discuss them as soon as possible.

Responses to Rocco's Points:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration. [AGREED. 7.01(b) and 7.01(c) will need to mirror the cure language we settle on in the Process Agreement (see my earlier comments). Perhaps the "which continues …" language in 7.01(B) can be revised to read: "to the extent that the Province would be entitled to provide a Suspension Notice in accordance with the terms of the agreement or agreements between the Province and OPG under which such obligations, requirements and processes arise". SIMILAR CHANGE FOR 7.01(C).

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings. [THAT IS THE INTENDED EFFECT. THE ADHERENCE CONDITIONS WOULD APPLY TO THE REFINANCING, SO IF THE REFINANCING TERMS DEVIATED MATERIALLY (BASED ON THE SUBSTANTIALLY IN THE FORM" THRESHOLD"), THEN OPG WOULD REQUIRE THE PROVINCE NOT TO OBJECT IN ORDER TO PROCEED WITH THOSE NEW TERMS. OTHERWISE, THE REFINANCING COULD INCORPORATE TERMS AND CONDITIONS, WHICH WOULD BIND THE PROVINCE UNDER THE LIMITED GUARANTEE, THAT WOULD BE UNCONSTRAINED AND WITHOUT ANY ACCOUNTABILITY TO THE PROVINCE. IN ROCCO'S EXAMPLE, THAT MIGHT MEAN THAT OPG WOULD NEED TO RESORT TO UNRATED DEBT, IF THE PROVINCE WAS UNWILLING TO ACCEPT THE NEW TERMS. PRESUMABLY EVERYONE WOULD ACT RATIONALLY. HOWEVER, AS A FAILSAFE, OPG COULD OFFER INCREASED PRICING IN ORDER TO ATTRACT

INVESTORS TO ACCEPT THE EARLIER VETTED TERMS (BASED ON THE THEN ACCEPTED REVIEWED DOCUMENTATION).]

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable. [THE SUGGESTION REGARDING THE PROVINCE PREVENTING A REFINANCING IS ADDRESSED IN #2. IF THE REFINANCING TERMS WOULD EXCEED THE SCOPE OF THE TRANSACTION DOCUMENTS REVIEWED AND NOT OBJECTED TO BY THE PROVINCE, THEN THAT SUGGESTS THERE IS A MATERIAL EFFECT ON THE PROVINCE AND SO THE PROVINCE WOULD NEED THE ABILITY TO REVIEW AND CONSIDER THE PROPRIETY OF THOSE NEW TERMS FROM ITS PERSPECTIVE. AS FOR THE STANDALONE NATURE OF THE PROCESS AGREEMENT, THE INTENTION IS THAT THE PROCESS AGREEMENT BE UNCOUPLED AND NOT PART OF THE COLLATERAL, AND AS MICHAEL FELDMAN HAS EXPLAINED, LEAVE FUTURE FLEXIBILITY FOR THIS LONG-TERM STRUCTURE. TO ADDRESS ROCCO'S CONCERN THAT THE PROVINCE AND OPG COULD CHANGE THE UNDERLYING OBLIGATIONS APPLICABLE TO ADHERENCE IN RELATION TO A NEW OBLIGATION, REQUIREMENT OR PROCESS IN THE PROCESS AGREEMENT THAT WOULD MAKE A REFINANCING LESS LIKELY TO OCCUR, WE HAVE ADDED AND USED IN THE ATTACHED VERSION A NEW DEFFINTION:

"Approved Refinancing" means a Certified Primary Obligation proposed to be incurred as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions except that the certificate contemplated to be delivered under Section 4.02(b) shall instead confirm that OPG has delivered to the Province a certificate by its applicable officers confirming that OPG would be in compliance with all

obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of such existing Certified Primary Obligation." Various references to "Refinancing" in the Protection Agreement can also be revised to refer to "Approved Refinancing", as required.

Regards, Steve

Stephen R. Ashbourne

Partner

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, December 06, 2017 7:45 PM
To: Mansoori, Nina; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Milligan, Peter; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka
Subject: RE: Fair Hydro -- Change of Law Process Agreement

I have reviewed the revised draft of the Change of Law Process Agreement that Torys has prepared and would like to pass along the following comments/observations:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration.

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to

Refinancings.

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Wednesday, December 06, 2017 4:38 PM
To: 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'JON.VINER@blakes.com' <JON.VINER@blakes.com>; 'JA.PRESTAGE@blakes.com' <JA.PRESTAGE@blakes.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)'

<Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>
Subject: Fair Hydro -- Change of Law Process Agreement

Blakes team,

Please find attached OPG and Torys' comments on the Process Agreement reflecting our discussions from yesterday's call. Please note that this draft is subject to continuing review and comment by Osler and the dealers. As discussed at the tail end of our call yesterday, the section in the Process Agreement that gives the Province the right to object to new and material changes to transaction documents dovetails with the Protection Agreement so additional comments from Oslers may be forthcoming on this draft.

We are working on getting you a revised draft of the Protection Agreement either later today or tomorrow. In the meantime, please let us know if you have any comments or questions on the Process Agreement.

Best Regards,

Nina

Nina Mansoori

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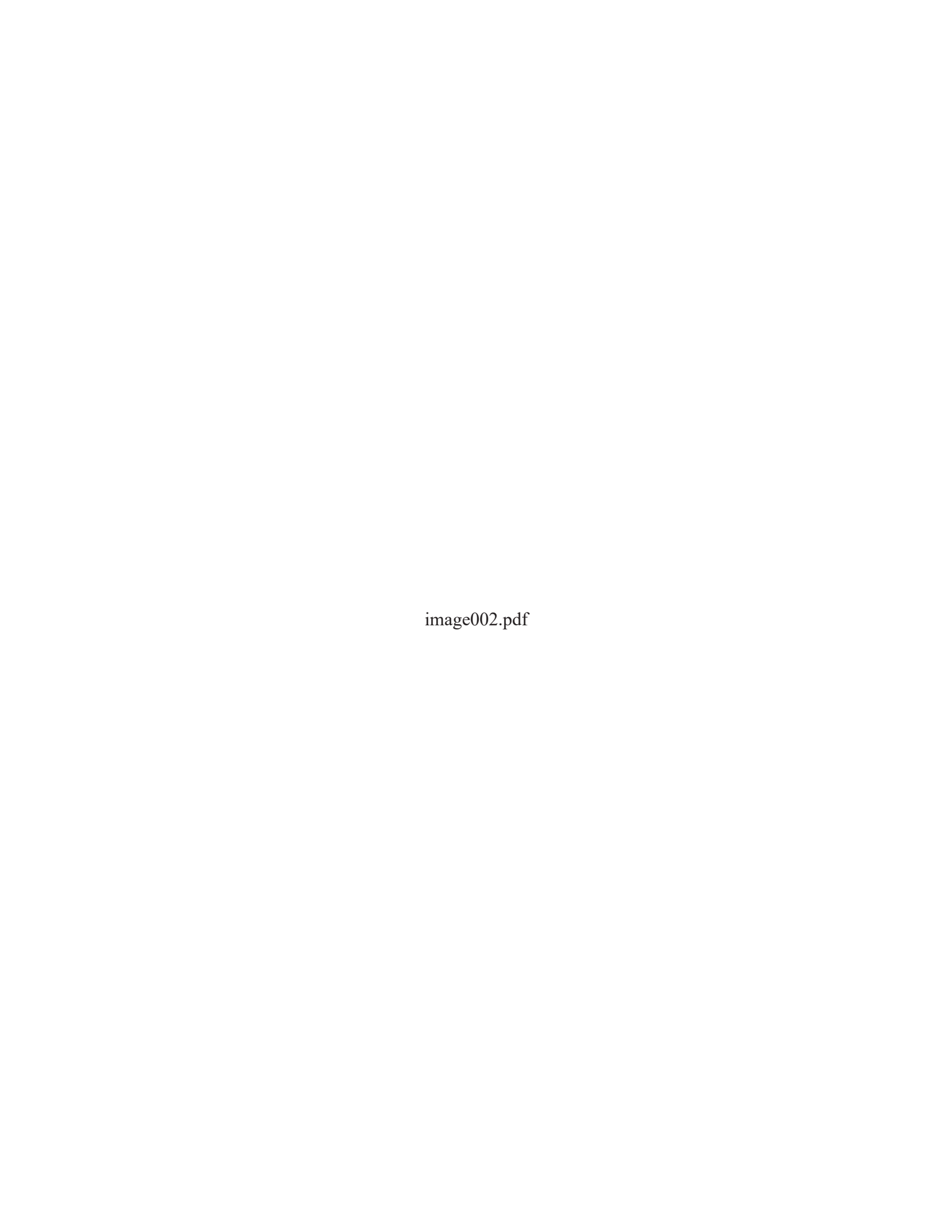
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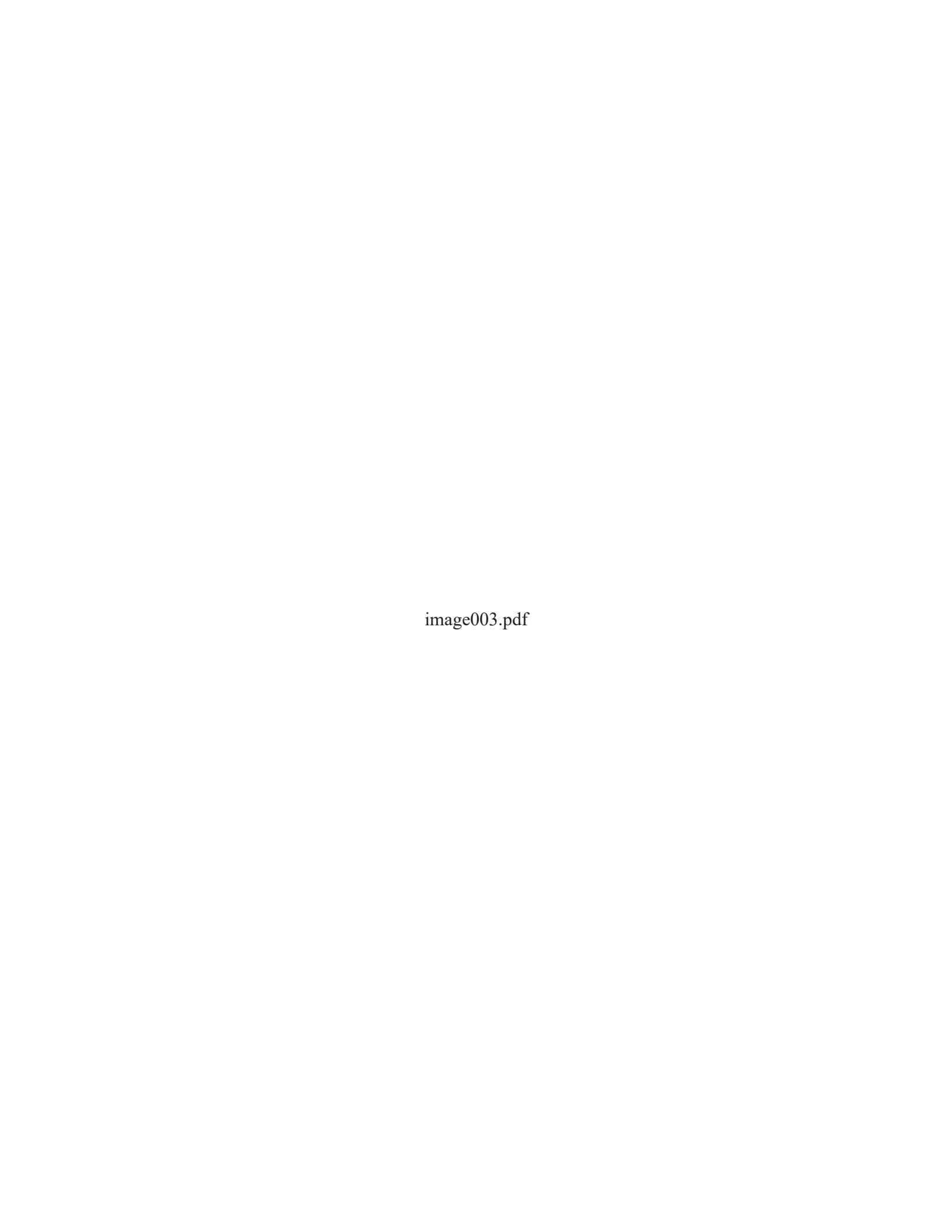
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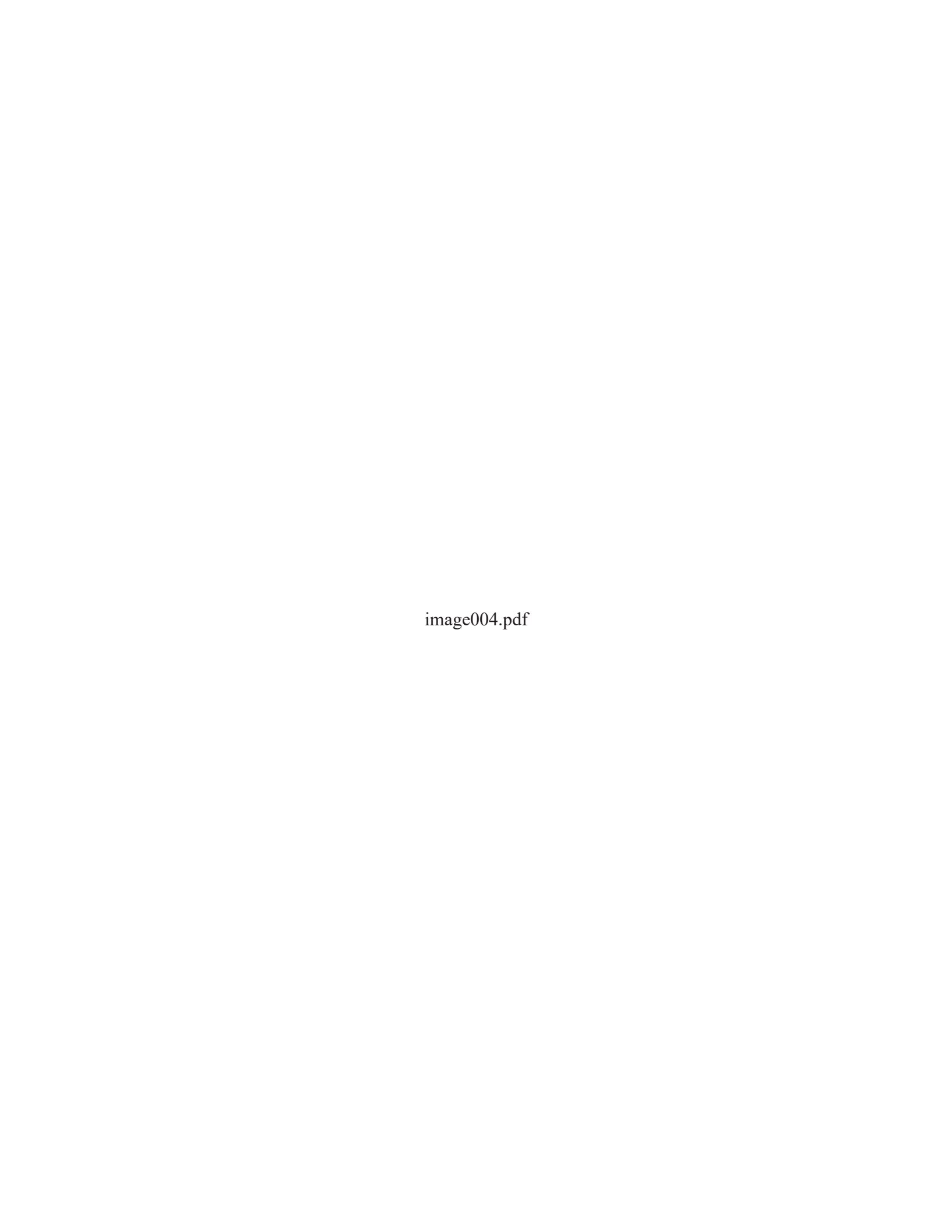
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RE_ Fair Hydro Trust - Disclosure Documents.rtf

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Subject: RE: Fair Hydro Trust - Disclosure Documents
Date: Tuesday, January 16, 2018 14:14:10
Attachment 1: @

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Thanks very much Jon. Are you able to send us the Word versions of the OM and Term Sheet reflecting your comments as well (that may facilitate a speedier turn on our end and will also allow us to send

Attachments:

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RE_ Fair Hydro Trust - Disclosure Documents.rtf

From: Saulnier, Brett [bsaulnier@torys.com]
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Subject: RE: Fair Hydro Trust - Disclosure Documents
Date: Sunday, January 21, 2018 16:05:54
Attachment 1: image001.gif
Attachment 2: imagece2646.JPG
Attachment 3: _Fair Hydro Trust - Confidential Offering Memorandum.DOCX
Attachment 4: Blackline_Fair Hydro Trust - Confidential Offering Memorandum.pdf
Attachment 5: _Fair Hydro - Series 2018-1 Senior Notes Term Sheet.DOCX
Attachment 6: Blackline_Series 2018-1 Senior Notes Term Sheet (Fair Hydro Trust).pdf
Attachment 7: _Fair Hydro Trust - Agency Agreement.docx
Attachment 8: Blackline_Fair Hydro Trust - Agency Agreement.pdf
Attachment 9: Fair Hydro Trust Investor Presentation - Jan 19.pdf

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All,

For your records, please find attached the final versions of the offering memorandum, indicative term sheet and investor presentation. I have also attached the latest version of the Agency Agreement, which is final subject to filling in notice information. I have included blacklines of the OM, term sheet and agency agreement against the versions that were last circulated.

Thanks,

Brett

Brett Saulnier

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Subject: RE: Fair Hydro Trust - Disclosure Documents

All,

Please find attached revised versions of the Offering Memorandum and Term Sheet. We have accepted the majority of the Province's comments where appropriate and I have included blacklines of each document against the version circulated by Jon below. The attached also reflect comments received from the IESO and some additional clean-up changes made since the documents were provided to the Province on January 5.

In the interest of time, we are circulating these drafts to all parties concurrently. Accordingly, they remain subject to review and comment by OPG, IESO, the dealers and their respective counsel.

Thanks,
Brett

Brett Saulnier

From: VINER, JON [mailto:JON.VINER@blakes.com]
Sent: January-16-18 10:48 AM
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Subject: Fair Hydro Trust - Disclosure Documents

All,

Please find attached the Province's comments on the offering memorandum, investor presentation and term sheet. We do not have comments on the additional documents circulated on January 5th.

Please let us know if you would like to discuss.

Kind regards,

Jon

Jon Viner

Associate

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This confidential shelf offering memorandum constitutes an offering of these securities only in those jurisdictions and to those persons where and to whom they may be lawfully offered for sale. This confidential shelf offering memorandum is not, and in no circumstances is to be construed as, a prospectus or advertisement or public offering of these securities. ***No securities commission or similar authority in Canada or in any other jurisdiction has reviewed this material or in any way passed upon the merits of the securities offered hereunder and any representation to the contrary is an offence.*** *Persons who acquire securities pursuant to this confidential shelf offering memorandum will not have the benefit of the review of this material by any securities commission or similar authority. The information contained in this confidential shelf offering memorandum has been furnished or supplied by the Issuer based on the most accurate information available as at the date hereof and there is no representation or warranty by the Agents as to the accuracy or completeness of such information. These securities have not been and will not be registered under the United States Securities Act of 1933, as amended (the "**U.S. Securities Act**") or any state securities laws and may not be offered or sold within the United States or to, or for the account of, U.S. persons (within the meaning of Regulation S under the U.S. Securities Act) unless registered under the U.S. Securities Act and applicable state securities laws or an exemption from such registration is available. See "Plan of Distribution". This confidential shelf offering memorandum is confidential and contains certain information not publicly disclosed. No one is authorized to make any representation or give any warranty on behalf of the Issuer other than those representations and warranties made or referred to in this confidential shelf offering memorandum.*

The information contained in this confidential shelf offering memorandum and delivered in connection with the private placement of the Senior Notes by the Issuer is confidential, is for the confidential use of only those persons to whom it is delivered in connection with the offering solely for the purpose of considering the purchase of the Senior Notes and its use for any other purpose is prohibited. By accepting this confidential shelf offering memorandum, each prospective purchaser agrees that it will not transmit, reproduce or make available to anyone, other than their respective advisors (so long as they advise such advisors of the confidential nature of such document), this confidential shelf offering memorandum (including any Term Sheets) or any information contained herein, and will not use such information (or permit its advisors to use such information) for any purpose other than to evaluate an investment in the Senior Notes pursuant to an Offering.

CONFIDENTIAL SHELF OFFERING MEMORANDUM

New Issue By Way of Private Placement — January 22, 2018

FAIR HYDRO TRUST
Senior Secured Notes

Fair Hydro Trust (the "**Issuer**"), a special purpose trust established under the laws of the Province of Ontario by Computershare Trust Company of Canada, acting as trustee of the Issuer, and caused to be established by Ontario Power Generation Inc. ("**OPG**"), as Financial Services Manager (as hereinafter defined), has created a program providing for the offering and issuance of senior secured notes (the "**Senior Notes**"), in one or several offerings. The Issuer was established in connection with the *Ontario Fair Hydro Plan Act, 2017* (together with the regulations promulgated thereunder, the "**FHPA**"). Under the FHPA, OPG is appointed as financial services manager (in such capacity, the "**Financial Services Manager**") and is given the authority to, among other things, establish, or cause to be established, one or more financing entities (each, a "**Financing Entity**") to incur payment obligations (referred to as "**Funding Obligations**") for the purposes prescribed under the FHPA. The Issuer is a Financing Entity under the FHPA and the Senior Notes are Funding Obligations being offered for the purposes of the FHPA.

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*. The Senior Notes will be limited recourse obligations, secured only by the collateral described in this confidential shelf offering memorandum. See *"Capital Markets Platform — Acceleration and Remedies — Limited Recourse"* and *"Risk Factors"*.

The specific terms of any offering of Senior Notes, including, without limitation, the aggregate principal amount of Senior Notes being offered, the currency of the Senior Notes, the issue price (at par, at a discount or at a premium), the issue, delivery and maturity dates, any redemption or repayment provisions, the rating of the Senior Notes at the time of such offering, the interest (either fixed or floating and the circumstances, if any, under which the rate may be adjusted), the interest rate basis and interest payment dates, will be established by the Issuer and set forth in a term sheet (a "**Term Sheet**") that will accompany, be incorporated by reference in and form an integral part of this

confidential shelf offering memorandum. Unless otherwise specified in a Term Sheet, the Senior Notes will not be listed on any securities exchange.

The offering of Senior Notes from time to time (each, an "**Offering**") will be made pursuant to exemptions from the prospectus requirements of applicable securities laws in each of the provinces of Canada only to "accredited investors" (as such term is defined in National Instrument 45-106 – *Prospectus Exemptions* ("**NI 45-106**") and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) that are purchasing the Senior Notes as principal and that are not individuals unless those individuals are also "permitted clients" (as such term is defined in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**")). Purchasers of Senior Notes will be obliged to establish their qualification to invest in accordance with the requirements of the securities laws of the jurisdiction in which they reside. See *"Representations and Agreements of Purchasers"*. As each Offering will be made pursuant to exemptions from prospectus requirements of applicable securities laws, there will be restrictions on the resale of the Senior Notes. See *"Risk Factors"* and *"Restrictions on Resale"*.

The Senior Notes may be sold by the Issuer directly pursuant to applicable statutory exemptions or through agents designated by the Issuer from time to time (the "**Agents**"). See *"Plan of Distribution"*. Each Term Sheet will identify the Agents engaged to conditionally offer the Senior Notes for sale on a best efforts basis, subject to prior sale, in connection with the applicable Offering of Senior Notes and will also set forth the terms of such Offering of Senior Notes, including the net proceeds to the Issuer and, to the extent applicable, any fees payable to the Agents.

Subscriptions for the Senior Notes will be received subject to rejection or allotment in whole or in part and the right is reserved to close the subscription books at any time without notice. The Senior Notes will be delivered and recorded in book-entry form through CDS Clearing and Depository Services Inc. ("**CDS**") or another depository selected by the Issuer in accordance with the master trust indenture governing the Senior Notes. The Senior Notes will be represented by fully registered book-entry notes held by, or on behalf of, such depository, or a successor thereof, as the custodian of the book-entry notes, in its name or the name of its nominee.

The Senior Notes will be issued under and will be entitled to the benefits of a master trust indenture dated as of December 21, 2017 between the Issuer, as issuer, and BNY Trust Company of Canada, as indenture trustee, as amended, supplemented, restated or otherwise modified from time to time.

In making an investment decision, prospective investors acknowledge that they have not relied on the Agents or any person affiliated with the Agents for investment or other advice and are relying on their own examination of the terms of an Offering, including the merits and risks involved and creditworthiness of the Issuer. Prospective investors are not to construe the contents of this document as legal, tax, accounting or investment advice. Prior to investing in the Senior Notes, prospective investors should consult with their legal, tax, accounting and investment advisors to determine the consequences of an investment in the Senior Notes. See *"Risk Factors"* for a discussion of certain factors that should be considered by prospective purchasers of Senior Notes.

The Issuer is not a "reporting issuer" (as such term is defined under applicable Canadian securities laws) in any jurisdiction. The Issuer will only distribute the Senior Notes in Canada under exemptions from the prospectus requirements of the securities laws of the provinces where they are sold. The Senior Notes may only be traded in Canada under exemptions from the prospectus requirements of the securities laws of the provinces in which they are traded and only through dealers registered or exempt from the dealer registration requirements of applicable Canadian securities laws. See *"Restrictions on Resale"*.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of Senior Notes with liquidity for their investment or that it will continue for the term of the applicable Senior Notes. Accordingly, purchasers of the Senior Notes may be required to bear the financial risk of investing in such Senior Notes until the maturity date of such Senior Notes.

No person is authorized to give any information or make any representation other than those contained in this confidential shelf offering memorandum in connection with an Offering and any decision to purchase Senior Notes should be based solely on the information contained herein. The Term Sheet applicable to such Offering and the

investor presentation (the "**Investor Presentation**"), attached hereto as Exhibit 1, are incorporated by reference and included in, respectively, and form an integral part of, this confidential shelf offering memorandum. The information contained in the Investor Presentation is current only as of the date thereof. The Investor Presentation may be updated and replaced by the Issuer in connection with an Offering and such updated Investor Presentation will be attached as Exhibit 1, and will be included in, and form an integral part of, this confidential shelf offering memorandum delivered in respect of such Offering.

This confidential shelf offering memorandum, including the Investor Presentation attached hereto, and any Term Sheets, are provided on a confidential basis to prospective investors for informational use solely in connection with their consideration of the purchase of Senior Notes. Use for any other purpose is not authorized. Each Offering will be made solely on the basis of the information contained herein or incorporated by reference which has been furnished by the Issuer. No Agent makes any representation or warranty, express or implied, as to the accuracy, adequacy or completeness of such information. Furthermore, no Agent has independently verified the information in this confidential shelf offering memorandum and has no responsibility for the accuracy, adequacy or completeness of any such information.

This confidential shelf offering memorandum does not contain all of the information that would normally appear in a prospectus qualified under applicable Canadian securities laws. Neither the delivery of this confidential shelf offering memorandum, at any time, nor any sales made pursuant hereto, will imply that the information contained herein is correct as of any time subsequent to the date set forth on the face page hereof and the Issuer and the Agents will not update such information except as may be required by applicable law.

Capitalized terms used and not otherwise defined in this confidential shelf offering memorandum have the meanings ascribed to them in the glossary starting on page 95 of this confidential shelf offering memorandum. An index of defined terms used in this confidential shelf offering memorandum specifying on which page such terms are defined is provided starting on page 107 of this confidential shelf offering memorandum. All figures in this confidential shelf offering memorandum are in Canadian dollars unless otherwise noted.

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CAUTION REGARDING FORWARD-LOOKING INFORMATION

Some of the statements contained in this confidential shelf offering memorandum, including those relating to the Issuer's expectations, forecasts, strategic and other statements, are forward-looking information within the meaning of securities laws. Forward-looking information is contained in the summary and in the sections titled *"Ontario's Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*, *"Subordinated Debt"* and *"Risk Factors"* of this confidential shelf offering memorandum and *"Fair Allocation Amount"*, *"Financing Plan / Strategy"*, *"Financing Structure"*, *Aggregate Financing Program"* and *"Consumer Bill Forecast with FHP"* of the Investor Presentation. The forward-looking statements contained in this confidential shelf offering memorandum are presented for the purposes of assisting potential purchasers in making an investment decision regarding the Senior Notes and may not be appropriate for other purposes.

Often, but not always, forward-looking information can be identified by the use of forward-looking terminology such as "may", "will", "expect", "believe", "estimate", "plan", "could", "should", "would", "outlook", "forecast", "anticipate", "foresee", "continue" or the negative of these terms or variations of them or similar terminology. Forward-looking information is based on the reasonable assumptions, estimates, analysis and opinions of management of the Issuer made in light of its experience and perception of trends, current conditions and expected developments, as well as other factors that the Issuer believes to be relevant and reasonable at the date that such statements are made. A variety of factors, many of which are beyond the Issuer's control, may cause actual results to differ materially from the expectations expressed in the forward-looking statements. These factors include, but are not limited to, the following risks:

Judicial, Legislative or Regulatory Risks:

- Future legal action might challenge or invalidate the FHPA and materially adversely affect a holder's investment in the Senior Notes.
- Future legislative action to change the FHPA, the Change of Law Protection Agreement or the electricity market might materially adversely affect a holder's investment in the Senior Notes.
- Future regulatory action to change the rules applicable to the operation of the electricity market might materially adversely affect a holder's investment in the Senior Notes.
- Future judicial action could reduce the value of a holder's investment in the Senior Notes.
- Potential difficulties in enforcing civil liabilities against the Province of Ontario may arise.

Risks Associated with the Unusual Nature of the Investment Asset:

- Clean Energy Adjustments will not be payable until May 1, 2021 and until such time the IESO will be the sole source of funds for payment on the Senior Notes. Amounts paid by the IESO are not available to pay principal on the Senior Notes.
- The Issuer's ability to enforce security granted by the IESO may be significantly impaired or delayed.
- A holder of Senior Notes may experience material payment delays because the source of funds for payment after the Moratorium Period is limited.
- The Clean Energy Adjustment may not be billed after April 30, 2047, unless further regulations to extend that date are passed.
- Foreclosure of the Indenture Trustee's lien on the Investment Interest securing the Senior Notes might not be practical and acceleration of the Senior Notes before maturity might have little practical effect.
- The Issuer may issue multiple Series of Senior Notes secured by the Investment Interest and some decisions affecting holders of Senior Notes may require approval of all Series.
- If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected.
- The Issuer may have a co-ownership interest in the Investment Asset with other Financing Entities.
- If the Clean Energy Adjustment amounts and other funds held in the Issuer Accounts results in investment losses or the investments become illiquid, a holder of Senior Notes might receive payment of principal of and interest on the Senior Notes later than expected.

Servicing, Operating and Consumer Risks

- Payments on the Senior Notes depend on the performance of Electricity Vendors and the IESO in performing their respective obligations under the FHPA and, with respect to the IESO, the Master Transfer and Servicing Agreement.
- Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and as Manager.
- Inaccurate consumption forecasting or unanticipated delinquencies or write-offs might reduce or delay scheduled payments on the Senior Notes.
- Changes to billing and collection practices may reduce the amount of funds available for payments on the Senior Notes.
- Limits on rights to terminate service to Specified Consumers might make it more difficult to collect the Clean Energy Adjustment.
- It might be difficult for the Issuer to collect the Clean Energy Adjustment from Specified Consumers.
- Delinquent or partial payments of electricity bills may make principal payments on the Senior Notes occur later than expected.
- Indemnification obligations of OPG and the IESO are limited and might not be sufficient to protect the investments in the Senior Notes.
- Power outages could impair payment of the Senior Notes.
- Technological changes that make alternative energy sources more attractive in the future or significant population fluctuations may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment.

Insolvency-Related Risks

- If the Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed.
- If the IESO were to become subject to Canadian Insolvency and Restructuring Laws, the Transfers of specified portions of the Regulatory Asset by the IESO may not be respected as true sales of the Regulatory Asset.
- If any Electricity Vendor or the IESO were to become subject to Canadian Insolvency and Restructuring Laws, collections that have been commingled may be unrecoverable and the Issuer's ability to enforce its rights against such Electricity Vendor or the IESO may be significantly impaired or delayed.
- If OPG were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to enforce its rights against OPG may be significantly impaired or delayed and the Issuer's assets and liabilities may be substantively consolidated with those of OPG.
- If the Issuer Trustee were to become subject to Canadian Insolvency and Restructuring Laws, the assets and liabilities of the Issuer may be substantively consolidated with the Issuer Trustee.
- If a Specified Consumer were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to collect Clean Energy Adjustment amounts from such Specified Consumer may be adversely affected.
- If amounts in the Issuer Accounts for any Series are invested with entities that become subject to insolvency proceedings, the Issuer's ability to make payments to holders of Senior Notes may be adversely affected.

Other Risks:

- The credit ratings are not an indication of the expected rate of payment of principal on the Senior Notes.
- If the ratings on the Senior Notes are withdrawn or revised downward, the value of a holder's investment in the Senior Notes may be adversely affected.
- The credit ratings of the IESO, OPG and the Province of Ontario might affect the market value of the Senior Notes.
- The absence of an established market for the Senior Notes might limit the ability to resell or refinance the Senior Notes.

- Restrictions on resale might limit the ability to resell the Senior Notes.

Please also see *"Risk Factors"*.

The Issuer does not intend, or assume any obligation, to update any forward-looking information except as may be required by applicable law.

CONFIDENTIALITY

THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM IS FOR THE CONFIDENTIAL USE OF ONLY THOSE PERSONS, AND THEIR RESPECTIVE REPRESENTATIVES, TO WHOM IT IS TRANSMITTED, SOLELY TO ENABLE SUCH PERSONS TO EVALUATE AN INVESTMENT IN THE NOTES DESCRIBED IN THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM. BY ACCEPTING A COPY OF THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM, EACH PROSPECTIVE PURCHASER AGREES THAT ALL INFORMATION CONTAINED HEREIN, ALL DOCUMENTS DELIVERED IN CONNECTION HEREWITH AND ALL OTHER INFORMATION OBTAINED BY PROSPECTIVE PURCHASERS IN RELATION TO THE ISSUER (COLLECTIVELY, THE "**CONFIDENTIAL INFORMATION**") IS CONFIDENTIAL, THAT NONE OF THE CONFIDENTIAL INFORMATION WILL BE COPIED, TRANSCRIBED, RECORDED OR TRANSMITTED BY THE RECIPIENT FOR ANY REASON OR USED FOR ANY PURPOSE OTHER THAN EVALUATING AN INVESTMENT IN THE NOTES, AND THAT THE RECIPIENT WILL HOLD ALL OF THE CONFIDENTIAL INFORMATION IN CONFIDENCE AND WILL NOT PROVIDE ANY OF IT TO ANY THIRD PARTIES OTHER THAN PERSONS RETAINED TO ADVISE THE RECIPIENT WITH RESPECT TO THE PURCHASE OF THE NOTES (SO LONG AS THEY ADVISE SUCH PERSONS OF THE CONFIDENTIAL NATURE OF SUCH CONFIDENTIAL INFORMATION), WITHOUT THE PRIOR WRITTEN CONSENT OF THE ISSUER.

DOCUMENTS INCORPORATED BY REFERENCE

A Term Sheet containing the specific variable terms in respect of an Offering will be delivered to prospective purchasers of Senior Notes together with this confidential shelf offering memorandum and will be deemed to be incorporated into this confidential shelf offering memorandum as of the date of such Term Sheet, solely for the purposes of the Senior Notes issued under such Term Sheet.

Any statement contained in the confidential shelf offering memorandum or in any document incorporated or deemed to be incorporated by reference in the confidential shelf offering memorandum shall be deemed to be modified or superseded, to the extent that a statement contained herein or in any other subsequent document which is or is deemed to be incorporated by reference in the confidential shelf offering memorandum, modifies or supersedes such prior statement. The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information set forth in the document which it modifies or supersedes. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. Any statement so modified or superseded shall not constitute a part of the confidential shelf offering memorandum, except as so modified or superseded.

The information contained in the Investor Presentation is current only as of the date thereof. The Investor Presentation may be updated and replaced by the Issuer in connection with a future Offering and such updated Investor Presentation will be attached as Exhibit 1, and will be included in, and form an integral part of, this confidential shelf offering memorandum delivered in respect of such Offering.

MARKET AND INDUSTRY DATA

Certain of the information contained herein concerning the electricity industry in Ontario is based upon or derived from information provided by third party sources, including industry publications and other publicly available industry sources. Neither the Issuer nor the Agents guarantee the accuracy of such information and neither the Issuer

nor the Agents have independently verified the assumptions upon which projections of future trends and performance are based. This information and data is subject to change and cannot always be verified with complete certainty due to limits on the availability and reliability of raw data, the voluntary nature of the data gathering process and other limitations and uncertainties inherent in any statistical survey of market or industry data. As a result, prospective purchasers should be aware that the information and data set forth herein, and estimates and beliefs based on such information and data, may not be reliable.

REFERENCES TO THE FHPA AND RELATED REGULATIONS

This confidential shelf offering memorandum describes certain provisions of the *Ontario Fair Hydro Plan Act, 2017* and the regulations made pursuant to that Act. These descriptions include simplified and summary descriptions of the terms and requirements of the legislation and do not purport to be comprehensive, definitive or determinative. All references in this confidential shelf offering memorandum to the terms and requirements of the *Ontario Fair Hydro Plan Act, 2017* and the regulations made pursuant to that Act are qualified in their entirety by reference to the specific terms and requirements set forth in such legislation, copies of which are available at www.ontario.ca/laws/statute/17o16.

SUMMARY

This summary does not contain all the information prospective purchasers should consider before investing in the Senior Notes. Prospective purchasers should read this entire confidential shelf offering memorandum carefully, including the section entitled "Risk Factors". Capitalized terms used and not otherwise defined in this summary have the meanings ascribed to them in the glossary starting on page 95 of this confidential shelf offering memorandum. An index of defined terms used in this summary is provided starting on page 107 of this confidential shelf offering memorandum.

Issuer:	Fair Hydro Trust, a special purpose trust established under the laws of the Province of Ontario.
Manager:	Ontario Power Generation Inc. ("**OPG**"), pursuant to the terms of the Management Agreement.
Limitations:	The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer) or of the IESO. The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG, IESO or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See "*— Change of Law Protection Agreement*".
Ontario Fair Hydro Plan Act:	On June 1, 2017, the Ontario Legislature passed the Ontario Fair Hydro Plan Act, 2017 (the "FHPA"). The FHPA was enacted to: (i) ensure that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers (a category of consumers that generally is comprised of residential consumers, small businesses and farms); (ii) recognize that Clean Energy Benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in Ontario; and (iii) align Clean Energy Costs with Clean Energy Benefits, in order to provide fairness for Specified Consumers over time. As a result, from July 1, 2017 until April 30, 2018, electricity rates payable by Specified Consumers will in effect be the rate that would result in a representative consumer being charged an invoice amount that is 25%[1] less than the rate that would otherwise have been determined by the Ontario Energy Board (the "**OEB**") under its Regulated Price Plan[2] for that period. Under the FHPA, OPG is appointed as Financial Services Manager and is given the authority to, among other things, establish, or cause to be established, one or more Financing Entities to incur Funding Obligations for the purposes prescribed under the FHPA. The Issuer is a Financing Entity under the FHPA and the Notes are Funding Obligations being offered for the purposes of the FHPA. See *"Ontario's Fair Hydro Plan — Background"*.

[1] The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax previously granted by the Ontario government.

[2] Specified Consumers, as a class, are not a one-to-one equivalent class to the RPP consumer class.

Summary of the Fair Hydro Financing Program:	The implementation of the Fair Hydro Plan is intended to be financed by the Issuer through the Fair Hydro financing program. The program provides for the offering and issuance by the Issuer of Senior Notes, in any number of Series, in one or several Offerings. A Term Sheet will describe particulars of the terms of each Series of Senior Notes and will be incorporated by reference and form an integral part of this confidential shelf offering memorandum. Each Series of Senior Notes will be issued under the Master Trust Indenture, as supplemented by a Supplemental Indenture authorizing that Series.
Transferor and Servicer:	The Independent Electricity System Operator (the "**IESO**") is a non-share corporation established under the *Electricity Act, 1998* (Ontario). As a non-share capital corporation, the IESO does not have any shareholders or owners and is governed by an independent board of directors appointed by the Minister of Energy. The IESO manages the operation and reliability of Ontario's bulk power system and administers the wholesale electricity market. Each month, the IESO will determine the shortfall resulting from the rate reduction mandated by the FHPA and record the amount in a variance account. The IESO has the right, exercisable in accordance with the FHPA, to recover the balance recorded in the variance account from Specified Consumers (such right, the "**Regulatory Asset**"). Pursuant to the Master Transfer and Servicing Agreement, the IESO may, on a monthly basis, offer to Transfer specified portions of the Regulatory Asset to the Issuer in accordance with the FHPA. See *"The Transferor and Servicer"*.
Investment Interest:	Upon completion of a Transfer by the IESO of a specified portion of the Regulatory Asset, the Issuer will acquire an Investment Interest in the Investment Asset, which is a current and irrevocable property right consisting of the rights specified in the FHPA, including the right to impose, invoice, collect, receive and recover the Clean Energy Adjustment from Specified Consumers in accordance with the FHPA. See *"— Clean Energy Adjustment"* below and *"Ontario's Fair Hydro Plan — Regulatory Asset"*, *"Ontario's Fair Hydro Plan — Investment Interest"* and *"The Transferor and Servicer"*.
Clean Energy Adjustment:	The FHPA imposes an irrevocable and non-bypassable charge referred to as the Clean Energy Adjustment that will be determined by the Financial Services Manager and will be converted by the OEB into a cent per kWh rate and added to the electricity invoices sent to Specified Consumers. See *"— Statutory Duties of the OEB"* below. The required Clean Energy Adjustment will be determined by the Financial Services Manager for each month in a Reference Period and consists of the sum (without duplication) of: (i) the estimated Finance Amount in respect of the Reference Period, which will include an estimate of all repayments, redemptions, funding costs (including interest and principal on the Senior Notes), derivative payments, required reserve account deposits, Issuer expenses and taxes, and other amounts paid or payable during such Reference Period, and (ii) the True-up Amount for such Reference Period, all divided by the number of months in the applicable Reference Period.

The "**True-up Amount**" is comprised of the cumulative Finance Amounts in respect of all preceding Reference Periods less the cumulative Clean Energy Adjustment amounts remitted to the Issuer in respect of all preceding Reference Periods plus other anticipated shortfalls. The True-up Amount will also reflect any historical and reasonably foreseeable differences between the estimated and actual Finance Amount; between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs; and variations in billings due to variations in electricity consumption. In determining such differences, the Financial Services Manager is required to have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of Specified Consumers, an Electricity Vendor or the IESO, whether in its capacity as an Electricity Vendor or its activities as agent or otherwise under the FHPA. The Financial Services Manager is obligated to calculate the True-up Amount in respect of each Reference Period so long as all Funding Obligations and other Finance Amounts have not been paid in full. The Financial Services Manager may also, at any time during a Reference Period, determine an interim True-up Amount if, among other things, it reasonably forecasts that the collection of the Clean Energy Adjustment will be insufficient to pay the estimated Finance Amount for a Reference Period.

Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and other financing expenses of the Issuer. Based on the Fair Allocation Amount determined and provided by the Province, from July 1, 2017 until April 30, 2021 (the "**Moratorium Period**"), no Clean Energy Adjustment amounts are permitted to be collected from Specified Consumers. During the Moratorium Period, the sole source of funds for payment of interest on the Senior Notes, and the Issuer's other Carrying Costs, will be the amounts the IESO is obligated to pay under the Regulations during such period. See *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*. Amounts so contributed by the IESO are not available to pay principal on the Senior Notes.

Non-bypassability:

The FHPA mandates that an amount in respect of the Clean Energy Adjustment shown on an invoice issued to a Specified Consumer is determinative of the amount of the consumer's indebtedness resulting from the Clean Energy Adjustment, and is irrevocable on invoicing such Specified Consumer and may not be set off or bypassed. See *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

Payment of Carrying Costs until July 31, 2021:

The IESO, which is rated A(high) by DBRS and Aa2 by Moody's, is required under the Regulations to pay and remit to the Issuer any amounts charged to the IESO by the Issuer in respect of Carrying Costs incurred in respect of the period from June 1, 2017 to July 31, 2021. Under the Regulations, Carrying Costs include all funding costs, such as interest on the Senior Notes, and other expenses of the Issuer, other than repayment of principal on any debt obligations of the Issuer (such as principal on the Senior Notes).

Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's carrying costs statement, the IESO is required to deliver the amount specified therein to the Issuer. See *"The Transferor and Servicer"*. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring September 30, 2022, which is permitted to be used by the IESO to pay the Carrying Costs to the Issuer. The amounts paid by the IESO to fund these Carrying Costs will be recorded by the IESO in the variance account and form part of the Regulatory Asset that the IESO is expected to Transfer to the Issuer in a subsequent period. Upon such Transfer, the Issuer will acquire a corresponding Investment Interest.

As security for the performance of the IESO's obligation under the Regulations to pay the Carrying Costs to the Issuer, the IESO has granted the Issuer a first-priority security interest in all accounts receivable owing to the IESO from Electricity Vendors, including amounts owing with respect to the global adjustment charge. See *"The Transferor and Servicer"*. For a further description of the global adjustment charge, see *"The Electricity Industry in Ontario — Electricity Prices"*.

Acceleration of Indebtedness:

A holder of Senior Notes must rely solely on the Clean Energy Adjustment amounts collected and any available reserve accounts for repayment of principal on the Senior Notes. Accordingly, if all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable during the Moratorium Period and before its scheduled payment date, maturity date or redemption date, the source of funds for repayment of principal may be limited.

If all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable after the Moratorium Period and before its scheduled payment date, maturity date or redemption date, then the estimated Finance Amount used by the Financial Services Manager to determine the Clean Energy Adjustment for a period will be determined without regard to the fact that such amount has become due and payable, unless and only to the extent that the amount of the Clean Energy Adjustment is capable of being increased based on the Fair Allocation Amount for such period. See *"— Fair Allocation Amount & Financing Plan"* below. However, upon such acceleration, all accelerated Senior Notes will be repaid in full before any further payments of principal are made to holders of subordinated indebtedness, including the subordinated debt held by OPG; therefore, collections of the Clean Energy Adjustment that would otherwise have been available to repay the principal amount of subordinated indebtedness in the absence of acceleration of the Senior Notes will instead be applied to repay accelerated Senior Notes. See *"— Subordinated Debt"* below.

Statutory Duties of the OEB:

The OEB is an independent public regulatory agency established under the *Ontario Energy Board Act, 1998*. The *Ontario Energy Board Act, 1998* provides the OEB with the authority to regulate participants (e.g.

OEB licensees) in Ontario's electricity market, including the activities of transmitters and distributors as well as the IESO (all of whom are Electricity Vendors for the purposes of the FHPA).

Under the Regulations, the OEB is responsible for determining the rates at which Specified Consumers are to be invoiced to recover the Clean Energy Adjustment. The rates are expressed as a cent per kWh rate and are determined by the OEB by dividing (i) the aggregate Clean Energy Adjustment as determined by the Financial Services Manager in respect of the relevant period of time by (ii) a forecast of electricity consumption of Specified Consumers in respect of such period, based on forecast information provided by the IESO to the OEB. See *"The Transferor and Servicer"*.

Statutory Duties of Electricity Vendors:

Electricity is distributed to almost all Specified Consumers in Ontario through a network of local distributors. See "*The Electricity Industry in Ontario*" and the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Ontario electricity market and these local distributors.

The FHPA requires Electricity Vendors to invoice their Specified Consumers for a charge in respect of the Clean Energy Adjustment, as determined by applying the rate set by the OEB, which is required to be included as a separate line item on each invoice sent to Specified Consumers. Electricity Vendors are also required to collect, as agent of the Issuer and any other Financing Entities that may be established, amounts in respect of the Clean Energy Adjustment, deposit such amounts into a segregated account established for the purpose of receiving those amounts and hold such amounts in trust for the benefit of the Financing Entities until remitted to the IESO for the benefit of the Financing Entities (initially, only the Issuer). If an Electricity Vendor does not receive payment in full of an invoice issued to a Specified Consumer, the Electricity Vendor shall allocate any payment received to the Clean Energy Adjustment and the other amounts payable under the particular invoice in the manner set out in the FHPA. It is a deemed condition of their distribution license issued by the OEB that Electricity Vendors comply with the FHPA.

As security for any failure of an Electricity Vendor that does not have an investment grade rating from DBRS and Moody's to remit Clean Energy Adjustment amounts collected under the FHPA, the IESO is required, pursuant to the Master Transfer and Servicing Agreement, to provide to the Issuer on or prior to the first day of the first billing period when the Clean Energy Adjustment is being invoiced to Specified Consumers, a letter of credit from a provider that satisfies the Rating Agency Condition or a performance guarantee or such other form of security that is acceptable to the Issuer and that satisfies the Rating Agency Condition. The amount of the security required is based on a formula as set out in the Master Transfer and Servicing Agreement and will be equal to: (a) the product of (i) 50% of estimated Clean Energy Adjustment amounts that are to be collected over a twelve-month period by all such non-investment grade rated Electricity Vendors, and (ii) a fraction equal to 45/365 (representing the 45-day period during which funds are expected to be held by such non-investment grade rated Electricity Vendors prior to being remitted to the Issuer); or (b) such

other lesser amount that satisfies the Rating Agency Condition. See *"The Transferor and Servicer."*

Management Duties of OPG:

Pursuant to the Management Agreement, the Issuer has delegated to OPG, as Manager, all of the powers and duties of managing the Issuer, including determining whether to incur Funding Obligations (including Offerings of Senior Notes) to acquire an Investment Interest or refinance existing Funding Obligations; negotiating and executing, on behalf of the Issuer, all agreements; maintaining accounts and banking records; preparing any offering documents to be furnished by the Issuer to prospective purchasers of Funding Obligations (including the Senior Notes); and preparing financial statements and tax filings on behalf of the Issuer.

In addition to the powers and duties delegated to the Manager under the Management Agreement, OPG is also required to comply with its duties as Financial Services Manager under the FHPA, including preparing the Financing Plan to evaluate whether potential Funding Obligations should be incurred for the purposes of Financing Entities acquiring and financing an Investment Interest, determining the amount of the Clean Energy Adjustment inclusive of the calculation of any True-up Amount, notifying the OEB of the Clean Energy Adjustment inclusive of any True-up Amount and ensuring that Funding Obligations are incurred in a manner consistent with the Financing Plan. OPG may also administer the Investment Interest on behalf of the Issuer and any other Financing Entities. Subject to OEB approval and as provided for in the FHPA, OPG is entitled to charge the Issuer a fee, comprised of a base fee and a variable fee, to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer or in relation to the establishment, management and administration of the Issuer and its Investment Interest. The priority of the Manager's entitlement to fees is subject to the payment priorities set forth in the Master Trust Indenture. The Province of Ontario is the sole shareholder of OPG and thereby has the power to determine the composition of OPG's board of directors. See *"The Electricity Industry in Ontario — Key Industry Participants — Ontario Power Generation Inc."* and *"The Manager"*.

Statutory and Servicing Duties of the IESO:

Following the Moratorium Period, the IESO is required, as agent of the Financing Entities (of which the Issuer is currently the only one), to receive Clean Energy Adjustment amounts paid to it from Electricity Vendors, deposit such amounts promptly into a segregated account established for the purpose of receiving amounts in respect of the Clean Energy Adjustment, hold such amounts in trust on behalf of the Financing Entities (of which the Issuer is currently the only one) and remit such amounts on a monthly basis, subject to daily remittance being required in certain limited circumstances. Pursuant to the Master Transfer and Servicing Agreement, monthly remittances of amounts received in respect of the Clean Energy Adjustment will occur on the 18th business day of each calendar month. In addition, the IESO will provide certain reporting and other servicing duties in favour of the Issuer, including providing forecast information to the OEB and the Issuer, which forecast information will be used by the OEB to forecast electricity consumption of Specified Consumers in respect of the relevant period, making commercially reasonable efforts to cause Electricity Vendors to establish segregated accounts into which Clean Energy Adjustment amounts are deposited, remitting such amounts and

fulfilling certain additional reporting requirements. Generally, all servicing duties provided by the IESO to the Issuer are provided at no cost to the Issuer. However, the Issuer will reimburse the IESO for certain direct costs relating to the performance by the IESO of its duties and obligations under the Master Transfer and Servicing Agreement that are otherwise not recovered or recoverable by the IESO under the *Electricity Act, 1998* (Ontario). See *"The Transferor and Servicer."*

Change of Law Protection Agreement:

Pursuant to the Change of Law Protection Agreement, upon a Protection Event and delivery by the Indenture Trustee of a written payment demand, the Province of Ontario is required to make payments in respect of all "Approved Obligations" when due and payable into the Protection Account (which includes payments of amounts that are due and payable in respect of Senior Notes), although the amount of the Province of Ontario's payment obligations in a particular period may differ depending on whether an Acceleration has occurred. See *"Change of Law Protection Agreement"*. The Issuer and the Indenture Trustee must ensure that amounts deposited into the Protection Account are applied to pay Specified Creditors to whom amounts are due and payable under an Approved Obligation in accordance with the provisions of the Master Trust Indenture. See *"Capital Markets Platform"*.

Generally, an "**Approved Obligation**" under the Change of Law Protection Agreement includes all obligations of the Issuer (except for amounts required to be deposited into any capital account or finance reserve account, or any obligation for the Issuer to pay itself any remaining amounts in the Collection Account pursuant to the Master Trust Indenture), including obligations of the Issuer under the Notes, subject to the satisfaction of certain adherence conditions for those obligations that constitute "Certified Primary Obligations", as defined in the Change of Law Protection Agreement. Subject to certain limited exceptions for refinancings, a "Certified Primary Obligation" includes all Notes, as well as certain other obligations of the Issuer under derivative agreements or under contracts with terms of greater than three years that are not terminable by the Issuer on less than three years' notice under which the Manager, acting reasonably, expects aggregate payments by the Issuer during the term of the contract in an amount in excess of $5,000,000.

It will be a condition to any Offering of Senior Notes that such Senior Notes constitute Approved Obligations under the Change of Law Protection Agreement.

Protection Event:

Each of the following constitutes a "**Protection Event**" for purposes of the Change of Law Protection Agreement:

(a)

(i) the Ontario legislature repeals, and does not replace on an equivalent basis, or amends, the Act or any portion thereof, as in effect on the date hereof;

(ii) the Ontario legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals, and does not replace on an equivalent basis, the regulations made under the Act or any portion thereof, as in effect on the date hereof;

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof; or

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province of Ontario or an entity controlled by the Province of Ontario,

in each case, that (X) adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in any of clauses (i) to (v) above, or (Y) adversely affects the enforceability of, or adversely changes, the terms and conditions of the Change of Law Protection Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable and that has the effect of the Issuer not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in this paragraph (b).

The occurrence of a Protection Event in and of itself will not result in the acceleration of the Senior Notes.

The Province of Ontario's obligation to make payments under the Change of Law Protection Agreement upon a Protection Event and

subsequent delivery of a written payment demand by the Indenture Trustee is referred to as the "**Limited Guarantee**".

Upon paying amounts when due and payable in respect of Approved Obligations, including the Senior Notes, into the Protection Account, the Province of Ontario will be subrogated and entitled to all of the rights and interests of applicable Specified Creditors (including Noteholders) under and in respect of the Approved Obligations to the extent of the amounts paid.

Under the Change of Law Protection Agreement, the right to deliver a written payment demand on occurrence of a Protection Event to enforce the Limited Guarantee is the only remedy available to the Indenture Trustee (and to Specified Creditors, to the extent they are permitted to exercise any rights, interests or elections under and in accordance with the Master Trust Indenture). Specified Creditors are not permitted to exercise any rights, interests, or elections under the Change of Law Protection Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Master Trust Indenture (in effect as of the date hereof). See *"Capital Markets Platform — Acceleration and Remedies — Rights of Specified Creditors"*.

Approved Obligations & Adherence Conditions:

Under the Management Agreement, the Manager is required to ensure that all obligations of the Issuer are and remain Approved Obligations under the Change of Law Protection Agreement.

The Limited Guarantee shall apply to all Certified Primary Obligations that meet the following adherence conditions:

(a) the Certified Primary Obligation when incurred is an Obligation Secured under the Master Trust Indenture;

(b) OPG, as Financial Services Manager, delivers a certificate to the Indenture Trustee on or before the incurrence of such obligation certifying that it has complied with all of its obligations to the Province of Ontario and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation; and

(c) the Province of Ontario has not provided a Suspension Notice to the Indenture Trustee, OPG and the Issuer.

All Senior Notes shall constitute Obligations Secured under the Master Trust Indenture and therefore condition (a) above will be satisfied for all Offerings of Senior Notes. It will be a condition to any Offering of Senior Notes that OPG deliver the adherence certificate required pursuant to (b) above or that the Province of Ontario designates in writing that the Senior Notes are Approved Obligations. The Change of Law Protection Agreement provides that delivery of an adherence certificate shall be determinative of satisfaction of this adherence condition, notwithstanding that such certificate may include

inaccuracies, be incomplete or otherwise be defective or deficient, and such certificate may be relied upon as conclusive evidence of same.

Suspension Notice & Post-Suspension Refinancing

The Change of Law Protection Agreement will remain in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, including all Senior Notes.

However, in the following limited circumstances, the Province of Ontario may deliver a Suspension Notice under the Change of Law Protection Agreement: (i) if there has been an acceleration of Funding Obligations in accordance with the provisions of the Master Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement; (ii) if there has been an uncured breach of covenant, uncured default in performance, or uncured representation, warranty or certification that proves to be incorrect in any material respect on the date made, in each case of OPG (or its officers, in the case of a certification) to the Province of Ontario in connection with its obligations to the Province of Ontario pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations; or (iii) if the Financial Services Manager is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove the Financial Services Manager as the Manager.

Upon delivery of a Suspension Notice, the Limited Guarantee shall not apply in respect of obligations incurred by the Issuer (excluding certain refinancings of Approved Obligations as described below) and certain material amendments of outstanding obligations of the Issuer.

Notwithstanding delivery of a Suspension Notice, the Limited Guarantee shall continue to apply to: (i) any Approved Obligations that were incurred prior to the suspension and (ii) any Funding Obligations incurred by the Issuer following a suspension that satisfy the terms and conditions of the Change of Law Protection Agreement, provided that the proceeds of such incurrence are to be used for the purpose of repaying one or more series of Approved Obligations. Accordingly, subject to compliance with the Change of Law Protection Agreement, any Senior Notes or other Funding Obligations that may be issued following a suspension to refinance Senior Notes that were Approved Obligations issued prior to a suspension will continue to have the benefit of the Limited Guarantee.

See *"Change of Law Protection Agreement"*.

Fair Allocation Amount & Financing Plan:

The Fair Allocation Amount is an amount calculated under the FHPA by the Minister of Energy in respect of each Reference Period that, among other things, allocates the estimated value of Clean Energy Costs in proportion to the relative attribution of the value of Clean Energy Benefits among Specified Consumers. See *"Ontario's Fair Hydro Plan"*.

The Financial Services Manager is required to prepare a Financing Plan under the FHPA to evaluate whether potential Funding Obligations

should be incurred by the Issuer or other Financing Entities for the purposes of acquiring an Investment Interest or for the purposes of a Refinancing. In preparing the Financing Plan, the Financial Services Manager must have regard to certain principles, including that Funding Obligations should be incurred such that, along with any Funding Obligations already incurred, the estimated Finance Amount that would, subject to any Refinancing, become due and payable during a Reference Period will reasonably align with the Fair Allocation Amount determined in respect of such Reference Period as of the date the Funding Obligations were incurred.

In other words, the Financing Plan should contemplate the issuance of Funding Obligations from time to time, with terms that would result in Clean Energy Adjustments being payable by Specified Consumers that align with the purposes of the FHPA. Notwithstanding the above, the FHPA provides that each Funding Obligation that is issued is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated Finance Amount with the Fair Allocation Amount.

The Financing Plan allows for the issuance of a variety of short and long term debt. See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Financing Plan and the Fair Allocation Amount.

Subordinated Debt:

Concurrent with every issuance of senior debt by the Issuer, including any Offering of Senior Notes, it is expected that OPG will subscribe for subordinated debt and junior subordinated debt of the Issuer in an amount equal to no more than 49% of all of the Issuer's Funding Obligations, approximately 44% of which is expected to be funded through equity investments in OPG by the Province of Ontario with the remaining 5% being funded from OPG's available funds, including all or a portion of the proceeds of any offerings by OPG of medium term notes.

Under the Master Trust Indenture, the Issuer will be required at all times to ensure that: (i) the aggregate outstanding principal amount of all subordinated debt and junior subordinated debt be not less than 35% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations; and (ii) the aggregate outstanding principal amount of all junior subordinated debt be not less than 10% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations.

Use of Proceeds:

The proceeds from each Offering may be used for one or more of the following purposes: (i) to acquire an Investment Interest pursuant to the FHPA and the Master Transfer and Servicing Agreement, (ii) to refinance indebtedness of the Issuer (including other Series of Senior Notes), (iii) to pay Offering and related costs of the Issuer and (iv) to fund specific reserve accounts as required.

The Term Sheet for each Offering of Senior Notes will identify the amount of proceeds that will be used for such specified purposes.

Interest Rate:	Fixed, floating or otherwise, as determined by the Issuer and as set out in the Term Sheet applicable to such Offering.
Interest Payment Dates:	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Principal Accumulation Amount(s):	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Principal Payment Date(s) and Principal Payment Amount(s):	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Principal Payment Default Date:	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Ranking:	Subject to the applicable payment waterfalls set out in the Master Trust Indenture, the Senior Notes will be direct, secured and unsubordinated obligations of the Issuer, and will at all times rank equally and proportionately with each other and all other senior indebtedness issued by the Issuer from time to time pursuant to the Indenture, without discrimination or preference. See "*Capital Markets Platform — Subordination Provisions*", "*Capital Markets Platform — Acceleration and Remedies — Payment Waterfall Upon Acceleration"*.
Security:	All indebtedness and other obligations of the Issuer, including the Senior Notes, will be secured by a first ranking charge against all property and assets of the Issuer, including each Issuer Account (and all funds and property credited thereto), all rights and benefits, and powers of the Issuer under the FHPA and all rights, benefits and power under all Program Agreements, including under the Limited Guarantee. Under the Master Trust Indenture, the Issuer is required to maintain certain reserves: the IESO Cash Reserve Deposit Amount (an amount equal to the aggregate of (i) 0.50% of the aggregate amount of all outstanding senior, subordinated and junior subordinated funding obligations determined as of April 15, 2021, and (ii) an amount estimated as the amount of Carrying Costs payable during May, June and July 2021, provided such amount in (ii) satisfies the Rating Agency Condition) will be deposited by the IESO by April 30, 2021. There is also a Program Cash Reserve Account which will begin to be funded from Clean Energy Adjustments following the Moratorium Period until it reaches the Program Cash Reserve Required Amount (on each Payment Date on and after May 15, 2021, an amount equal to 0.50% of the aggregate amount of all outstanding senior, subordinated and junior subordinated funding obligations determined as of such date, or such lesser amount that satisfies the Rating Agency Condition). Funds in the IESO Cash Reserve Account will be applied to pay Carrying Costs after April 2021 to the extent that funds can be so applied such that the aggregate amount of funds in the IESO Cash Reserve Account and Program Cash Reserve Account is maintained at the Program Cash Reserve Required Amount. In connection with the incurrence of any Series of Notes, the Issuer may (i) establish a Series Account for purposes of accumulating funds used to make principal payments or for purposes of reserving funds to pay finance charges, and/or (ii) enter into a credit enhancement agreement

or liquidity agreement. Whether a Series of Senior Notes has the benefit of a Series Account or any credit enhancement agreement or liquidity agreement will be determined from time to time by the Issuer and set out in the Term Sheet applicable to such Offering.

See "*Capital Markets Platform — Security*".

Priority of Payments:

Prior to an Event of Default and acceleration of the Issuer Funding Obligations (other than Derivative Funding Obligations), amounts available for disbursement will generally be applied in the following order of priority:

- taxes;
- trustee fees, expenses and reimbursement amounts (up to a specified cap);
- payment of or accumulations in respect of interest for Senior Funding Obligations, *pari passu* with payments under derivative agreements (other than termination payments);
- payment of or accumulations in respect of interest for Subordinated Funding Obligations;
- payments of or accumulations in respect of interest for Junior Subordinated Funding Obligations;
- payment of or accumulations in respect of principal for Warehouse Obligations (see *"Warehouse Facilities"*);
- accumulations in respect of principal for Senior Funding Obligations (other than Warehouse Obligations), *pari passu* with termination payments under derivative agreements (other than as provided below);
- fees and other amounts (other than principal and interest) on Senior Funding Obligations;
- the Manager's fees, expenses and reimbursement amounts;
- payment of or accumulations in respect of principal for Subordinated Funding Obligations;
- fees and other amounts (other than principal and interest) on Subordinated Funding Obligations;
- payment of or accumulations in respect of principal for Junior Subordinated Funding Obligations;
- replenishment of Program Cash Reserve Account;
- replenishment of Series Accounts (other than accounts established for Subordinated Funding Obligations or Junior Subordinated Funding Obligations);
- replenishment of Series Accounts established for Subordinated Funding Obligations;
- fees and other amounts (other than principal and interest) on Junior Subordinated Funding Obligations;
- replenishment of Series Accounts established for Junior Subordinated Funding Obligations;
- termination payments under derivative agreements where the counterparty is the defaulting party or sole affected party;
- beneficiaries of the Issuer;
- indemnity amounts owing to the Manager; and
- all other obligations not specifically dealt with above.

After an Event of Default and acceleration of the Issuer Funding Obligations (other than Derivative Funding Obligations), amounts available to the Issuer or otherwise held by the Indenture Trustee will generally be applied in the following order of priority:

- taxes;
- trustee fees, expenses and reimbursement amounts;
- interest, fees and other amounts (other than principal) on Senior Funding Obligations and payments under derivative agreements (other than termination payments), *pari passu*, then Subordinated Funding Obligations (other than principal) and then Junior Subordinated Funding Obligations (other than principal);
- principal for Warehouse Obligations;
- *pari passu*, principal on Senior Funding Obligations (other than Warehouse Obligations) and termination payments under derivative agreements (other than where the counterparty is the defaulting party or sole affected party);
- the Manager's fees, expenses and reimbursement amounts;
- principal for Subordinated Funding Obligations and then Junior Subordinated Funding Obligations; and
- all other obligations not specifically dealt with above.

Notwithstanding the above, amounts held in a Series Account will be applied in accordance with the relevant Funding Obligation Agreement and amounts held in the Protection Account will be applied in accordance with the specific written payment statement and would not otherwise modify the provisions of the applicable payment waterfalls set out in the Master Trust Indenture.

See "*Capital Markets Platform — Payment Waterfall Prior to Acceleration*" and "*Capital Markets Platform — Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

Currency: Senior Notes may be denominated in any currency. The currency for a particular Series of Senior Notes will be set out in the Term Sheet applicable to such Offering.

Minimum Subscription: Minimum principal amount of 100,000 units of the applicable currency and integral multiple of 1,000 units of the applicable currency. The minimum subscription and denomination of the Senior Notes may be varied as set out in the Term Sheet applicable to such Offering.

Optional Redemption: Senior Notes may be subject to redemption prior to maturity at the times and redemption price set out in the Term Sheet applicable to such Offering.

Purchase for Cancellation: The Issuer may, at any time, purchase at any price all or any of the Senior Notes in the market or by invitation for tenders or by private contract. Any Senior Notes so purchased shall be cancelled.

Distribution Method: The Senior Notes may be offered and sold by the Issuer on a private placement basis in Canada to "accredited investors" (as such term is defined in NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) who purchase the Senior

	Notes as principal and that are not individuals unless those individuals are also "permitted clients" (as such term is defined in NI 31-103). By purchasing Senior Notes and accepting a purchase confirmation in respect thereof, a purchaser will be agreeing with and representing to the Issuer and any Agent participating in the trade that the purchaser is an accredited investor purchasing as principal along with certain other matters. See *"Representations and Agreements of Purchasers"*.
Book-Entry Form:	The Senior Notes will be delivered and recorded in book-entry form only through CDS or another depository selected by the Issuer in accordance with the Master Trust Indenture. Each Series of Senior Notes will be evidenced by a global note held by such depository, registered in its name or the name of its nominee, on behalf of all holders of such Series of Senior Notes. Subject to limited exceptions, no purchasers of Senior Notes will be entitled to a certificate or other instrument from the Issuer or CDS evidencing that purchaser's ownership thereof, and no holder of a Senior Note will be shown on the records maintained by CDS except through book-entry accounts of a participant of CDS acting on behalf of owners. See *"Depository Services"*.
Resale Restrictions:	Resale of the Senior Notes will be subject to restrictions under applicable securities legislation which vary depending on the relevant jurisdictions. **The Senior Notes may only be sold on a basis that is in accordance with, or pursuant to an exemption from, the prospectus requirements of applicable provincial securities laws and only through an appropriately registered dealer or pursuant to an exemption from the dealer registration requirements of applicable provincial securities laws.** See *"Restrictions on Resale"*.
Risk Factors:	The purchase of the Senior Notes is subject to risks. Prospective investors should carefully consider the risk factors and other information in this confidential shelf offering memorandum and the Term Sheet for each Offering before purchasing Senior Notes, including the discussion set forth under *"Risk Factors"*, and any additional disclosure set out in the Term Sheet for each Offering.
Indenture Trustee:	BNY Trust Company of Canada.
Issuer Trustee:	Computershare Trust Company of Canada.

THE ELECTRICITY INDUSTRY IN ONTARIO

General Overview

The following summary of the electricity industry in Ontario does not purport to be comprehensive or definitive. It is a general and high-level overview of the historical context and the current manner in which the industry operates, including how real-time energy supply needs are met.

The Ontario electricity industry is principally comprised of three components:

- *Generation*: the production of electricity from various forms of energy, such as wind, solar, hydroelectric, natural gas and nuclear;
- *Transmission*: the transfer of electricity across high-voltage power lines from large generating facilities to local distribution systems and large transmission-connected consumers, as well as to and from inter-jurisdictional entities; and
- *Distribution*: the delivery of electricity within local areas to homes and businesses, as well as the delivery of electricity from small distribution-connected generating facilities, using low voltage power lines.

The structure of Ontario's electricity industry underwent significant changes in the late 1990s and early 2000s. Prior to April 1, 1999, Ontario Hydro, a Crown corporation, supplied most of Ontario's electricity generation and transmission needs. Consistent with initiatives taken in other electricity markets in North America at the time, the electricity industry was restructured in order to encourage greater competition. Ontario's competitive wholesale electricity market was opened by the IESO on May 1, 2002 and the market is used to administer the purchase and sale of wholesale electricity in Ontario.

Since the opening of the competitive market, Ontario's power supply mix has experienced significant change. As a result of provincial government policy, coal-fired generation has been eliminated and a significant amount of new capacity has been added as a result of new natural gas powered capacity, new wind and solar capacity and additional baseload nuclear generation capacity. These changes, along with the transmission and distribution system investments needed to support these changes, have resulted in significantly increased costs of electricity to consumers in Ontario.

While electricity supply in Ontario has increased, the province's electricity demand as reported by the IESO has fallen over the last decade, largely due to changes in economic conditions and conservation measures. Moreover, the addition of smaller scale wind and solar generation embedded in the distribution system has reduced the level of demand that is supplied by transmission-connected generation. Reducing electricity demand by encouraging conservation and demand management has been a key part of the Government of Ontario's plan to reduce greenhouse gas emissions from the province's electricity sector. Shorter-term fluctuations in electricity demand are impacted by variations in seasonal weather conditions.

Real-time energy supply needs are met through the wholesale electricity market administered by the IESO. Generators offer their generation into this real-time energy market, or "spot market", to be scheduled and dispatched by the IESO. The IESO receives hourly offers from electricity generators and importers to provide energy, along with bids to withdraw energy by certain domestic loads and exporters, and then schedules the lowest-cost offers and bids needed to meet demand. Most generators in Ontario also have bilateral contracts with the IESO (i.e. power purchase agreements) and one large generator, OPG, receives OEB-regulated prices, or payment amounts, that provide for payments in addition to wholesale market settlements that are paid to generators.

Key Industry Participants

Ontario Power Generation Inc.

OPG is a corporation formed under the *Business Corporation Act* (Ontario). The Province of Ontario is the sole shareholder of OPG and thereby has the power to determine the composition of OPG's board of directors. In 1999, when Ontario Hydro was split up in anticipation of deregulation, OPG was formed to hold the generation assets of the former Ontario Hydro. OPG has divested itself of certain of those assets, but remains the largest generator in Ontario.

OPG is Ontario's largest clean energy generator. As at the date hereof, OPG operated two nuclear generating stations, 66 hydroelectric generating stations, three thermal generating stations, and one wind power facility. OPG's mandate is to provide low cost power in a safe, clean, reliable and sustainable manner for the benefit of its customers and its sole shareholder, the Province of Ontario. OPG's electricity generation accounts for a significant portion of the total energy generated and injected into Ontario's electricity transmission system. OPG is one of the most experienced and largest generating companies in Canada with a broad set of relationships and capabilities. OPG is also experienced in successful complex financing arrangements of large capital projects, including the recently completed Lower Mattagami project.

Additional information about OPG is provided in the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum and is available at www.opg.com.

The IESO

The IESO is a non-share capital corporation created under the *Electricity Act, 1998* (Ontario). It was created as an amalgamation of two predecessor entities, one of which was also called the IESO ("**Predecessor IESO**") and the other of which was called the Ontario Power Authority ("**OPA**"). Predecessor IESO was responsible for managing the reliability of the provincial transmission system and operating the wholesale electricity markets in Ontario. The OPA was formed to plan the provincial power system and to procure electricity resources. The OPA entered into bilateral power or capacity purchase contracts with generators and other electricity resource providers. These two entities were merged statutorily on January 1, 2015 into the IESO, which now carries out all of these functions. As a non-share capital corporation, the IESO does not have any shareholders or owners and is governed by an independent board of directors appointed by the Minister of Energy.

Additional information about the IESO is provided in the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum and is available at www.ieso.ca.

The Ontario Energy Board

The OEB is a non-share capital corporation created under the *Ontario Energy Board Act, 1998*. The OEB is an independent and impartial administrative tribunal and public regulatory agency. The *Ontario Energy Board Act, 1998* provides the OEB with the authority to license and regulate the participants in Ontario's electricity market, including the activities of the IESO, transmitters and distributors. The IESO and distributors are Electricity Vendors for the purposes of the FHPA.

The OEB has the following objectives in relation to the electricity industry:

(a) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(b) to promote the education of consumers;

(c) to promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry;

(d) to promote electricity conservation and demand management in a manner consistent with the policies of the Province of Ontario, including having regard to the consumer's economic circumstances;

(e) to facilitate the implementation of a smart grid in Ontario; and

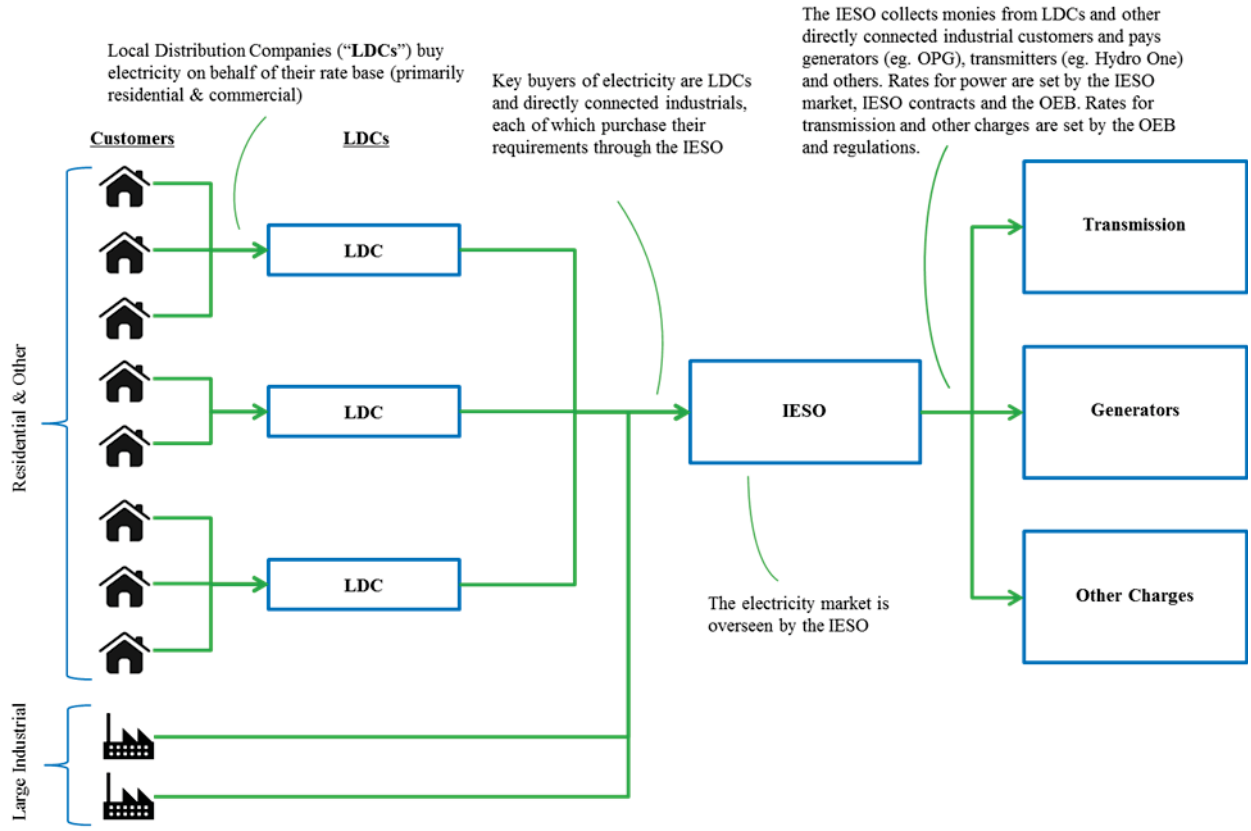
(f) to promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Ontario government, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

The OEB is responsible for, among other things, approving transmission and distribution rates in Ontario, as well as payment amounts for OPG's nuclear and hydroelectric generation. It also approves the construction, expansion, or reinforcement of transmission lines greater than two kilometres in length, as well as mergers, acquisitions, amalgamations and divestitures affecting regulated assets and regulated entities, such as distributors and transmitters. The activities of transmitters and distributors are subject to the conditions of their transmission and distribution licenses, as applicable, which require compliance with a number of industry codes issued by the OEB, as well as with the market rules that are administered by the IESO. These codes and other requirements prescribe minimum standards of conduct and service for licensed participants in the electricity market.

Electricity Vendors

As part of the restructuring of Ontario's electricity industry, the province's municipally-owned electricity distributors were reorganized into separate business corporations. These distributors are typically referred to in Ontario as local distribution companies, or "**LDCs**". An LDC is responsible for distributing electricity to customers in its OEB-licensed service territory, and in some cases to other distributors. A service territory may cover large portions or all of a particular municipality, or an otherwise-defined geographic area. Distribution customers include residential, commercial and industrial end-users, as well as institutions such as governments, schools and hospitals. At multi-unit buildings within an LDC's service territory, there may be a unit sub-metering service provider that provides metering services for each individual unit. These sub-metering service providers are also licensed by the OEB.

The following diagram depicts the flow of funds between the key industry participants:



See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding LDCs.

Electricity Prices

There are two main components that make up the commodity cost of electricity in Ontario, the Hourly Ontario Energy Price ("**HOEP**") and the global adjustment charge.

- The HOEP is set by the IESO based on bids and offers in the real-time energy market that is administered by the IESO.

- The global adjustment charge is established monthly by the IESO in accordance with regulations and is the amount of money necessary to pay certain other costs to generators and other suppliers that are not compensated by the HOEP, including the cost of energy supply contracts with generators and payments made to OPG pursuant to OEB-established payment amounts.

Prior to the FHPA being passed, the amount collected generally over an annual basis by the IESO on account of the HOEP and global adjustment charge was approximately equal to the IESO's current payables to generators and other electricity resource suppliers, subject to certain periodic true-ups, fees and adjustments to keep the IESO whole.

At the request of the Minister of Energy in 2004, the OEB created the "**Regulated Price Plan**" or "**RPP**", which establishes time-of-use and tiered prices primarily for residential, farm and small commercial customers. Prior to the introduction of the FHPA, the RPP prices were reviewed and changed every six months by the OEB based on an updated forecast and any accumulated differences between the amounts collected from RPP consumers and the amount paid to generators in previous periods. RPP prices are now established in accordance with the FHPA. Most

Specified Consumers are billed for electricity based on the Regulated Price Plan, although some Specified Consumers may be invoiced the HOEP and the global adjustment charge by their LDC for electricity they have consumed. The IESO has also stated that there is one Specified Consumer connected directly to the transmission system and settled by the IESO, not an LDC.

While most residential and small commercial consumers in Ontario choose to purchase their electricity under the RPP, consumers in Ontario may instead choose to buy their electricity from an OEB-licensed retailer pursuant to a retail contract that provides a rate for electricity over a specified period. These customers are also required to pay the global adjustment charge in addition to the rate under their retail contract.

In addition to the HOEP and global adjustment charges, or RPP prices, as the case may be, electricity consumers pay a number of other uplifts and charges, such as transmission and distribution tariffs.

ONTARIO'S FAIR HYDRO PLAN

Background

On June 1, 2017, the Ontario Legislature passed the FHPA. From July 1, 2017 until April 30, 2018, electricity rates payable by Specified Consumers (a category of consumers that generally is comprised of residential consumers, small businesses and farms) will in effect be the rate that would result in a representative consumer being charged an invoice amount that is 25%[3] less than the rate that would otherwise have been determined by the OEB for that period absent Ontario's Fair Hydro Plan (such adjustment, together with the further adjustments described below in this section, the "**Fair Adjustment**").

Under the FHPA, a "**Specified Consumer**" is:

(a) a person who has an account with an Electricity Vendor for the supply of electricity in the Province of Ontario and meets any one of the following criteria:

(i) the person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed by the Regulations;

(ii) the person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed by the Regulations;

(iii) the person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22(6) of that Act;

(iv) the person's account with the Electricity Vendor relates to

(A) a dwelling;

(B) a property within the meaning of the *Condominium Act, 1998*;

(C) a residential complex within the meaning of subsection 2(1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act; or

(D) a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*; or

[3] The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax previously granted by the Ontario government.

(v) the person satisfies such criteria as may be prescribed by the Regulations; or

(b) such other person as may be prescribed by the Regulations.

Electricity bills for Specified Consumers for the period between May 1, 2018 and April 30, 2019 are to increase by the rate of inflation (or remain unchanged in the event inflation is negative). Permitted increases after April 30, 2019 will be determined by the Ontario government through additional regulations, though the Ontario government has indicated that rate increases will be held to the rate of inflation until 2021.

Under the FHPA, OPG is appointed as Financial Services Manager and given the authority to, among other things, establish, or cause to be established, one or more Financing Entities to incur Funding Obligations to fund the acquisition of an Investment Interest. The Issuer is a Financing Entity under the FHPA and the Senior Notes are Funding Obligations under the FHPA.

Regulatory Asset

Under the FHPA, each month the IESO determines the shortfall that results from the Fair Adjustment as compared to what the IESO would have been entitled to receive without the Fair Adjustment and records this amount, together with the costs of financing the shortfall, the amounts charged to the IESO by the Issuer in respect of the Carrying Costs of the Issuer, when applicable, and certain other amounts in a variance account. The IESO has the right, exercisable in accordance with the FHPA, to recover the balance recorded in the variance account from Specified Consumers (such right, the "**Regulatory Asset**"). The FHPA provides that the OEB shall, from time to time and in accordance with the Regulations, determine and set rates payable by Specified Consumers to allow for the IESO to recover the balance recorded in the variance account and that the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from Specified Consumers before May 1, 2021. The IESO may, in accordance with the FHPA, Transfer a specified portion of the Regulatory Asset to a Financing Entity for a cash purchase price equal to the amount recorded in the variance account in respect of such specified portion of the Regulatory Asset. Upon receipt by the IESO of payment by the Financing Entity, the IESO retains no further right, title or interest in the corresponding Investment Interest.

Investment Interest

By acquiring an Investment Interest, the Financing Entity is financing a portion of the shortfall that gives rise to the Regulatory Asset and, as an owner of the Investment Interest, will be entitled to recover its Finance Amount (the costs of such financing). While a Financing Entity may choose to acquire an Investment Interest by accepting a Transfer of the corresponding specified portion of a Regulatory Asset, it is under no obligation to do so.

If the IESO and a Financing Entity agree to the Transfer of a specified portion of the Regulatory Asset from the IESO, such Transfer results in the creation of a current and irrevocable property right that is immediately vested in the Financing Entity, free and clear of any adverse claim (such right, the "**Investment Asset**", and an ownership interest therein, an "**Investment Interest**"). The Investment Asset consists, collectively, of the following rights and interests of Financing Entities that own an Investment Interest (among other things):

(a) the right and interest to impose, invoice, collect, receive and recover the Clean Energy Adjustment from Specified Consumers, including the right to determine the Clean Energy Adjustment in accordance with the FHPA;

(b) the right to receive, collect and recover the Clean Energy Adjustment that is imposed, invoiced and recoverable under the FHPA, including any amounts in respect of the Clean Energy Adjustment that are held by Electricity Vendors or the IESO;

(c) the right to enforce the duties and obligations under the FHPA of each Electricity Vendor to impose, attribute, charge and invoice for the Clean Energy Adjustment;

(d) the right to enforce the duties and obligations under the FHPA of each Electricity Vendor and the IESO to collect, receive and remit amounts received by it in respect of the Clean Energy Adjustment,

including all collections and the proceeds of any enforcement action undertaken by any Electricity Vendor to recover payment of the Clean Energy Adjustment;

(e) all rights of any kind related to any of the other property rights or interests that comprise the Investment Interest; and

(f) all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs (a) to (e), regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Clean Energy Adjustment

The "**Clean Energy Adjustment**" is the amount calculated in accordance with the FHPA and payable by Specified Consumers to cover the cost of financing the shortfall that gives rise to the Regulatory Asset. The Financial Services Manager will determine the amount of the Clean Energy Adjustment payable by Specified Consumers for each month of a Reference Period. The Clean Energy Adjustment is based on an estimate of the amount payable by a Financing Entity in a Reference Period in respect of the Finance Amount and the True-up Amount (each as described below).

The "**Finance Amount**" in respect of the Issuer for a period of time is an amount determined by the Financial Services Manager as follows:

(a) after eliminating any duplication in the following amounts, calculating the sum of the following amounts:

(i) amounts paid or payable during the period in respect of the payment by or on behalf of the Issuer or the provision by or on behalf of the Issuer for the payment of all or a portion of the principal amount advanced to the Issuer under a Funding Obligation;

(ii) interest, commitment fees or other similar costs payable by or on behalf of the Issuer in respect of Funding Obligations that are paid or payable during the period;

(iii) amounts payable by or on behalf of the Issuer to redeem, prepay or repurchase Funding Obligations incurred by or on behalf of the Issuer, including any premium, make-whole or other amount payable to give effect to the prepayment redemption or repurchase, that are paid or payable during the period;

(iv) payments required to be made in respect of any derivative agreements during the period, including ordinary course payments, payments on termination and payments made in connection with margining or collateral arrangements;

(v) amounts deposited, as required under the governing documents of Funding Obligations, into capital accounts or finance reserve accounts during the Reference Period;

(vi) Issuer expenses, including fees (including fees charged by the Financial Services Manager), charges, costs, indemnities, reimbursements and other amounts incurred or committed to by or on behalf of the Issuer as a result of an activity authorized or permitted under the FHPA, and any taxes on such amounts, in each case that are paid or payable during the period;

(vii) taxes paid or payable by or on behalf of the Issuer, incurred directly or indirectly by the Issuer , or for which the Issuer is otherwise liable as a result of any activity, undertaking, transaction or event authorized or permitted under the FHPA that are payable during the period; and

(viii) amounts paid or payable by or on behalf of the Issuer during the period to any guarantor or surety that made a payment of an amount due and payable under a Funding Obligation, including pursuant to a guarantee, indemnity, contract of insurance or agreement entered into under subsection 5(2) or (3) of the FHPA;

(b) after eliminating any duplication in the following amounts, calculating the sum of the following amounts:

(i) amounts withdrawn, as required under the governing documents of Funding Obligations, from capital accounts or finance reserve accounts during the period;

(ii) amounts received during the period in respect of Carrying Costs;

(iii) the aggregate of all amounts received by or on behalf of the Issuer in respect of Funding Obligations during the period;

(iv) the principal amount of Funding Obligations incurred by the Issuer that are applied to refinance existing Funding Obligation during the period;

(v) any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements, in each case during the period;

(vi) amounts received by or on behalf of the Issuer as a refund of tax during the period; and

(c) subtracting the sum calculated under (b) from the sum calculated under (a).

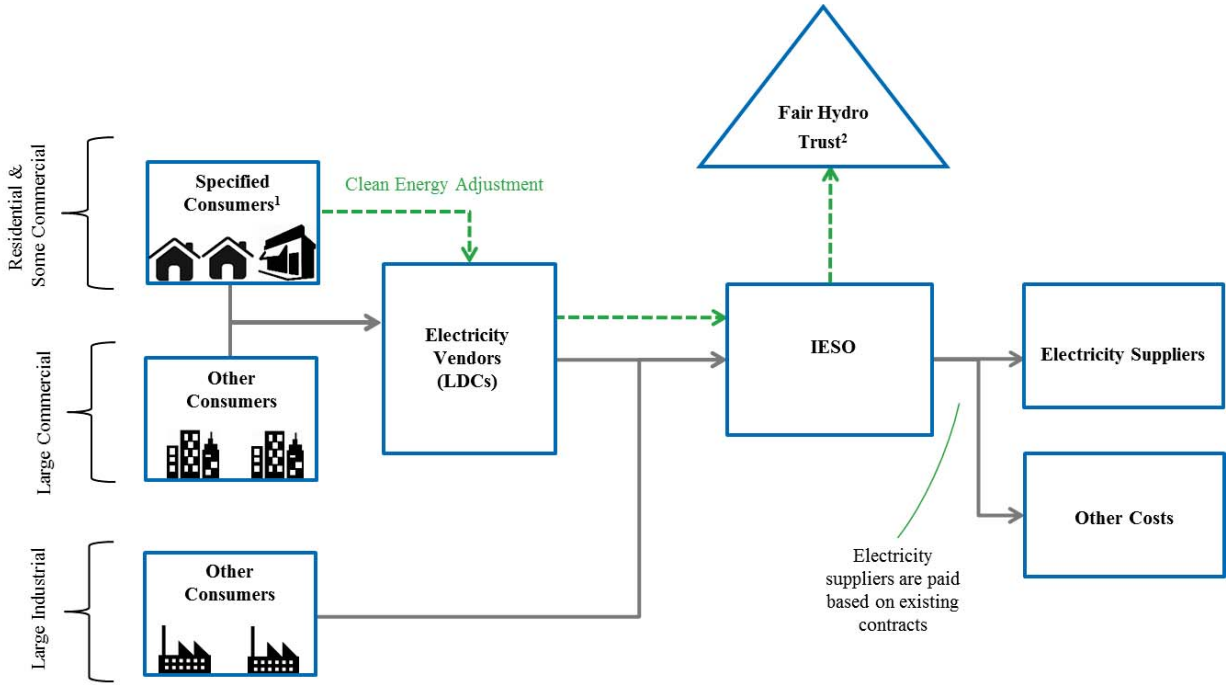
In determining the Clean Energy Adjustment, the Financial Services Manager must also calculate a "**True-up Amount**" in accordance with the Regulations. The True-up Amount is comprised of the cumulative Finance Amounts in respect of all preceding Reference Periods less the cumulative Clean Energy Adjustment amounts remitted to the Issuer in respect of all preceding Reference Periods plus other anticipated shortfalls. The True-up Amount will also reflect any historical and reasonably foreseeable differences between the estimated and actual Finance Amount; between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs; and variations in billings due to variations in electricity consumption. In determining such differences, the Financial Services Manager is required to have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of Specified Consumers, an Electricity Vendor or the IESO, whether in its capacity as an Electricity Vendor or its activities as agent or otherwise under the FHPA. The Regulations obligate the Financial Services Manager to calculate the True-up Amount in respect of each Reference Period so long as all Funding Obligations and other Finance Amounts have not been paid in full. After the final scheduled payment date of the Funding Obligation that has the latest maturity date of all outstanding Funding Obligations, the Financial Services Manager will calculate the True-up Amount quarterly. The Financial Services Manager may also at any time during a Reference Period determine an interim True-up Amount if, among other things, it reasonably forecasts that the collection of the Clean Energy Adjustment will be insufficient to pay the estimated Finance Amount for a Reference Period.

The Financial Services Manager must notify the OEB of the Clean Energy Adjustment for each Reference Period. The OEB must accept this amount and will determine the rates at which Specified Consumers are to be invoiced to recover the Clean Energy Adjustment. The rates are expressed as a cent per kWh amount and are determined by the OEB by dividing (i) the Clean Energy Adjustment provided by the Financial Services Manager in respect of the relevant period by (ii) a forecast of electricity consumption of Specified Consumers in respect of such period based on forecast information provided by the IESO. Electricity Vendors are required to invoice their Specified Consumers for the Clean Energy Adjustment, as determined by applying the rate set by the OEB, which is required to be included as a separate line item on each invoice. Electricity Vendors are required to collect, as agent of the Financing Entities (of which the Issuer is currently the only one), amounts in respect of the Clean Energy Adjustment, deposit such amounts into a segregated account established for the purpose of receiving those amounts, and hold such amounts in trust for the benefit of the Financing Entities (of which the Issuer is currently the only one) until remitted

to the IESO for the benefit of the Financing Entities (of which the Issuer is currently the only one). If an Electricity Vendor does not receive payment in full of an invoice issued to a Specified Consumer, the Electricity Vendor shall allocate any payment received to the Clean Energy Adjustment and the other amounts payable under the particular invoice in the manner set out in the FHPA. It is a deemed condition of their licenses that Electricity Vendors comply with their obligations under the FHPA.

An amount in respect of the Clean Energy Adjustment shown on an invoice issued to a Specified Consumer is determinative of the amount of such Specified Consumer's indebtedness resulting from the Clean Energy Adjustment and is irrevocable upon invoicing and may not be set off or bypassed, except to the extent that the invoice reflects a clerical, typographical or calculation-related error. Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and other financing expenses of the Issuer. From July 1, 2017 until April 30, 2021 (the "**Moratorium Period**"), no Clean Energy Adjustments are permitted to be collected from Specified Consumers. During the Moratorium Period, the sole source of funds for payment on the Senior Notes, and the Issuer's other Carrying Costs, will be the amounts the IESO is obligated to pay to the Issuer under the Regulations during such period. See *"— IESO Payment of Carrying Costs during the Moratorium Period"* below. Once it starts being included on such invoices, the Clean Energy Adjustment will be collected until all outstanding Funding Obligations and other Finance Amounts have been repaid in full. Subject to the FHPA, the Clean Energy Adjustment will be collected and remitted to the Issuer to pay the Finance Amount, including the principal and interest on the Senior Notes and all other administrative and other financing expenses of the Issuer.

The following diagram illustrates the flow of funds under the Fair Hydro Plan.



[1] There is currently one Specified Consumer that is directly connected to the IESO and, accordingly, makes payments, including in respect of the Clean Energy Adjustment, once applicable, directly to the IESO.

[2] Pursuant to the Master Transfer and Servicing Agreement, the IESO may periodically Transfer specified portions of the Regulatory Asset to the Issuer for a corresponding purchase price. Upon completion of a Transfer by the IESO of a specified portion of the Regulatory Asset following payment by the Issuer of the corresponding purchase price, the Issuer will acquire an Investment Interest.

Fair Allocation Amount and Financing Plan

The FHPA was enacted to: (i) ensure that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers; (ii) recognize that Clean Energy Benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in Ontario; and (iii) align Clean Energy Costs with Clean Energy Benefits, in order to provide fairness for Specified Consumers over time. Under the FHPA, the Minister of Energy calculates a "**Fair Allocation Amount**", which is an amount for every Reference Period that, among other things, allocates the estimated Clean Energy Costs in proportion to the relative attribution of Clean Energy Benefits among Specified Consumers. Under the FHPA, the Minister of Energy is responsible for determining the Fair Allocation Amount prior to the incurrence of the first Funding Obligation. The Fair Allocation Amount may be changed from time to time in accordance with the FHPA, provided that no change of the Fair Allocation Amount shall affect any Clean Energy Adjustment that arises as a result of a Funding Obligation that has been incurred prior to such change.

OPG, as Financial Services Manager, is required to prepare a Financing Plan to evaluate whether and when potential Funding Obligations should be incurred by a Financing Entity to acquire an Investment Interest or for the purposes of a Refinancing. The Financial Services Manager is required to prepare the Financing Plan having regard to certain prescribed principles, including that Funding Obligations should be incurred such that, along with any Funding Obligations already incurred, the estimated Finance Amount that would, subject to any Refinancing, become due and payable during a Reference Period will reasonably align with the Fair Allocation Amount determined in respect of such Reference Period as of the date the Funding Obligations were incurred. In other words, the Financing Plan should contemplate the issuance of Funding Obligations from time to time, with terms that would result in Clean Energy Adjustments being payable by Specified Consumers that align with the purposes of the FHPA. Notwithstanding the above, the FHPA provides that each Funding Obligation that is issued is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated Finance Amount with the Fair Allocation Amount.

The Financing Plan allows for the issuance of a variety of short and long term debt. See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Financing Plan and the Fair Allocation Amount.

Payment of Carrying Costs until July 31, 2021

Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and financing expenses of the Issuer. The IESO, which is rated A(high) by DBRS and Aa2 by Moody's, is required under the Regulations to pay and remit to the Issuer amounts charged to the IESO by the Issuer in respect of its Carrying Costs incurred in respect of the period from June 1, 2017 to July 31, 2021. Carrying Costs include all funding costs (such as interest on the Senior Notes) and other expenses of the Issuer, other than repayment of principal on any debt obligations of the Issuer (including repayment of principal on the Senior Notes). The amounts paid by the IESO to the Issuer to fund these Carrying Costs will be recorded by the IESO in the variance account and form part of the Regulatory Asset that the IESO is expected to Transfer to the Issuer in a subsequent period. Upon such Transfer, the Issuer will acquire a corresponding Investment Interest pursuant to the FHPA.

Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's statement, the IESO is required to deliver the amount specified in the carrying costs statement to the Issuer. See *"The Transferor and Servicer"*. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring September 30, 2022, which is permitted to be used by the IESO to pay the Carrying Costs to the Issuer. Furthermore, as security for the performance of its obligations under the Regulations to pay the Carrying Costs to the Issuer, the IESO has granted the Issuer a first-priority security interest in all accounts receivable owing to the IESO from Electricity Vendors, including amounts owing with respect to the global adjustment charge. See *"The Transferor and Servicer"*.

Other Statutory Protections

The FHPA provides certain protection and assurances in respect of the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment. Generally, no action or omission by the OEB, the Minister of Energy or the Crown, and no regulation under the FHPA, will be effective to reduce, impair, postpone or terminate the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment or to impair or postpone the invoicing, collection or remittance of the Clean Energy Adjustment. If an Electricity Vendor, the IESO or the Financial Services Manager, has failed, or will fail, to comply with the FHPA, the Issuer may apply to an Ontario court to make an order directing such party to comply and requiring compensation to be provided to the Issuer by such non-compliant party. Additional contractual protections are provided in the Change of Law Protection Agreement described below.

CHANGE OF LAW PROTECTION AGREEMENT

The following brief summary of certain provisions of the Change of Law Protection Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Change of Law Protection Agreement are qualified in their entirety by reference to the Change of Law Protection Agreement and the detailed provisions thereof. The Change of Law Protection Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

Pursuant to the Change of Law Protection Agreement, upon a Protection Event and delivery by the Indenture Trustee of a written payment demand, the Province of Ontario is required to make payments of amounts that are due and payable in respect of all Approved Obligations when due and payable into the Protection Account. The Issuer and Indenture Trustee must ensure that amounts deposited into the Protection Account are applied to pay Specified Creditors to whom amounts are due and payable under an Approved Obligation in accordance with the provisions of the Master Trust Indenture. See *"Capital Markets Platform"*. The Province of Ontario's obligation to make such payments under the Change of Law Protection Agreement upon a Protection Event and delivery by the Indenture Trustee of a written payment demand is referred to as the "**Limited Guarantee**".

The payment obligations of the Province of Ontario under the Limited Guarantee differ depending on whether an Acceleration has occurred. If no Acceleration has occurred in respect of any Senior Notes on or before a date on which the Province of Ontario is to perform the Limited Guarantee, the Change of Law Protection Agreement provides that the Province of Ontario is to pay the amounts due and payable on such date in respect of Approved Obligations. If an Acceleration has occurred in respect of any Senior Notes on or before a date on which the Province of Ontario is to perform the Limited Guarantee, the Province of Ontario is to pay the amounts that would be available to be paid on such date in respect of the Approved Obligation on an applicable payment date in respect of the Approved Obligation under the applicable payment provisions of the Master Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Master Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period, divided by the number of months in such Reference Period. See *"Capital Markets Platform — Acceleration and Remedies — Limitation on Available Amounts on Acceleration"* for a description of the amounts that would be available to be paid under the Master Trust Indenture in such circumstances.

The Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include payments of amounts that are due and payable in respect of the Senior Notes).

Under the Change of Law Protection Agreement, the right to deliver a written payment demand on occurrence of a Protection Event to enforce the Limited Guarantee is the only remedy available to the Indenture Trustee (and to Specified Creditors, to the extent they are permitted to exercise any rights, interests or elections under and in accordance with the Master Trust Indenture). Specified Creditors are not permitted to exercise any rights, interests, or elections under the Change of Law Protection Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Master Trust Indenture as at December 21, 2017.

In connection with the provision of the Limited Guarantee, OPG, as Financial Services Manager, has entered into a process agreement with the Province of Ontario pursuant to which OPG is required to satisfy certain reporting and other requirements regarding the Issuer's incurrence of, and material amendments to, any Issuer Funding Obligations.

Protection Event

Each of the following constitutes a "**Protection Event**" under the Change of Law Protection Agreement:

(a)

(i) the Ontario legislature repeals, and does not replace on an equivalent basis, or amends, the Act or any portion thereof, as in effect on the date hereof;

(ii) the Ontario legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals, and does not replace on an equivalent basis, the regulations made under the Act or any portion thereof, in whole or in part, as in effect on the date hereof;

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof; or

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province of Ontario or an entity controlled by the Province of Ontario,

in each case, that (X) adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in any of clauses (i) to (v) above, or (Y) adversely affects the enforceability of, or adversely changes, the terms and conditions of the Change of Law Protection Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the Act, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable and that has the effect of the Issuer not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in this paragraph (b).

The occurrence of a Protection Event in and of itself will not result in the acceleration of the Senior Notes.

On a Protection Event and payment by the Province of Ontario of amounts in respect of Approved Obligations that are due and payable into the Protection Account, such deposited amounts are applied by the Issuer and Indenture Trustee in the priority of payments governed by the Master Trust Indenture.

Upon the Province of Ontario's payment of amounts in respect of Approved Obligations that are due and payable into the Protection Account, the Province of Ontario will be subrogated and entitled to all of the rights of applicable Specified Creditors (including Noteholders) under and in respect of the Approved Obligations to the extent of the amounts paid. Applicable Specified Creditors in respect of whom amounts were deposited into the Protection Account will not have continuing rights, interests or entitlements (including rights as a secured party) in respect of Approved Obligations to the extent so paid; the Province of Ontario will be the absolute assignee of such rights. The Province of Ontario will have the right to be paid from the Issuer the amounts that the Province of Ontario paid in respect of the Approved Obligations ("**Subrogation Amounts**"), such Subrogation Amounts being payable in the same order of priority and with the same entitlements accruing to the Province of Ontario as applied to the amounts in respect of the Approved Obligations previously owing to Specified Creditors that the Province of Ontario has paid. The Province of Ontario will also be entitled to the benefit of the Collateral and proceeds therefrom to the extent of the amounts paid under the Limited Guarantee.

As payee of Subrogation Amounts, the Province of Ontario will be a Specified Creditor under the Master Trust Indenture. Further, the entitlements of the Province of Ontario to Subrogation Amounts arising in respect of Approved Obligations that are interest and principal obligations on Notes will be treated for all purposes of the Master Trust Indenture as interest and principal obligations, respectively, arising under Notes, having the same priority and any applicable voting rights as under the related Approved Obligations, and accordingly the Province of Ontario will be entitled to all of the rights, entitlements, interests and privileges of a holder of such Notes in accordance with the Master Trust Indenture, as supplemented by the supplemental indenture or other indenture document under which the related Approved Obligations were issued, provided that for purposes of determining voting rights with respect to Notes, Notes in which the Province of Ontario has an interest will be deemed not to be outstanding at any time that a Specified Creditor other than the Province of Ontario has an interest in such Class of Notes.

Approved Obligations & Adherence Conditions

Under the Management Agreement, the Manager is required to ensure that all obligations of the Issuer are and remain Approved Obligations under the Change of Law Protection Agreement.

An "**Approved Obligation**" under the Change of Law Protection Agreement means: (i) a Certified Primary Obligation if the adherence conditions applicable thereto have been satisfied at the time such obligation was incurred; (ii) all other Primary Obligations that are not Certified Primary Obligations (except any Primary Obligation to which the Limited Guarantee will not apply on or after delivery of a Suspension Notice as described below); and (iii) all Certified Primary Obligations that the Province of Ontario, in its sole discretion, designates in writing is an Approved Obligation.

It will be a condition to any Offering of Senior Notes that such Senior Notes constitute Approved Obligations under the Change of Law Protection Agreement.

A "**Primary Obligation**" under the Change of Law Protection Agreements means any Obligation Secured under the Master Trust Indenture (i) that is a Funding Obligation or (ii) that otherwise is a payment obligation of the Issuer that gives rise to a Finance Amount, in each case other than (x) any amounts required to be deposited by or on behalf of the Issuer into any capital account or finance reserve account; and (y) any obligation to pay the Issuer or on the Issuer's direction any remaining amounts in the Collection Account pursuant to the Master Trust Indenture.

A "**Certified Primary Obligation**" means a Primary Obligation: (i) incurred by or on behalf of the Issuer to fund its ownership of an Investment Interest, including any Refinancing, other than a Post-Suspension Refinancing or a Pre-Approved Refinancing (each as defined below), of such a Primary Obligation (for greater certainty, including, in the case of any Certified Primary Obligation permitting funding transactions pursuant to a Funding Obligation Agreement applicable to the Certified Primary Obligation, each individual borrowing or funding utilization thereunder), (ii) incurred by or on behalf of the Issuer upon the Issuer entering into a derivative agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such derivative agreement and not any individual trade confirmation other than a trade confirmation that modifies or purports to override the express terms or conditions of the related Master Agreement, or (iii) incurred by or on behalf of the Issuer upon entering into a contract that has a term of more than three (3) years which is not terminable by the Issuer giving three (3) years' notice or less and expected (as determined by the Manager, acting reasonably) aggregate payments by the

Issuer thereunder during the term of such contract are or would be in excess of $5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).

The Limited Guarantee shall apply to all Certified Primary Obligations that meet the following adherence conditions:

(a) the Certified Primary Obligation when incurred is an Obligation Secured under the Master Trust Indenture;

(b) OPG, as Financial Services Manager, delivers a certificate to the Indenture Trustee on or before the incurrence of such obligation certifying, among other things, that OPG has delivered a certificate to the Province of Ontario confirming that OPG has complied with all of its obligations to the Province of Ontario and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation (an "**Adherence Compliance Certificate**"); and

(c) the Province of Ontario has not provided a Suspension Notice to the Indenture Trustee, OPG and the Issuer.

All Senior Notes shall constitute Obligations Secured under the Master Trust Indenture and therefore condition (a) above will be satisfied for all Offerings of Senior Notes. It will be a condition to any Offering of Senior Notes that OPG deliver the adherence certificate required pursuant to (b) above or that the Province of Ontario designates in writing that the Senior Notes are Approved Obligations. The Change of Law Protection Agreement provides that delivery of an adherence certificate shall be determinative of satisfaction of this adherence condition, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such certificate may be relied upon as conclusive evidence of same.

Suspension Notice & Post-Suspension Refinancings

The Change of Law Protection Agreement will remain in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, including the Senior Notes.

However, in the following limited circumstances, the Province of Ontario may deliver a written notice (a "**Suspension Notice**") to the Indenture Trustee, the Financial Services Manager and the Issuer:

(a) an acceleration of Funding Obligations in accordance with the provisions of the Master Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement;

(b) a default in the performance, or breach, of any covenants of OPG, as Financial Services Manager, or OPG, in its corporate capacity, in each case to the Province of Ontario in connection with its obligations to the Province of Ontario pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligation and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as Financial Services Manager or in its corporate capacity, to the Province of Ontario in connection with its obligations to the Province of Ontario and its internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations, proves to be incorrect in any material respect on the date made and the expiration of any applicable cure period; or

(d) the Financial Services Manager no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the Financial Services Manager as the Manager;

If a Suspension Notice has been provided under the Change of Law Protection Agreement (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary Obligation incurred, excluding any Post-Suspension Refinancing, or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province of Ontario, in each case, on or after the time such Suspension Notice is delivered.

Following the occurrence of a Suspension Event, the Limited Guarantee shall continue to apply in respect of any Post-Suspension Refinancing; provided that prior to the Financing Entity incurring any Primary Obligation constituting a Post-Suspension Refinancing, the Manager shall provide the Province of Ontario with at least 30 days' notice of its intention to seek a Post-Suspension Refinancing and during such 30-day period the Province of Ontario may, but is not obligated to, offer to fund such Post-Suspension Refinancing or arrange for another Person to fund such Post-Suspension Refinancing on the same terms as set out in the notice or on such other terms as may be considered by the Province of Ontario to be not more onerous on the Financing Entity and that are acceptable on that basis to the Financing Entity, acting reasonably.

A "**Post-Suspension Refinancing**" means a Funding Obligation that is an Obligation Secured and that is incurred on or after the occurrence of a Suspension Event in compliance with the requirements of the Change of Law Protection Agreement, as a Refinancing of one or more Series of Approved Obligations (including any Pre-Approved Refinancing incurred on or after the occurrence of a Suspension Event), in each case the proceeds of which, together with any other funds that may be available, are used solely for the purpose of paying in full such Series of Approved Obligations and any costs and expenses associated with such Refinancing.

A "**Pre-Approved Refinancing**" means a Refinancing of a Certified Primary Obligation in respect of which the Province of Ontario has, prior to the incurrence of such Certified Primary Obligation, agreed shall be an Approved Obligation, subject to compliance with such conditions and requirements as may be specified in such agreement.

A "**Material Effect**" means a material adverse effect on the obligations or the rights of the Province of Ontario under the Limited Guarantee that relates to, and in each case, differs in any material respect from the terms or conditions applicable to any transaction document to which the Limited Guarantee applies and which was previously provided to the Province of Ontario, the following: (i) the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization) that, in each case, is inconsistent with the Fair Allocation Amount; (ii) the appointment, obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Issuer or the Issuer Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province of Ontario as a Specified Creditor; (v) the payment provisions and associated priorities set forth in the Master Trust Indenture; (vi) compliance by the Financial Services Manager with the then applicable Financing Plan; (vii) compliance by the Financial Services Manager or the Issuer with the FHPA; or (viii) the Province of Ontario's rights of subrogation or assignment or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

Accordingly, notwithstanding delivery of a Suspension Notice, the Limited Guarantee shall continue to apply to: (i) any Approved Obligations that were incurred prior to the Suspension Event and (ii) any Funding Obligations incurred by the Issuer following a Suspension Event if the terms and conditions of the Change of Law Protection Agreement are satisfied and the proceeds of such incurrence are to be used for the purpose of repaying one or more series of Approved Obligations. Accordingly, subject to compliance with the Change of Law Protection Agreement, any Senior Notes or other Funding Obligations that may be issued following a Suspension Event to refinance Senior Notes that were issued prior to a Suspension Event will continue to have the benefit of the Limited Guarantee.

THE ISSUER

The Issuer is an unincorporated open-ended unit trust established under the laws of the Province of Ontario pursuant to the Declaration of Trust. The Issuer Trustee is the sole trustee of the Issuer, which is a Financing Entity established to incur Funding Obligations for the purpose of acquiring Investment Interests pursuant to the FHPA. The principal business address and head office of the Issuer is in Ontario, in the care of the Issuer Trustee at the following address: 100 University Avenue, 11th Floor, Toronto, Ontario M5J 2Y1.

The following brief summary of certain provisions of the Declaration of Trust does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Declaration of Trust are qualified in their entirety by reference to the Declaration of Trust and the detailed provisions thereof. The Declaration of Trust may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

The Declaration of Trust establishes the Issuer to carry on activities for the exclusive benefit of its unitholders, FHP2017 Inc., a wholly-owned subsidiary of OPG, and BNY Trust Company of Canada, the Indenture Trustee under the Master Trust Indenture (collectively, the "**Unitholders**"). The beneficial interest and rights generally of the Unitholders in the Issuer are limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Issuer. The legal ownership of the trust property and the right to conduct the activities of the Issuer are vested exclusively in the Issuer Trustee and no Unitholder has any right of ownership in any of the trust property. Except in limited circumstances provided in the Declaration of Trust, no Unitholder is entitled to interfere with or give any direction to the Issuer Trustee with respect to the affairs of the Issuer or in connection with the exercise of any powers or authorities conferred upon the Issuer Trustee under the Declaration of Trust. The Issuer Trustee will generally have, free from any power or control on the part of the Unitholders, full authority over the trust property and the activities of the Issuer to the same extent as if the Issuer Trustee were the sole and absolute owner thereof. The Unitholders will also not be subject to any liability arising out of the activities of the Issuer.

The Issuer Trustee, on behalf of the Issuer, has entered into a management agreement with OPG, as Manager, whereby all of the powers and duties of managing the Issuer have been delegated to the Manager. See *"The Manager."*

The permitted activities of the Issuer are limited to:

(a) acquiring, owning, holding, administering or entering into agreements regarding the acquisition and servicing of Investment Interests, along with certain other related assets;

(b) managing, selling, assigning, pledging and collecting amounts due on or otherwise dealing with Investment Interests and certain other related assets in accordance with the terms of the Program Agreements;

(c) negotiating, authorizing, executing, delivering, assuming the obligations under and performing its duties under the Program Agreements;

(d) filing with any applicable securities commission one or more prospectuses, offering memoranda, registration statements or documents necessary or desirable to register one or more series of Funding Obligations under the securities laws of any applicable jurisdiction;

(e) authorizing, executing, delivering, issuing and registering one or more series of Funding Obligations;

(f) making payments on Funding Obligations;

(g) pledging its interest in Investment Interests and related assets to the Indenture Trustee in order to secure Funding Obligations; and

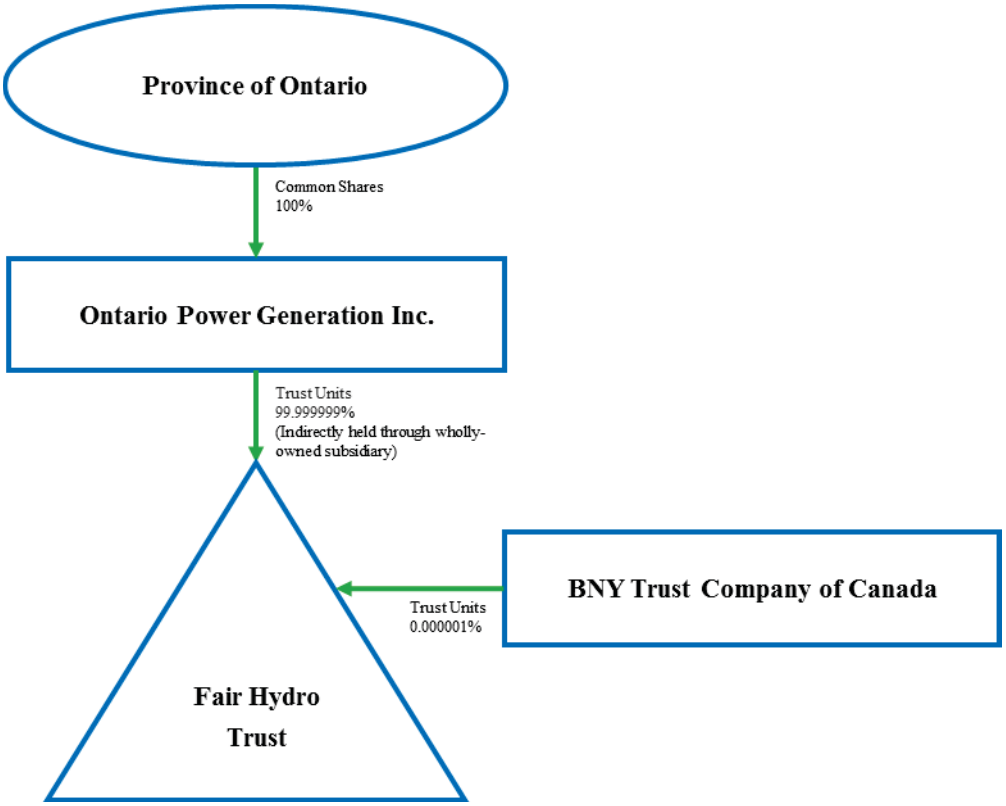
(h) engaging in any lawful act or activity that is incidental to the above-mentioned purposes.

The Issuer Trustee may amend the Declaration of Trust under specified circumstances without the consent of Unitholders provided (i) the amendment will not materially adversely affect the interest of any Unitholder, unless that Unitholder has approved of the amendment in writing, and (ii) in respect of any material amendment, the Rating Agency Condition has been satisfied. The Issuer Trustee is required to provide the Rating Agencies and the Indenture Trustee with a copy of any amendment, variation, supplement, replacement or restatement of the Declaration of Trust.

The consent of the Indenture Trustee, in addition to all other Unitholders, will be required to wind up the Issuer or voluntarily institute or consent to insolvency proceedings against the Issuer while any Funding Obligations remain outstanding. The Issuer Trustee may be removed by the Unitholders at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date such removal is to take effect. The Issuer Trustee may also be removed by the Unitholders with no prior written notice if it becomes bankrupt or insolvent or it is unable to exercise its duties under the Declaration of Trust. The Issuer Trustee may resign on 120 days' prior written notice to the Unitholders, the Indenture Trustee and the Rating Agencies. No such resignation will be effective until a replacement issuer trustee acceptable to the Unitholders and the Indenture Trustee has been appointed and the Rating Agency Condition has been satisfied.

Each of the Issuer Trustee and its directors, officers, agents, representatives and employees will be indemnified from and against all claims (including any claim arising out of the assessment of any tax on income by a taxing authority), demands, levies, penalties, suits, losses, actions, causes of action, costs, charges, fees and expenses, damages and liabilities whatsoever arising out of, among other things, any action or omission in relation to the execution of the duties of the Issuer Trustee or in relation to the trust property or the activities of the Issuer, except, in each case, for wilful misconduct, gross negligence or failure to comply with the standard of care established by the Declaration of Trust.

The following diagram illustrates the structure of the Issuer and its affiliates.



THE MANAGER

Pursuant to the Management Agreement, the Issuer has delegated to OPG, as Manager, all of the powers and duties of managing the Issuer. The following brief summary of certain provisions of the Management Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Management Agreement are qualified in their entirety by reference to the Management Agreement and the detailed provisions thereof. The Management Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

The powers and duties delegated to the Manager under the Management Agreement include, among others:

(a) negotiating and executing, on behalf of the Issuer, the Program Agreements;

(b) maintaining accounts and banking records;

(c) enforcing the rights of the Issuer under the Program Agreements and the FHPA;

(d) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to incur Funding Obligations;

(e) ensuring that all Primary Obligations of the Issuer are and remain Approved Obligations;

(f) administering all activities of the Issuer in connection with the issuance, sale, payment, repurchase and redemption of the Issuer's Funding Obligations;

(g) preparing, in accordance with applicable securities laws, any offering documents to be furnished by the Issuer to prospective purchasers of Funding Obligations, including the Senior Notes, and ensuring that all statements of the Issuer made therein are at all times true and correct in all material respects;

(h) arranging for compliance by the Issuer with any continuous disclosure obligations;

(i) arranging for the retention of legal counsel, accountants and an auditor for the Issuer;

(j) preparing financial statements and paying taxes on behalf of the Issuer;

(k) preparing a monthly portfolio report setting out information regarding incoming and outgoing cash flows; and

(l) providing such other services as are incidental to the foregoing or as may be agreed upon between the Issuer and the Manager.

The Manager is also required to work with the IESO to develop, on or before January 31, 2020, a written implementation plan identifying the actions to be taken by the IESO and the Issuer to facilitate the OEB, the Issuer, the IESO and Electricity Vendors being prepared to perform their obligations under the FHPA when setting, invoicing and collecting the Clean Energy Adjustment. The Manager will deliver written progress reports to the Issuer and the Indenture Trustee on the status of the implementation plan on or before June 30, 2020, October 31, 2020 and January 31, 2021.

Following the Moratorium Period, the Manager will review a monthly servicer report required to be delivered to the Issuer by the IESO under the Master Transfer and Servicing Agreement and make commercially reasonable efforts to resolve any Electricity Vendor failures or discrepancies identified in such report that have not been remedied or adequately explained by Electricity Vendors. The Manager is obligated to institute any proceedings necessary to compel performance by Electricity Vendors of any obligations or duties under the FHPA, including with respect to the invoicing, collection and remittance of Clean Energy Adjustment amounts. Commencing May 1, 2021 and pursuant to its rights under the Regulations, the Manager (on behalf of the Issuer) shall review, or cause to be reviewed,

on an annual basis, or less frequently as may be determined by the Manager and subject to satisfaction of the Rating Agency Condition, the records maintained by Electricity Vendors with respect to the Clean Energy Adjustment and if there is evidence of material non-compliance by an Electricity Vendor, the Manager will promptly review or cause to be reviewed the records of such Electricity Vendor.

The Manager is obligated to perform its duties under the Management Agreement diligently and in conformity with the Issuer's obligations under each of the Program Agreements and with the FHPA, as applicable, and honestly, in good faith and in the best interest of the Issuer. The Manager must exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

In addition to the powers and duties delegated to OPG pursuant to the Management Agreement, OPG has also agreed to comply with its duties under the FHPA in its capacity as Financial Services Manager, including:

(a) preparing the Financing Plan to evaluate whether potential Funding Obligations should be incurred by Financing Entities for the purposes of acquiring Investment Interests;

(b) determining the amounts of the Clean Energy Adjustment, inclusive of any True-up Amount;

(c) calculating the True-up Amount;

(d) notifying the OEB of the Clean Energy Adjustment, inclusive of any True-up Amount;

(e) administering the Investment Interests on behalf of Financing Entities in accordance with the Program Agreements;

(f) ensuring that Funding Obligations are incurred in a manner that is consistent with the Financing Plan; and

(g) establishing and charging fees for the services provided under the Management Agreement.

Subject to OEB approval, OPG is entitled to charge the Issuer a fee, comprised of a base fee and a variable fee, to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer or in relation to the establishment, management and administration of the Issuer and its Investment Interest. The priority of the Manager's entitlement to fees is subject to the payment priorities set forth in the Master Trust Indenture.

The Manager is not entitled to resign from its duties or terminate the Management Agreement as long as Funding Obligations remain outstanding. The Manager may be terminated by the Issuer Trustee, with the consent of the Indenture Trustee, or by the Indenture Trustee in accordance with the Master Trust Indenture. No termination of the Manager will be effective until a replacement manager that satisfies the Rating Agency Condition has been approved and has entered into a management agreement with the Issuer whereby the replacement manager agrees to assume, in substance, the obligations of the Manager under the Management Agreement. If the Manager ceases to perform, or inadequately performs, its management duties under the Management Agreement, it might be difficult to find a replacement for the Manager or a successor manager. See "*Risk Factors — Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and as Manager.*"

The Manager shall provide to the Issuer Trustee an annual certificate confirming compliance with certain matters, including: (i) accurate maintenance of the books and records of the Issuer; (ii) all debt obligations and expenses due and payable by the Issuer have been paid to date; (iii) all required filings with tax and regulatory authorities have been completed to date; and (iv) all material statements and reports to be delivered by the Issuer under the Program Agreements have been delivered and all material statements and reports to be received by the Issuer under the Program Agreements have been received.

The Manager indemnifies the Issuer under the Management Agreement for any losses incurred by the Issuer as a result of the failure of the Manager to perform its obligations under the Management Agreement or any breach by the Manager of its representations and warranties under the Management Agreement or any other Program Agreement to which it is a party, except to the extent such losses result from the willful misconduct, bad faith or gross

negligence of the Issuer. Notwithstanding the foregoing, the Manager is not obligated to indemnify the Issuer under the Management Agreement for any losses resulting from: (i) a breach or failure to perform by a third party under any Program Agreement, the FHPA (excluding any delegation by the Manager under the Management Agreement to a third party); (ii) changes in law, (iii) the validity or applicability of the Change of Law Protection Agreement; (iv) the collectability or sufficiency of the Clean Energy Adjustment or Carrying Costs to satisfy the Issuer Funding Obligations, including the Senior Notes; or (v) any liability of the Issuer incurred after termination of the Management Agreement unless attributable to the actions or omissions of the Manager prior to such termination or in respect of a representation, warranty or covenant that survives such termination.

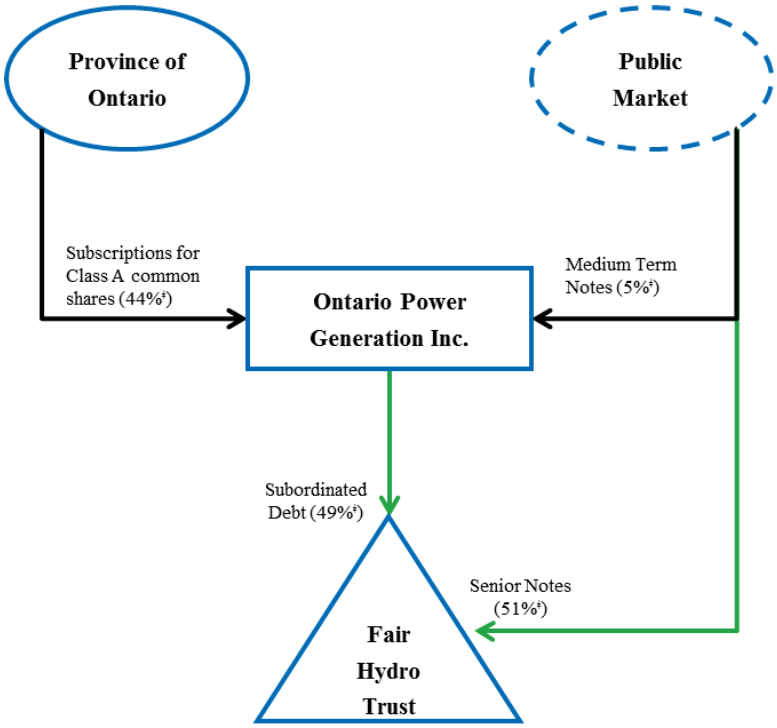
SUBORDINATED DEBT

Concurrent with every issuance of senior debt by the Issuer, including any Offering of Senior Notes, it is expected that OPG will subscribe for subordinated debt and junior subordinated debt of the Issuer in an amount of no more than 49% of all of the Issuer's Funding Obligations, approximately 44% of which is expected to be funded through equity investments in OPG by the Province of Ontario with the remaining approximately 5% being funded from OPG's available funds, including all or a portion of the proceeds of any offerings by OPG of medium term notes.

Under the Master Trust Indenture, the Issuer will be required at all times to ensure that: (i) the aggregate outstanding principal amount of all subordinated debt and junior subordinated debt be equal to not less than 35% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations; and (ii) the aggregate outstanding principal amount of all junior subordinated debt be equal to not less than 10% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations.

The Issuer is structured to be bankruptcy remote from OPG insofar as none of OPG, its subsidiaries or holders of its indebtedness will have any recourse whatsoever against the Issuer or its assets other than OPG's rights and remedies as a holder of subordinated debt of the Issuer in accordance with the provisions of that indebtedness. From an accounting perspective, however, the Issuer will be consolidated with OPG.

The following diagram illustrates the expected structure of OPG's investments in subordinated debt of the Issuer.



‡ OPG is expected to acquire up to 49% of the Issuer's outstanding debt in the form of subordinated debt. Actual amounts may vary if OPG acquires less than 49% of the Issuer's outstanding debt.

SHORT TERM INDEBTEDNESS

On December 21, 2017, the Issuer entered into the following supplemental indentures under the Master Trust Indenture for the provision of an aggregate of approximately $1.56 billion in short term indebtedness (collectively, the "**Warehouse Facilities**"), of which a total of $1.179 billion is drawn as of the date hereof:

(a) a warehouse senior series 2017-1 supplemental indenture with, among others, Royal Bank of Canada, as administrative agent for certain commercial paper conduit purchasers and financial institutions named therein, for the provision of an aggregate maximum principal amount of $800,000,000 floating rate variable funding Senior Notes, Series 2017-1 ("**Senior Notes, Series 2017-1**"), of which $601,290,000 is drawn;

(b) a warehouse subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $611,764,705.88 floating rate variable funding Subordinated Notes, Series 2017-1 ("**Subordinated Notes, Series 2017-1**"), of which $459,810,000 is drawn; and

(c) a warehouse junior subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $156,862,745.10 floating rate variable funding Junior Subordinated Notes, Series 2017-1 ("**Junior Subordinated Notes, Series 2017-1**"), of which $117,900,000 is drawn.

The issuance of Senior Notes, Series 2017-1, Subordinated Notes, Series 2017-1 and Junior Subordinated Notes, Series 2017-1 under the Warehouse Facilities described above were used to acquire a $1.179 billion Investment Interest on December 21, 2017.

THE TRANSFEROR AND SERVICER

Pursuant to the Master Transfer and Servicing Agreement, the IESO may periodically Transfer specified portions of the Regulatory Asset to the Issuer. Additional information regarding the IESO, including its most recently published financial statements, is available at www.ieso.ca. Such information does not form part of this confidential shelf offering memorandum and neither the Issuer nor the Agents guarantee the accuracy of such information or has independently verified the accuracy or completeness of any such information or to determine if there has been any omission by the IESO to disclose any facts, information or events which may affect the significance or accuracy of any such financial statements or other information.

The following brief summary of certain provisions of the Master Transfer and Servicing Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Master Transfer and Servicing Agreement are qualified in their entirety by reference to the Master Transfer and Servicing Agreement and the detailed provisions thereof. The Master Transfer and Servicing Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

Under the Master Transfer and Servicing Agreement, the IESO may offer, no more frequently than monthly, to Transfer to the Issuer a specified portion of the Regulatory Asset. The Issuer has the right, but not the obligation, to accept the IESO's offer. The IESO is responsible for servicing the Issuer's Investment Interest in accordance with the Regulations and the Master Transfer and Servicing Agreement. Its responsibilities including, among others:

(a) establishing a segregated account to be used for the sole purpose of receiving the Clean Energy Adjustment in respect of the Issuer's Investment Interest and making commercially reasonable efforts to cause Electricity Vendors to do the same;

(b) making commercially reasonable efforts to cause each Electricity Vendor to establish procedures for the invoicing of amounts in respect of the Clean Energy Adjustment;

(c) responding to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(d) reviewing reports submitted to the IESO by Electricity Vendors regarding the collection of Clean Energy Adjustment amounts for material manifest discrepancies;

(e) contacting Electricity Vendors on the occurrence of certain events;

(f) holding Clean Energy Adjustment amounts received in respect of the Issuer's Investment Interest in trust for the benefit of the Issuer and remitting such amounts to the Issuer on the 18th business day of each month, subject to daily remittance being required in certain limited circumstances;

(g) together with the Issuer, settling a form of monthly servicer report to be provided to the Issuer; and

(h) providing forecast information to the OEB and the Issuer, which forecast information will be used by the OEB to forecast electricity consumption of Specified Consumers in respect of the relevant period.

The IESO must follow standards, policies and procedures in performing its servicing duties that are customary for an electricity market operator and administrator that regularly performs settlement functions. The Master Transfer and Servicing Agreement provides for various limitations on the duties and responsibilities of the IESO including that: (i) the IESO provides no guarantee that collections of the Clean Energy Adjustment from Electricity Vendors will equal amounts invoiced or that Clean Energy Adjustment amounts will be sufficient to satisfy the Issuer's Funding Obligations, (ii) the IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Investment Interest, the collectability of the Clean Energy Adjustment or that Clean Energy Adjustment amounts received will be sufficient to satisfy the Issuer's Funding Obligations, (iii) the IESO shall have no liability or responsibility to any person in respect of any forecasts or other information provided, provided only that such forecasts or other information has been prepared and provided in good faith and (iv) the IESO is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from Specified Consumers or not remitted by Electricity Vendors to the IESO. See *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"* and *"Ontario's Fair Hydro Plan — Other Statutory Protections"* with respect to the manner in which the risks associated with incorrect forecasts by the IESO, and shortfalls in Clean Energy Adjustments as a result of amounts not being collected by Electricity Vendors or remitted by Electricity Vendors, are mitigated.

The IESO is required to work with the Manager to develop, on or before January 31, 2020, a written implementation plan identifying the actions to be taken by the IESO and the Issuer to facilitate the OEB, the Issuer, the IESO and Electricity Vendors being prepared to perform their obligations under the FHPA when setting, invoicing and collecting Clean Energy Adjustment amounts. The IESO and the Manager will deliver to the Issuer written progress reports on the status of the implementation plan on or before June 30, 2020, October 31, 2020 and January 31, 2021. The IESO is also required to work with the Issuer to settle a form of monthly servicer report, which will be provided to the Manager on or before the 20th business day after the end of each month in which Clean Energy Adjustment amounts are collected by Electricity Vendors from Specified Consumers, and which report is expected to contain available information regarding the Clean Energy Adjustment amounts billed, collected and remitted by Electricity Vendors, actual electricity consumption compared to forecast electricity consumption and such other information as may be agreed to by the IESO.

Generally, all servicing duties provided by the IESO to the Issuer are provided at no cost to the Issuer. However, the Issuer will reimburse the IESO for its direct costs relating to the performance by the IESO of its duties and obligations under the Master Transfer and Servicing Agreement that are not otherwise recovered by the IESO under the *Electricity Act, 1998* (Ontario), excluding any costs relating to the performance of the IESO's duties and obligations under the FHPA, including its obligation to pay the Carrying Costs to the Issuer.

During the Moratorium Period and extending to July 31, 2021, the IESO, which is rated A(high) by DBRS and Aa2 by Moody's is required under the Regulations to pay and remit to the Issuer amounts charged to the IESO by the Issuer in respect of its Carrying Costs. Under the Regulations, Carrying Costs include all funding costs, such as interest on the Senior Notes, and other expenses of the Issuer, other than repayment of principal on any debt obligations

of the Issuer, including repayment of principal on the Senior Notes. Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's carry costs statement, the IESO is required to deliver the amount specified therein to the Issuer. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring September 30, 2022, which is permitted to be used by the IESO to pay the Carrying Costs to the Issuer.

As security for the performance of its obligation to pay the Carrying Costs to the Issuer, the IESO has granted the Issuer a first-priority security interest in all accounts receivable owing to the IESO from Electricity Vendors, including amounts owing with respect to the global adjustment charge. The amounts paid by the IESO to fund these Carrying Costs will be recorded by the IESO in the variance account and form part of the Regulatory Asset which is expected to be offered by the IESO for Transfer to the Issuer in a subsequent period. Upon completion of such Transfer, the Issuer will acquire an Investment Interest pursuant to the FHPA.

As security for any failure of Non-Investment Grade Rated Electricity Vendors to remit Clean Energy Adjustment amounts collected under the FHPA, the IESO is required, pursuant to the Master Transfer and Servicing Agreement, to provide to the Issuer on or prior to the first day of the first billing period when the Clean Energy Adjustment is being invoiced to Specified Consumers, a letter of credit from a provider that satisfies the Rating Agency Condition or a performance guarantee or such other form of security that is acceptable to the Issuer and that satisfies the Rating Agency Condition. A "**Non-Investment Grade Rated Electricity Vendor**" means any Electricity Vendor that does not have a rating of: (i) "Baa3" or higher by Moody's, unless otherwise agreed to by Moody's; and (ii) "BBB(low)" or higher by DBRS, unless otherwise agreed to by DBRS.

The amount of security required from the IESO will be calculated on an annual basis and will be equal to the amount determined by the following formula:

((A / B) x C x D / 365 x E)

where A, B, C, D and E are as follows:

A = for the most recently completed twelve-month period, the aggregate amount of energy consumed by Specified Consumers of all Non-Investment Grade Rated Electricity Vendors.

B = for the same twelve-month period used for A, the aggregate amount of energy consumed by all Specified Consumers.

C = for the most current twelve-month forecast period available, the Clean Energy Adjustment amounts estimated to be payable by all Specified Consumers.

D = 45, representing the estimated number of days that total Clean Energy Adjustment amounts are expected to be held by Electricity Vendors or such other number as mutually agreed to in writing by the Issuer and the IESO and that satisfies the Rating Agency Condition.

E = 0.50 or another value as mutually agreed to in writing by the Issuer and the IESO and that satisfies the Rating Agency Condition.

The Master Transfer and Servicing Agreement sets out specific servicer defaults. Upon the occurrence of a servicer default, the Issuer will be entitled to appoint a replacement servicer that will perform the IESO's duties as servicer under the Master Transfer and Servicing Agreement. Any replacement servicer must be permitted under the FHPA to perform the duties of servicer, the Rating Agency Condition must be satisfied and the replacement servicer must enter into a master transfer and servicing agreement with the Issuer having substantially the same terms as the Master Transfer and Servicing Agreement.

The IESO has agreed to indemnify the Issuer for any losses incurred by the Issuer as a result of the failure of the IESO to perform its obligations under the Master Transfer and Servicing Agreement or any other Program

Agreement to which it is a party or the breach by the IESO of any of its representations or warranties under the Master Transfer and Servicing Agreement or any other Program Agreement to which the IESO is a party, except to the extent such losses result from the willful misconduct, bad faith or gross negligence of the Issuer. Notwithstanding the foregoing, the IESO is not obligated to indemnify the Issuer under the Master Transfer and Servicing Agreement for any losses resulting from: (i) a breach or failure to perform by a third party under any Program Agreement or the FHPA (excluding any delegation by the IESO under the Master Transfer and Servicing Agreement to a third party); (ii) changes in law, (iii) the collectability or sufficiency of the Clean Energy Adjustment to satisfy the Issuer's Funding Obligations, including the Senior Notes; or (iv) any liability of the Issuer incurred after termination of the Master Transfer and Servicing Agreement unless attributable to the actions or omissions of the IESO prior to such termination or in respect of a representation, warranty or covenant that survives such termination.

CREDIT RATINGS

Credit ratings are intended to provide investors with an independent measure of the credit quality of securities and are indicators of the likelihood of the payment capacity and willingness of an issuer to meet its financial commitment on an obligation in accordance with the terms of such obligation. The credit ratings accorded to the Senior Notes are not recommendations to purchase, hold or sell such securities inasmuch as such ratings are not a comment upon the market price of the securities or their suitability for a particular investor. There is no assurance that any rating will remain in effect for any given period of time or that any rating will not be revised or withdrawn entirely by a rating agency in the future if, in its judgment, circumstances so warrant.

The Term Sheet for each Offering will identify the rating of the applicable Senior Notes at the time of such Offering.

RATING AGENCY CONDITION

The Program Agreements provide that certain actions are subject to the "**Rating Agency Condition**". In each such case, satisfaction of the Rating Agency Condition requires: (a) that the Issuer has delivered written notice of the proposed action to the Rating Agencies at least ten business days prior to the effective date of such action; and (b) that the Rating Agencies shall have informed the Issuer prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating in effect with respect to the Notes immediately before the taking of such action. If the Rating Agency Condition is to be satisfied without specifying one or more specific Series or Tranches of Notes, the Rating Agency Condition must be satisfied with respect to all outstanding Series or Tranches of Notes.

CAPITAL MARKETS PLATFORM

The Financial Services Manager has developed a Financing Plan for the Issuer which encompasses an ongoing program which allows for the issuance of a variety of short and long term debt, as well as interest rate and currency swaps and other hedging instruments.

The Master Trust Indenture establishes common security and a set of common covenants given by the Issuer for the benefit of all of its creditors. Notes are issued under Supplemental Indentures and in certain cases, Terms Documents. Borrowings are incurred pursuant to liquidity agreements or loan agreements. Notes and Borrowings incurred by the Issuer are Issuer Funding Obligations. Each Issuer Funding Obligation will be part of a Class and Series of Issuer Funding Obligations, and may include one or more Tranches. A Class designation determines the relative seniority for receipt of cash flows. See *"— Subordination Provisions"*, "*— Payment Waterfalls Prior to Acceleration*" and "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*". Tranches of Issuer Funding Obligations may differ from each other as to the interest rate, maturity and the timing, sequential order and amount of payments of principal or interest, or both.

The following summary of the principal provisions contained in the Master Trust Indenture does not purport to be comprehensive or definitive. This overview summarizes certain provisions of the Master Trust Indenture and omits descriptions of many provisions which may be considered to be of a customary nature. All references in this confidential shelf offering memorandum to the Master Trust Indenture are qualified in their entirety by reference to the Master Trust Indenture and the detailed provisions thereof. The Master Trust Indenture may be reviewed at the

principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Notes are outstanding.

Indenture Trustee

BNY Trust Company of Canada, a trust company governed by the laws of Canada, is the Indenture Trustee under the Master Trust Indenture.

Under the terms of the Master Trust Indenture, the Issuer has agreed to pay the Indenture Trustee reasonable compensation for the performance of its duties under the Master Trust Indenture. The Indenture Trustee has agreed to perform only those duties expressly set forth in the Master Trust Indenture. Many of the duties of the Indenture Trustee are described throughout this confidential shelf offering memorandum. Under the terms of the Master Trust Indenture, the Indenture Trustee's limited responsibilities include the following:

- to authenticate, deliver, cancel and otherwise administer the Notes;
- to serve as the registrar in respect of the Notes;
- to establish and maintain all Issuer Accounts and to maintain accurate records of activity in those accounts;
- to serve as the Paying Agent and distribute and transfer funds at the direction of the Manager in accordance with the terms of the Master Trust Indenture;
- to invest funds in the Issuer Accounts at the direction of the Manager (or its agent);
- to deliver to Specified Creditors notice of any Default, Event of Default, Acceleration Event, Protection Event or Servicer Default of which it has received notice, as required under the Master Trust Indenture; and
- to perform certain other administrative functions identified in the Master Trust Indenture.

In the exercise of its duties, the Indenture Trustee will use the same degree of care and skill as a reasonably prudent person would use in comparable circumstances. When all Issuer Funding Obligations have been satisfied and discharged (see "— *Satisfaction and Discharge*"), the Indenture Trustee will no longer act as Indenture Trustee and will have no fiduciary responsibilities to any remaining Specified Creditors and will act only as security agent for those remaining Specified Creditors. The Indenture Trustee is not liable for any errors of judgment as long as the errors are made in good faith and the Indenture Trustee was not negligent. Furthermore, the Indenture Trustee will not be liable for any action taken or not taken by it in good faith if directed to do so by Extraordinary Resolution. The Indenture Trustee is not required to expend or risk its own funds, or incur any financial liability in the exercise of its duties under the Master Trust Indenture and it will not be obliged to exercise any of its rights under the Master Trust Indenture at the request of any Controlling Class Creditor unless such Controlling Class Creditor has provided it with security or an indemnity reasonably satisfactory to it.

In addition to the Indenture Trustee's compensation and the reimbursement of the Indenture Trustee's expenses in connection with the Master Trust Indenture, the Issuer will indemnify the Indenture Trustee for any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the administration of the trusts under the Master Trust Indenture. The payment of all such amounts will be subject to the payment waterfalls set out in the Master Trust Indenture and in certain instances, such amounts will be higher in priority than payments to Noteholders. See "— *Payment Waterfalls Prior to Acceleration — Collection Account*", "— *Payment Waterfalls Prior to Acceleration — Protection Account*" and "— *Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

The Indenture Trustee may resign at any time by giving written notice to the Issuer and it may be removed for any reason by Ordinary Resolution of Controlling Class Creditors. The Indenture Trustee must resign if a material

conflict of interest arises in its role as an Indenture Trustee under the Master Trust Indenture and such conflict of interest is not eliminated within 90 days after the Indenture Trustee becomes aware of such material conflict of interest. The Issuer may remove, or any Controlling Class Creditor who has been a *bona fide* Controlling Class Creditor for at least six months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the removal of the Indenture Trustee if (i) the Indenture Trustee is no longer eligible to act as trustee under the Master Trust Indenture (and any Supplemental Indenture) and fails to resign after it has received a written request to do so by the Issuer or by any Controlling Class Creditor, (ii) the Indenture Trustee becomes incapable of acting, or (iii) the Indenture Trustee becomes subject to any bankruptcy or insolvency related events. In all such circumstances, the Issuer must appoint a successor Indenture Trustee. Any resignation or removal of the Indenture Trustee and appointment of a successor Indenture Trustee will not become effective until the successor Indenture Trustee accepts the appointment. If an instrument of acceptance by a successor Indenture Trustee has not been delivered to the Indenture Trustee within 30 days of giving notice of resignation or removal, the Indenture Trustee may petition a court of competent jurisdiction to appoint a successor Indenture Trustee.

Any successor Indenture Trustee will execute and deliver to the Issuer and its predecessor Indenture Trustee an instrument accepting such appointment. The successor Indenture Trustee must be a bank, a trust company or a corporation organized and doing business under the laws of Canada or of any province or territory thereof, authorized under such laws to carry on a trust business in each of the provinces and territories of Canada. The Issuer may not, nor may any person directly or indirectly controlling, controlled by, or under common control with the Issuer, serve as Indenture Trustee.

The Indenture Trustee may become the owner or pledgee of Notes and may otherwise deal with the Issuer with the same rights it would have if it were not the Indenture Trustee (subject to its obligation to resign if there is a material conflict).

Conditions Precedent to Incurrence of Obligations Secured

There is no limit on the aggregate amount of indebtedness or other obligations which may be secured under the Master Trust Indenture. However, the Issuer will not be permitted to incur any Issuer Funding Obligations or other obligations unless the Issuer meets the conditions described below under *"— Issuer Funding Obligations"* and *"— Other Obligations Secured"*.

Issuer Funding Obligations

The Issuer may not incur any new Issuer Funding Obligations, or renew or extend any existing Issuer Funding Obligations (in each case, other than Derivative Funding Obligations), unless the conditions described below are met on or prior to the date that the Issuer enters into a definitive agreement in respect of such Issuer Funding Obligations:

(a) the Issuer delivers to the Indenture Trustee and each Rating Agency notice of such incurrence;

(b) the Issuer delivers to the Indenture Trustee and each Rating Agency a certificate to the effect that:

(i) the Issuer reasonably believes that such incurrence will not cause an Adverse Effect; an "**Adverse Effect**" means that such action will at the time of its occurrence (a) result in the occurrence of an Event of Default or any event which with the giving of notice or passage of time, or both, would become an Event of Default, (b) adversely affect the amount or timing of any payment to be made to any Debtholder or Derivative Counterparty pursuant to the Master Trust Indenture or any Program Agreement, (c) materially adversely affect the amount or timing of payments to be made to the Specified Creditors (other than Debtholders and Derivative Counterparties) pursuant to this Indenture or any Program Agreement, or (d) adversely affect the security interest and the rights and remedies of the Indenture Trustee in respect thereof;

(ii) all instruments furnished to the Indenture Trustee conform to the requirements of the Master Trust Indenture and constitute sufficient authority under the Master Trust Indenture for the Indenture Trustee to (A) in the case of an issuance of Notes only, authenticate and

deliver such Notes, and (B) in the case of all other Issuer Funding Obligations, execute and deliver the applicable Funding Obligation Agreement;

(iii) in the case of an issuance of Notes only, the form and terms of the Notes have been established in conformity with the provisions of the Master Trust Indenture;

(iv) the incurrence of such Issuer Funding Obligation is consistent in all material respects with the Financing Plan; see *"Ontario Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*;

(v) the conditions set out in clauses (c), (d), (g) and (k) below are met; and

(vi) such other matters as the Indenture Trustee may reasonably request;

(c) the representations and warranties of the Issuer in the Master Trust Indenture are true and correct in all material respects;

(d) the Rating Agency Condition is satisfied with respect to all outstanding Series or Tranches of Issuer Funding Obligations;

(e) the Indenture Trustee receives either:

(i) a certified copy of the instrument whereby the Province of Ontario designated in writing that such Issuer Funding Obligation is an Approved Obligation as contemplated by the Change of Law Protection Agreement; or

(ii) both (A) an Adherence Compliance Certificate addressed to the Indenture Trustee with respect to such Issuer Funding Obligation delivered in accordance with the Change of Law Protection Agreement; and (B) a certificate signed by the Manager certifying that the Province of Ontario has not provided a Suspension Notice;

(f) the Issuer delivers to the Indenture Trustee copies of the applicable Funding Obligation Agreement, including in the case of Notes, a Supplemental Indenture relating to the applicable Series or Tranche of Notes and, if applicable, a Terms Document relating to the applicable Tranche of Notes;

(g) in the case of Senior Funding Obligations only, the Issuer has Subordinated Funding Obligations and Junior Subordinated Funding Obligations in an aggregate outstanding principal amount equal to not less than 35% of the aggregate outstanding principal amount of the aggregate Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations (after giving effect to such incurrence) and in the case of Subordinated Funding Obligations only, the Issuer has Junior Subordinated Funding Obligations in an aggregate outstanding principal amount equal to not less than 10% of the aggregate outstanding principal amount of the aggregate Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations (after giving effect to such incurrence);

(h) except in the case of Notes, the Issuer delivers to the Indenture Trustee an updated list of the Specified Creditors;

(i) each Debtholder in respect of such Issuer Funding Obligation (or an authorized agent on their behalf) has made the acknowledgements and agreements described below under "— *Acknowledgements of Specified Creditors*";

(j) the Change of Law Protection Agreement is in full force and effect against the Province of Ontario or has been replaced with a new agreement that is in form and substance satisfactory to Controlling Class Creditors pursuant to an Ordinary Resolution;

(k) the conditions precedent, if any, specified in the applicable Funding Obligation Agreement are satisfied; and

(l) in the case of an issuance of Notes only:

(i) the Indenture Trustee receives a certificate for the certification and delivery of the Notes and specifying the particulars relating to such Notes;

(ii) in the case of Notes described in section 163(f)(2)(A) of the Internal Revenue Code, if such Notes are not in registered form (including by reason of a book entry system described in section 163(f) of the United States Internal Revenue Code of 1986), then such Notes are described in section 4701(b)(1)(B) of the United States Internal Revenue Code of 1986 and such section will apply to such Notes; and

(iii) in the case of foreign currency Notes, the Issuer appoints one or more Paying Agents in the appropriate countries, if requested by the Indenture Trustee.

Periodic drawdowns under existing Funding Obligation Agreements will not constitute a new incurrence of Issuer Funding Obligations. However, an increase in the aggregate commitment under an existing Funding Obligation Agreement or the issuance of additional Notes of an outstanding Series or Tranche of Notes will constitute a new incurrence of Issuer Funding Obligations.

The Indenture Trustee is not required to and, except as otherwise provided in a Funding Obligation Agreement, the Issuer is not required to, provide prior notice to or obtain the consent of any Debtholder or any other Specified Creditor to issue any Issuer Funding Obligations.

Other Obligations Secured

The Issuer may incur other obligations (including Derivative Funding Obligations) so long as:

(a) the Issuer delivers to the Indenture Trustee a copy of the agreement giving rise to such obligations;

(b) the Issuer delivers to the Indenture Trustee an updated list of the Specified Creditors;

(c) the counterparty to the agreement giving rise to such obligations makes the acknowledgements and agreements described below under "— *Acknowledgements of Specified Creditors*";

(d) if the obligations are Certified Primary Obligations, the Indenture Trustee receives either:

(i) a certified copy of the instrument whereby the Province of Ontario designated in writing that such obligation is an Approved Obligation as contemplated by the Change of Law Protection Agreement; or

(ii) both (A) an Adherence Compliance Certificate addressed to the Indenture Trustee with respect to such obligation delivered in accordance with the Change of Law Protection Agreement; and (B) a certificate signed by the Manager certifying that the Province of Ontario has not provided a Suspension Notice;

provided that, in respect of derivative agreements, the Issuer will provide notice to each Rating Agency of the identity of the Derivative Counterparty and the terms of any applicable master agreement and schedule.

Derivative Agreements

The Issuer may, from time to time, enter into one or more derivative agreements, which would consist of a currency swap or interest rate swap, a cap (obligating a Derivative Counterparty to make payments if a reference rate is greater than a specified rate), a floor (obligating a Derivative Counterparty to make payments if a reference rate is less than a

specified rate), or a collar (obligating a Derivative Counterparty to make payments if a reference rate is greater than a specified rate and entitling the Derivative Counterparty to receive payments if the same reference rate is less than a lower specified rate), with various counterparties. In general, the Issuer will receive payments from the Derivative Counterparty in exchange for the Issuer's payments to them, to the extent required under the derivative agreements. Payments received by the Issuer will constitute Available Collections.

Acknowledgements of Specified Creditors

Each Specified Creditor must acknowledge and agree in favour of the Indenture Trustee that it is a Specified Creditor under the Master Trust Indenture and that its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Master Trust Indenture including, without limitation, those described under "*— Indenture Trustee*", "*— Payment Waterfalls Prior to Acceleration*", "*— Debtholder Approvals and Meetings — Access to Debtholder Lists*", "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*", "*— Acceleration and Remedies — Rights of Specified Creditors*", "*— Acceleration and Remedies — Limited Recourse*" and "*— Acceleration and Remedies — No Petition*".

Subordination Provisions

Under the Master Trust Indenture, the Issuer can issue the following classes of Issuer Funding Obligations: "Senior Funding Obligations", "Subordinated Funding Obligations" or "Junior Subordinated Funding Obligations" (each, a "**Class**"). The payment of interest on Subordinated Funding Obligations shall be subordinate and rank junior to the payment of interest on Senior Funding Obligations and Derivative Funding Obligations. The payment of interest on Junior Subordinated Funding Obligations shall be subordinate and rank junior to the payment of interest on Senior Funding Obligations, Derivative Funding Obligations and Subordinated Funding Obligations. The payment of principal on Subordinated Funding Obligations shall be subordinate and rank junior to the payment of principal on Senior Funding Obligations and Derivative Funding Obligations. The payment of principal on Junior Subordinated Funding Obligations shall be subordinate and rank junior to the payment of principal on Senior Funding Obligations, Derivative Funding Obligations and Subordinated Funding Obligations. In each case, the subordinations are the to the extent and in the manner set forth in the Master Trust Indenture and described under "*— Payment Waterfalls Prior to Acceleration*" and "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

Subject to the applicable payment waterfall, (i) all Senior Funding Obligations will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction on account, (ii) all Subordinated Funding Obligations will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction and (iii) all Junior Subordinated Funding Obligations of each Series or Tranche will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction, in each case, except as set out in a related Funding Obligation Agreement.

Security

To secure the payment of all Obligations Secured, including principal of and interest on the Issuer Funding Obligations, the Issuer has granted to the Indenture Trustee a security interest in all of its right, title and interest (whether now owned or hereafter acquired or arising) in and to the following property: (i) the Investment Interest acquired by the Issuer; (ii) each Issuer Account (including all sub-accounts); (iii) all Eligible Investments and all investment property, money and other property held in any Issuer Accounts (including all sub-accounts); (iv) all rights, benefits and powers of the Issuer under any Program Agreement; (v) all rights, benefits and powers of the Issuer under the FHPA; (vi) all present and future claims, demands, causes of and choses in action in respect of any of the foregoing and all interest, principal, payments and distributions of any nature or type on any of the foregoing; (vii) all accounts, general intangibles, chattel paper, instruments, documents, goods, money, investment property, deposit accounts, letters of credit and letter-of-credit rights consisting of, arising from, or relating to any of the foregoing; (viii) all debts, accounts, claims, monies and choses in action due or to become due with respect to all of the foregoing and also all securities, bills, notes, evidences of deposits of money, and other documents now held or owned or which may be hereafter taken, held or owned by the Issuer, or anyone on behalf of the Issuer, and all renewals thereof, accretions thereto, substitutions therefor and all interest, income and revenue arising therefrom or by virtue thereof; (ix) all

amounts received with respect to all of the foregoing; and (x) all proceeds of the foregoing (collectively, the "**Collateral**").

Issuer Accounts

Pursuant to the Master Trust Indenture, the Issuer will establish various accounts ("**Issuer Accounts**") – Program Accounts, Series Accounts and Securities Accounts. Each Issuer Account will be under the sole dominion and exclusive control of the Indenture Trustee. Each Program Account and each Series Account will be established as a segregated trust account with an Eligible Institution (an "**Eligible Deposit Account**"). If the institution holding any Program Account or Series Account ceases to be an Eligible Institution, the Issuer will establish a new Program Account or Series Account that is an Eligible Deposit Account and transfer any funds or other property from such existing Program Account or Series Account to such new Program Account or Series Account. Each Securities Account will be established as a segregated securities trust account with an affiliate of an Eligible Institution, which affiliate is licensed to maintain securities accounts (an "**Eligible Securities Account**"). If the institution holding any Securities Account ceases to be an affiliate of an Eligible Institution, the Issuer will establish a new Securities Account that is an Eligible Securities Account and transfer any funds or other property from such existing Securities Account to such new Securities Account. The Indenture Trustee has no obligation to reconcile any Issuer Account against another Issuer Accounts or against the Program Agreements.

Program Accounts

Collection Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Collection Account**"). The Indenture Trustee will hold the Collection Account for the benefit of the Indenture Trustee and the Specified Creditors. All Available Collections received by the Issuer will be credited to the Collection Account. "**Available Collections**" means: (i) all amounts received by the Servicer in respect of the Clean Energy Adjustment from Specified Consumers, (ii) IESO Carrying Cost payments (other than the IESO Cash Reserve Deposit Amount); and (iii) amounts received by the Issuer pursuant to derivative agreements. See *"Ontario Fair Hydro Plan"* and *"The Transferor and Servicer"*.

Interest Accumulation Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Interest Accumulation Account**"). The Indenture Trustee will hold the Interest Accumulation Account for the benefit of the Indenture Trustee and the Specified Creditors. The Interest Accumulation Account has been established for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of interest in respect of all Issuer Funding Obligations.

Principal Accumulation Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Principal Accumulation Account**"). The Indenture Trustee will hold the Principal Accumulation Account for the benefit of the Indenture Trustee and the Specified Creditors. The Principal Accumulation Account has been established for the purpose of accumulating funds to be used to make repayments in respect of all Issuer Funding Obligations.

IESO Cash Reserve Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**IESO Cash Reserve Account**"). The Indenture Trustee will hold the IESO Cash Reserve Account for the benefit of the Indenture Trustee and the Specified Creditors. The Issuer will deposit the IESO Cash Reserve Deposit Amount in the IESO Cash Reserve Account on the earlier of (x) April 30, 2021, and (y) the receipt by the Issuer of the IESO Cash Reserve Deposit Amount from the IESO. Amounts in the IESO Cash Reserve Account are not available to pay principal on the Senior Notes.

Program Cash Reserve Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Program Cash Reserve Account**"). The Indenture Trustee will hold the Program Cash Reserve Account for the benefit of the Indenture Trustee and the Specified Creditors. The Issuer will deposit the Program Cash Reserve Required Amount in the Program Cash Reserve Account during the Reference Period commencing May 1, 2021 pursuant to the application of amounts available therefor under the Collection Account Waterfall. Amounts in the Program Cash Reserve Account will be available to pay interest and principal on the Senior Notes.

Refinancing Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Refinancing Account**"). The Indenture Trustee will hold the Refinancing Account for the benefit of the Indenture Trustee and the Specified Creditors. All proceeds arising from Notes and Borrowings related to Refinancings will be credited to the Refinancing Account.

Protection Account

Pursuant to the Master Trust Indenture, before the making of any demand for payment under the Change of Law Protection Agreement, the Issuer will establish an Eligible Deposit Account in the name of the Indenture Trustee (the "**Protection Account**"). The Indenture Trustee will hold the Protection Account for the benefit of the Indenture Trustee and the Specified Creditors. On the occurrence of a Protection Event and a written payment demand from the Indenture Trustee to the Province of Ontario, all payments received from the Province of Ontario under the Change of Law Protection Agreement will be credited to the Protection Account.

Series Accounts

Series Capital Reserve Account

In connection with the creation of a Series of Issuer Funding Obligations, the Issuer may establish an Eligible Deposit Account in the name of the Indenture Trustee (a "**Series Capital Reserve Account**"). The Indenture Trustee will hold each Series Capital Reserve Account for the benefit of the Indenture Trustee and the applicable Debtholders or Derivative Counterparties. A Series Capital Reserve Account may be established for the sole purpose of allowing the Issuer to accumulate funds to be used to make repayments in respect of a Series of Issuer Funding Obligations. Details of any period of accumulation and the amounts to be accumulated will be specified in the applicable Funding Obligation Agreement.

Series Finance Reserve Account

In connection with the creation of a Series of Issuer Funding Obligations, the Issuer may establish an Eligible Deposit Account in the name of the Indenture Trustee (a "**Series Finance Reserve Account**"). The Series Finance Reserve Account will be under the sole dominion and exclusive control of the Indenture Trustee. The Indenture Trustee will hold each Series Finance Reserve Account for the benefit of the applicable Debtholders or Derivative Counterparties. A Series Finance Reserve Account may be established for the sole purpose of allowing the Issuer to reserve funds to pay finance charges for a Series of Issuer Funding Obligations. Details of any reserve requirements will be specified in the applicable Funding Obligation Agreement.

Securities Accounts

In connection with the establishment of any Program Account (other than the Protection Account) or Series Account, the Issuer may establish an Eligible Securities Account in the name of the Indenture Trustee (a "**Securities Account**"). The Indenture Trustee will hold each Securities Account for the benefit of the applicable Specified Creditors. A Securities Account may be established for the purpose of allowing the Issuer to invest funds held in any Program Account or Series Account in Eligible Investments. Each Securities Account may relate to only one Program Account or Series Account. Funds in each Program Account and Series Account will be invested in Eligible

Investments at the direction of the Manager using the associated Securities Account. Additionally, neither the Indenture Trustee nor the Manager will be responsible for any losses incurred in the investment of any funds in any Eligible Investments and any insufficiency in an Issuer Account resulting from any loss on Eligible Investments.

Credit Enhancement Agreements and Liquidity Agreements

A Series or Tranche of Issuer Funding Obligations may have the benefit of one or more additional forms of credit enhancement—referred to herein as credit enhancement agreements—such as a letter of credit, surety bond or loan facility. In addition, a Series or Tranche of Notes may have the benefit of one or more forms of liquidity agreements—referred to herein as liquidity agreements—such as a liquidity facility. Whether a Series or Tranche of Issuer Funding Obligations has the benefit of a credit enhancement agreement or a liquidity agreement, including how any payments made pursuant to such agreement will be applied, will be set out in the applicable Funding Obligation Agreement and the related Term Sheet (where applicable).

Payment Waterfalls Prior to Acceleration

All amounts received by the Issuer and all amounts to be paid by the Issuer from a Program Account or Series Account will be made in accordance with the payment waterfalls described below. All payments or transfers described in the sections below will be made by the Paying Agent based on payment instructions provided by the Manager. See "*— Covenants of the Issuer — Payment Instructions*".

Collection Account

Subject to the paragraph below, on each Payment Date (after giving effect to the distributions described in the first paragraph under "*— IESO Cash Reserve Account*"), all amounts on deposit in the Collection Account will be distributed in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted) (the "**Collection Account Waterfall**"):

(a) first, to the payment or remittance of taxes for which a governmental authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(b) second, to pay fees, expenses and reimbursement amounts owing to the Issuer Trustee and the Indenture Trustee up to a maximum aggregate amount equal to (i) $150,000, multiplied by (ii) the number of Series of Senior Funding Obligations outstanding on such Payment Date, divided by (iii) 12;

(c) third, *pari passu* (i) to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Senior) for such Payment Date, and (ii) to pay all Derivative Funding Obligations (other than termination payments);

(d) fourth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Subordinated) for such Payment Date;

(e) fifth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Junior Subordinated) for such Payment Date;

(f) sixth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Warehouse) for such Payment Date;

(g) seventh, *pari passu* (i) to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Senior) for such Payment Date, and (ii) to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is not the defaulting party or the sole affected party;

(h) eighth, to pay all fees and other amounts (other than principal or interest) owing in respect of Senior Funding Obligations;

(i) ninth, to pay fees, expenses and reimbursement amounts owing to the Manager;

(j) tenth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Subordinated) for such Payment Date;

(k) eleventh, to pay all fees and other amounts (other than principal or interest) owing in respect of Subordinated Funding Obligations;

(l) twelfth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Junior Subordinated) for such Payment Date;

(m) thirteenth, to transfer to the Program Cash Reserve Account, the amount, if any, by which the amount on deposit in the Program Cash Reserve Account is less than the Program Cash Reserve Required Amount;

(n) fourteenth, to transfer to any Series Account (other than any Series Account related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations), the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(o) fifteenth, to transfer to any Series Account related solely to Subordinated Funding Obligations, the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(p) sixteenth, to pay all fees and other amounts (other than principal or interest) owing in respect of Junior Subordinated Funding Obligations;

(q) seventeenth, to transfer to any Series Account related solely to Junior Subordinated Funding Obligations, the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(r) eighteenth, to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is the defaulting party or the sole affected party;

(s) nineteenth, to pay the amount required pursuant to the Declaration of Trust to the Issuer Trustee for the account of the beneficiaries of the Issuer;

(t) twentieth, to pay all indemnity amounts owing to the Manager;

(u) twenty-first, *pari passu* (i) to pay fees, expenses, reimbursement and indemnity amounts owing to the Issuer Trustee and the Indenture Trustee not previously paid pursuant to paragraph (b), (ii) to the payment or remittance of taxes not previously paid pursuant to paragraph (a), and (iii) to pay all amounts owing to Specified Creditors not specifically referred to above; in each case, including, for each referenced party, any amounts payable to their respective affiliates under the terms of any relevant indemnity; and

(v) twenty-second, any amounts remaining (i) to be held in the Collection Account for distribution in the above order of priority on the next Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full and discharged, and all other amounts have been paid in full, to pay to the Issuer.

Notwithstanding the foregoing, (i) the transfer of any amounts deposited by the IESO into the Collection Account on account of the IESO Cash Reserve Deposit Amount to the IESO Cash Reserve Account, and (ii) the transfer of any amounts deposited in the Collection Account on account of one-time transaction costs and expenses in connection with the incurrence of Issuer Funding Obligations on or within three business days of the closing date of such transaction, will, in each case, be made without reserving for or paying amounts which are senior in priority to such obligation under the Collection Account Waterfall.

Interest Accumulation Account

On each Interest Payment Date, the Paying Agent will distribute all amounts on deposit in the Interest Accumulation Account in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay all interest that is due and payable on Senior Funding Obligations on such Interest Payment Date;

(b) second, to pay all interest that is due and payable on Subordinated Funding Obligations on such Interest Payment Date, so long as after making this payment, the amount remaining on deposit in the Interest Accumulation Account at least equals the amount of accrued and unpaid interest on Senior Funding Obligations as of such Interest Payment Date; and

(c) third, to pay all interest that is due and payable on Junior Subordinated Funding Obligations on such Interest Payment Date, so long as after making this payment, the amount remaining in the Interest Accumulation Account at least equals the amount of accrued and unpaid interest on Senior Funding Obligations and Subordinated Funding Obligations as of such Interest Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Interest Accumulation Account for distribution in the above order of priority on the next Interest Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

Principal Accumulation Account

On each Interest Payment Date (after making the applications provided for in the waterfall under "— *Interest Accumulation Account*"), if any interest that is due and payable on Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations has not been paid, an amount equal to such deficiency will be withdrawn from the Principal Accumulation Account and applied to the payment of interest due and payable on such Interest Payment Date, provided that if the amount to be applied pursuant to this paragraph is insufficient to pay all such interest, the application of such amounts will be made first to Senior Funding Obligations, then to Subordinated Funding Obligations, and finally to Junior Subordinated Funding Obligations, in each case, on a *pro rata* basis.

On each Principal Payment Date (after making the applications provided for in the previous paragraph), the Paying Agent will distribute all amounts on deposit in the Principal Accumulation Account in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay all principal that is due and payable on Warehouse Obligations on such Principal Payment Date;

(b) second, to pay all principal that is due and payable on Senior Funding Obligations (other than Warehouse Obligations) on such Principal Payment Date;

(c) third, to pay all principal that is due and payable on Subordinated Funding Obligations on such Principal Payment Date, so long as after making this payment, the amount remaining in the Principal Accumulation Account at least equals the Required Principal Accumulation Amount (Senior) as of such Principal Payment Date; and

(d) fourth, to pay all principal that is due and payable on Junior Subordinated Funding Obligations on such Principal Payment Date, so long as after making this payment, the amount remaining in the Principal Accumulation Account at least equals the sum of the Required Principal Accumulation Amount (Senior) and the Required Principal Accumulation Amount (Subordinated) as of such Principal Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Principal Accumulation Account for distribution in the above order of priority on the next Interest Payment Date or Principal Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

IESO Cash Reserve Account

On each Payment Date beginning in November, 2021, an amount equal to the lesser of (i) the amounts to be paid or transferred pursuant to items (a) through (e) of the Collection Account Waterfall, and (ii) the amount, if any, by which the amount on deposit in the IESO Cash Reserve Account exceeds the IESO Cash Reserve Required Amount will be withdrawn from the IESO Cash Reserve Account and applied to the making of such payments or transfers in the order provided for in the Collection Account Waterfall.

On each Payment Date, if the amounts available for distribution from the Collection Account and from the preceding sentence are insufficient to pay or transfer items (a) through (e) of the Collection Account Waterfall, an amount equal to such deficiency will be withdrawn from the IESO Cash Reserve Account and applied to the making of such payments or transfers in the order provided for in the Collection Account Waterfall. Amounts in the IESO Cash Reserve Account are not available to pay principal on the Senior Notes. Once all funds in the IESO Cash Reserve Account have been paid out, the IESO Cash Reserve Account will be closed.

Program Cash Reserve Account

If, on any Payment Date, the amount on deposit in the Interest Accumulation Account is less than the sum of the Interest Accrual Amount (Senior), the Interest Accrual Amount (Subordinated) and the Interest Accrual Amount (Junior Subordinated), an amount equal to such deficiency will be withdrawn from the Program Cash Reserve Account and deposited in the Interest Accumulation Account.

If, on any Principal Payment Date, the amount available in the Principal Accumulation Account (in accordance with the provisions applicable thereto) is insufficient to pay all principal that is due and payable on Warehouse Obligations, other Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as applicable (see "— *Principal Accumulation Account*"), on such Principal Payment Date (after making the applications provided for in the previous paragraph), amounts on deposit in the Program Cash Reserve Account will be used in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay the deficiency on principal that is due and payable on Warehouse Obligations on such Principal Payment Date;

(b) second, to pay the deficiency on principal that is due and payable on Senior Funding Obligations (other than Warehouse Obligations) on such Principal Payment Date;

(c) third, to pay the deficiency on principal that is due and payable on Subordinated Funding Obligations on such Principal Payment Date; and

(d) fourth, to pay the deficiency on principal that is due and payable on Junior Subordinated Funding Obligations on such Principal Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Program Cash Reserve Account for distribution in the above order of priority on the next Interest Payment Date or Principal Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

Refinancing Account

On each Principal Payment Date, the Paying Agent will transfer from the Refinancing Account to the Principal Accumulation Account the lesser of (i) the amount on deposit in the Refinancing Account, and (ii) the amount by which the sum of the Principal Accumulation Amounts for all Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations on such Principal Payment Date (without reference

to any refinancing notice) exceeds the amount on deposit in the Principal Accumulation Account. After all Issuer Funding Obligations have been paid in full, any amounts remaining in the Refinancing Account will be transferred to the Collection Account.

Protection Account

On each date in respect of which the Province of Ontario makes a payment pursuant to the Change of Law Protection Agreement, the Paying Agent will, prior to making any payments under any other payment waterfall, distribute all amounts in the Protection Account solely to satisfy payments in respect of Approved Obligations as set out in the written payment statement delivered by the Manager to the Province of Ontario under the Change of Law Protection Agreement in the order of priority the applicable Obligation Secured has under the applicable payment waterfall.

On the Province of Ontario paying any amount in respect of an Approved Obligation into the Protection Account, the Province of Ontario will be subrogated and entitled to each applicable Specified Creditor's rights and interests under and in respect of the Approved Obligation to the extent of the amounts paid to the Specified Creditor out of the Protection Account, and shall be entitled to the right to be paid the applicable Subrogation Amount, the benefits of the Collateral and all proceeds therefrom.

Series Accounts

If, after giving effect to payments made on any Payment Date, the amount in the Collection Account is insufficient to make all required payments to Specified Creditors on such date, amounts on deposit in any Series Account may be withdrawn from such Series Account and allocated to the applicable Specified Creditors in accordance with the related Funding Obligation Agreement.

Covenants of the Issuer

Payment of Principal and Interest

The Issuer will duly and punctually pay the principal of and interest due on the Issuer Funding Obligations in the manner specified in the Master Trust Indenture and any related Funding Obligation Agreement.

Use of Proceeds

The Issuer will use the proceeds of such indebtedness solely for: (i) the acquisition by the Issuer of an Investment Interest; (ii) the redemption, repayment or repurchase of any existing Issuer Funding Obligations; (iii) the funding of Issuer Accounts; and (iv) the payment of transaction fees and expenses in connection with the incurrence of Issuer Funding Obligations.

Legal Existence

The Issuer will do or cause to be done all things necessary to preserve its existence and maintain its status as a Financing Entity.

Separateness Covenants

The Issuer will take all reasonable steps to maintain its identity as a distinct entity with assets and liabilities distinct from those of the Manager and any of its affiliates. Such steps include: (i) conducting all transactions with the Manager strictly on an arm's length basis and in good faith; (ii) allocating all overhead expenses for items shared between the Issuer and the Manager on the basis of actual use to the extent practicable; (iii) conducting its affairs strictly in accordance with the Declaration of Trust; (iv) maintaining its books and records separate from those of the Manager or any affiliate thereof; (v) preparing its financial statements separately from those of the Manager and ensuring that any consolidated financial statements of the Manager that include the Issuer have notes clearly stating that the Issuer is a separate entity; (vi) only maintaining bank accounts or other depository accounts to which the Issuer alone is the account party and from which only the Issuer or its agent has the power to make withdrawals; (vii) paying

its operating expenses from its own assets (including, reimbursing the Manager for any such expenses); (viii) maintaining its property in such a manner that it is not costly or difficult to segregate, ascertain or otherwise identify its individual assets from or against those of the Manager or any affiliate thereof; and (ix) not becoming liable to any person for any obligations of the Manager or any affiliate thereof.

Performance of Obligations

The Issuer agrees that it will (i) perform and observe all of its obligations and agreements contained in the Master Trust Indenture, the Declaration of Trust, the Master Transfer and Servicing Agreement, the other Program Agreements and in the instruments and agreements relating to the Collateral; (ii) diligently pursue any and all actions to enforce its rights each instrument or agreement included in the Collateral except as expressly provided in any Program Agreement; and (iii) enforce the Servicer's material obligations under the Master Transfer and Servicing Agreement and the Manager's material obligations under the Management Agreement.

Funding Obligations

The Issuer will ensure that all indebtedness is incurred pursuant to and in accordance with the provisions of the Master Trust Indenture, as described under "— *Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations*". The Issuer will not enter into any Funding Obligation Agreement (other than a Funding Obligation Agreement relating to Warehouse Obligations) that the Manager believes, acting reasonably, would likely require the Issuer to pay principal on such Issuer Funding Obligation by means of a Refinancing (other than a Pre-Approved Refinancing).

Financial Statements; Statement as to Compliance

The Issuer will deliver, or cause to be delivered to the Indenture Trustee and the Rating Agencies: (i) within 140 days after the end of each fiscal year, audited financial statements of the Issuer; (ii) within 90 days after the end of each fiscal quarter (other than the last fiscal quarter of each fiscal year), unaudited financial statements of the Issuer; and (iii) on an annual basis on or before March 31 of each year, a written statement concerning compliance with the conditions and covenants contained in the Master Trust Indenture and confirming that no Default or Event of Default has occurred or if a material Default or Event of Default has occurred, specifying the details thereof.

Payment Instructions

The Issuer will deliver to the Indenture Trustee and the Paying Agent (if the Paying Agent is not the Indenture Trustee) on a monthly basis, a payment instruction in respect of the Collection Account, which instruction shall set out the payments to be made on the following Payment Date and setting forth, among other things, (i) the amount of the payment to Debtholders (including a breakdown of principal and interest), (ii) any other transfers and payments to be made on such Payment Date, including amounts paid to the Indenture Trustee, the Issuer Trustee and the Manager, and (iii) the amounts on deposit in the Collection Account after giving effect to the foregoing payments. Similar payment instructions will also be delivered in respect of each other Program Account and Series Account, as and when payments are to be made from those accounts.

Notice of Certain Events; Protection Event

The Issuer will give the Indenture Trustee and each Rating Agency prompt written notice of (i) each Event of Default, (ii) each breach on the part of the Issuer or the Servicer of its respective obligations under the Master Transfer and Servicing Agreement (including any Servicer Default), (iii) each breach on the part of the Manager of its obligations under the Management Agreement, (iv) any default of the Issuer or a Derivative Counterparty under a derivative agreement, and (v) any Protection Event.

No Other Business

The Issuer will not engage in any activity other than the activities set forth in the Declaration of Trust or the other Program Agreements, the material provisions of which are described in this confidential shelf offering memorandum under "The Issuer".

Amendments to Program Agreements

Unless the Rating Agency Condition is satisfied, the Issuer will not make any material amendments to any Program Agreement (other than the Master Trust Indenture and individual trade confirmations under derivative agreements), or enter into any Co-Owner Agreement. Without limiting the foregoing sentence, the Issuer will not:

(a) enter into any Co-Owner Agreement without the consent of Controlling Class Creditors by Ordinary Resolution;

(b) amend, supplement, modify, restate or replace, or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to, any of the Program Agreements (other than the Master Trust Indenture, the derivative agreements and the Declaration of Trust) if any such amendment, supplement, modification, restatement or replacement, or waiver or consent, could reasonably be considered to be materially prejudicial to the rights or interests of any Specified Creditor(s), except as expressly permitted by such Specified Creditor(s) and subject to the Province of Ontario having been given prior notice;

(c) consent, if consent is required, to the resignation of the Manager under the Management Agreement; or

(d) amend the Declaration of Trust if such amendment would have or reasonably be expected to have an Adverse Effect; provided that if such amendment would have such result, such amendment may only be made if the Issuer has obtained the consent of the Debtholders affected by such amendment by Ordinary Resolution.

Regarding amendments to the Master Trust Indenture or a Supplemental Indenture, see "— *Amendments to Master Trust Indenture*".

Consolidation; Sale of Assets

The Issuer may not consolidate with or merge into any other person, or sell, convey, exchange, transfer or otherwise dispose of any of its properties or assets included in the Collateral to any person (each, a "**transaction**"), unless:

(a) the entity formed by or surviving the consolidation or merger (if other than the Issuer) or the entity that acquires by conveyance or transfer formed by or surviving the consolidation or merger, by conveyance or transfer, as applicable: (i) is a financing entity; (ii) is organized under the laws of Canada or any province or territory thereof; (iii) is not a non-resident for purposes of the *Income Tax Act* (Canada); (iv) is not subject to regulation as an "investment company" under the Investment Company Act, (v) expressly assumes, pursuant to an assignment and/or assumption agreement or supplement, the due and punctual payment of all Obligations Secured then outstanding and the performance or observance of all of the Issuer's agreements and covenants under each of the Program Agreements to which the Issuer is a party; and (vi) in the case of a conveyance or transfer only, expressly agrees, pursuant to such assignment and/or assumption agreement or supplement, that (A) all right, title and interest conveyed or transferred is subject and subordinate to the security interest of the Indenture Trustee and (B) it will make all filings required by applicable securities laws in connection with any Notes;

(b) no Event of Default has occurred and is continuing immediately after the transaction;

(c) the Issuer has delivered to the Indenture Trustee an officer's certificate and an opinion of counsel, each stating that (i) such transaction and the agreements delivered in connection with such transaction comply with the terms and conditions in the Master Trust Indenture, (ii) all conditions precedent in the Master Trust Indenture relating to the transaction have been complied with, and (iii) each agreement delivered in connection with such transaction has been duly authorized,

executed and delivered, and are valid, binding and enforceable against the surviving entity or transferee, as applicable;

(d) the Rating Agency Condition has been satisfied with respect to such transaction; and

(e) any action as is necessary to maintain the first priority perfected security interest in the Collateral has been taken.

No Borrowing; Guarantees, Loans; Restricted Payments

The Issuer will not issue, incur, assume, guarantee or otherwise become liable for any indebtedness except for Funding Obligations. Additionally, the Issuer will not, except as contemplated by the Master Trust Indenture or the Declaration of Trust, make any loan or advance or credit to, or guarantee, endorse or otherwise become contingently liable in connection with the obligations of, or own, purchase or acquire any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other person.

The Issuer is permitted to declare or make payable any amounts to the owner of units in the Issuer as permitted by and in accordance with the Declaration of Trust, and redeem, purchase, retire or otherwise acquire for value any units in the Issuer, provided that the Issuer may only satisfy the distribution declared or made payable, or the redemption or purchase price of such units to the extent that cash or property is available for such purpose, subject to the payment waterfalls provided for in the Master Trust Indenture. If the Issuer is restricted from satisfying the foregoing amounts in cash or property, then the Issuer will satisfy such amounts through the issuance of additional units and/or a promissory note to its unitholders in accordance with the Declaration of Trust.

Subordinated Funding Obligations and Junior Subordinated Funding Obligations

Notwithstanding anything in a Funding Obligation Agreement to the contrary, the Issuer may not redeem any Series or Tranche of Subordinated Funding Obligations or Junior Subordinated Funding Obligations unless the following conditions are satisfied: (i) no Default or Event of Default has occurred and is continuing; (ii) all Issuer Accounts are fully funded in accordance with the Master Trust Indenture and any applicable Funding Obligation Agreement; and (iii) the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations after giving effect to such redemption will not be less than 35% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations.

The Issuer will not permit (i) the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be less than 35% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations, or (ii) the aggregate outstanding principal amount of Junior Subordinated Funding Obligations to be less than 10% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations.

Security Matters

The Issuer will not (i) permit any lien, charge, excise, claim, security interest, mortgage or other encumbrance (other than permitted liens) to be created on or extend to the Collateral, (ii) release any security or guarantee in respect of the Collateral, (iii) sell, transfer, exchange or otherwise dispose of any of the Collateral except as expressly permitted under the Master Trust Indenture, or (vi) change its name, jurisdiction of formation or type of organization, unless it has provided the Indenture Trustee and each Rating Agency with prior written notice and it has first made all filings and taken all actions necessary to continue and maintain the Indenture Trustee's first priority security interest in the Collateral.

Other Covenants

In addition to the covenants contained in any Supplemental Indenture or any other Funding Obligation Agreement and the other covenants described in this section, the Issuer agrees that:

- upon the written request of the Indenture Trustee, it will use reasonable commercial efforts, following any (i) termination or resignation of the Servicer, the Manager or the Paying Agent, or (ii) termination, non-renewal or expiry of a liquidity agreement or a credit enhancement agreement, to appoint and enter into an agreement with a successor to such Servicer, Manager or Paying Agent, or replace or renew such liquidity agreement or credit enhancement agreement, in form and substance the same as the previously existing Program Agreement;

- it will not claim any credit on or make any deduction from the principal and interest payable on the Notes or Borrowings (other than amounts withheld or deducted in accordance with the Master Trust Indenture); or

- it will not take any action that would cause it to be treated as engaged in a "trade or business within the United States" for U.S. federal income tax purposes.

Amendments to Master Trust Indenture

Amendments not Requiring Consent of Specified Creditors

The Issuer and the Indenture Trustee may amend, supplement or otherwise modify the Master Trust Indenture or any Supplemental Indenture without the consent of any Specified Creditor upon prior notice to each Rating Agency and the Province of Ontario and delivery by the Issuer to the Indenture Trustee of an officer's certificate to the effect that the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect. Such amendments to the Master Trust Indenture or any Supplemental Indenture may:

- evidence the succession or successive successions of another Financing Entity to the Issuer, and the assumption by such successor of the covenants of the Issuer in the Master Trust Indenture and the Notes;

- add to the covenants of the Issuer, or have the Issuer surrender any of its rights or powers under the Master Trust Indenture (or any Supplemental Indenture), for the benefit of the Debtholders of any or all Classes, Series or Tranches of Issuer Funding Obligations;

- cure any ambiguity, correct or supplement any provision in the Master Trust Indenture which may be inconsistent with any other provision in the Master Trust Indenture (or any Supplemental Indenture), to correct a clear clerical or administrative error, or make any other provisions for matters or questions arising under the Master Trust Indenture;

- provide for the issuance of any Series or Tranche of Notes and to set forth the terms thereof, and/or to add to the rights of the Noteholders of any Class, Series or Tranche;

- provide for the acceptance of a successor Indenture Trustee under the Master Trust Indenture;

- add any Events of Default relating to any or all Classes, Series or Tranches of Issuer Funding Obligations;

- provide for the consolidation of any financing entity and the Issuer into a single entity or the transfer of assets in any financing entity to the Issuer;

- if the IESO is replaced under the Master Transfer and Servicing Agreement, make any necessary changes to the Master Trust Indenture;

- provide for additional forms of credit enhancement for any Class, Series or Tranche of Issuer Funding Obligations;

- facilitate the issuance of foreign currency Issuer Funding Obligations;

- comply with any regulatory, accounting or tax laws, or changes to any ratings criteria;

- enable the Issuer to file a registration statement for the offering of securities registered under the Securities Act and to comply with Regulation AB thereunder; or

- qualify for sale treatment under generally accepted accounting principles.

The Master Trust Indenture or any Supplemental Indenture may also be amended by the Issuer and the Indenture Trustee without the consent of any Specified Creditor (but with prior notice to each Rating Agency and the Province of Ontario) in the following circumstances, provided that the Issuer delivers to the Indenture Trustee an officer's certificate to the effect that (i) the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect, and (ii) such amendment is required to comply with law, or to conform or be consistent with the statements contained in this confidential shelf offering memorandum:

- to facilitate compliance with changes in laws or regulations applicable to the Issuer or the transactions governed by the Program Agreements; or

- to cause the provisions of the Master Trust Indenture to conform to or be consistent with or in furtherance of the statements made in this confidential shelf offering memorandum with respect to the Master Trust Indenture or any Supplemental Indenture.

Additionally, the Master Trust Indenture or any Supplemental Indenture may also be amended by the Issuer and the Indenture Trustee without the consent of any Specified Creditor (but with prior notice to each Rating Agency and the Province of Ontario) in the following circumstances, provided that (i) the Issuer delivers to the Indenture Trustee an officer's certificate to the effect that the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect and (ii) the Rating Agency Condition is satisfied with respect to such amendment:

- to add provisions to, or change in any manner or eliminate any of the provisions of, the Master Trust Indenture or any Supplemental Indenture;

- to modify in any manner the rights of the Specified Creditors under the Master Trust Indenture or any Supplemental Indenture; or

- to provide for those changes necessary for compliance with securities law requirements or banking laws or regulations.

The Indenture Trustee may, but is not obligated to, enter into any amendment which adversely affects its rights, duties, benefits, protections, privileges or immunities under the Master Trust Indenture (or any Supplemental Indenture).

Amendments Requiring Consent of Debtholders

The Issuer and the Indenture Trustee may amend, supplement or otherwise modify and amend the Master Trust Indenture or any Supplemental Indenture for reasons other than those stated in the prior section ("*— Amendments not Requiring Consent of Specified Creditors*"), with prior notice to each Rating Agency and the Province of Ontario, the consent of Debtholders of each Class, Series or Tranche of Issuer Funding Obligations affected by that amendment, supplement or other modification by Ordinary Resolution, and satisfaction of the Rating Agency Condition. However, if the amendment, supplement or other modification would result in any of the following events occurring, it may be made only with the consent of each Debtholder of Issuer Funding Obligations affected thereby and satisfaction of the Rating Agency Condition:

- a change in an Interest Payment Date, Principal Payment Date or Principal Payment Default Date for any Issuer Funding Obligation;

- a reduction in the principal amount of, or interest rate on, any Note, or a change in the method of computing the outstanding principal amount in a manner that is adverse to any Debtholder;

- a reduction in the amount of a discount note payable upon its acceleration;

- a reduction in the percentage in outstanding principal amount of Issuer Funding Obligations of any Class, Series or Tranche, the consent of whose holders is required for modification or amendment of the Master Trust Indenture, any Supplemental Indenture or any related agreement or for waiver of compliance with provisions of the Master Trust Indenture or for waiver of defaults and their consequences provided for in the Master Trust Indenture;

- a modification of any of the provisions governing the amendment of the Master Trust Indenture or any Supplemental Indenture, or waivers of past defaults, except to increase any percentage of Debtholders required to consent to any such amendment or waiver, or to provide that certain other provisions of the Master Trust Indenture cannot be modified or waived without the consent of each Debtholder affected by such modification;

- a change in the city or political subdivision so designated with respect to any Class, Series or Tranche of Notes where any principal of, or interest on, any Note is payable; or

- a change in the method of computing the amount of principal of, or interest on, any Note on any date.

Debtholder Approvals and Meetings

Access to Debtholder Lists

The Indenture Trustee will preserve the names and addresses of all Specified Creditors received by it in its capacity as Note registrar and those which it has received from the Issuer in accordance with the Master Trust Indenture. Three or more Debtholders of any Series or Tranche, each of whom has owned an Issuer Funding Obligation of such Series or Tranche for at least six months, may, by application to the Indenture Trustee in the prescribed form, obtain access to the current list of Debtholders held by the Indenture Trustee for purposes of communicating with other Debtholders concerning their rights under the Master Trust Indenture (or any Supplemental Indenture) or under the applicable Program Agreement.

Debtholder Meetings

The Master Trust Indenture sets out the mechanics for meetings of Debtholders. The Master Trust Indenture provides for meetings of Debtholders of any Class, Series or Tranche of Issuer Funding Obligations, of all Issuer Funding Obligations, of Controlling Class Obligations of a Series or of all Controlling Class Obligations (each of such groups of Debtholders being a "**Debtholder Group**"). The Indenture Trustee will call a meeting of a Debtholder Group upon request of the Issuer or Debtholders of at least 25% in aggregate outstanding principal amount of the applicable Issuer Funding Obligations. If the Indenture Trustee fails to convene, or cause to be convened, such a meeting after 30 days, the Issuer or those Debtholders may convene the meeting. The Indenture Trustee may call a meeting of a Debtholder Group at any time for any purpose. The quorum for any meeting is one or more persons holding (personally or as proxies) not less than 25% of the outstanding principal amount of the Issuer Funding Obligations of the Debtholder Group entitled to vote at such meeting. Each Debtholder who is present, whether in person or by proxy, will have one vote for every $1,000 of outstanding principal amount of applicable Issuer Funding Obligations of which he or she shall be the holder.

Every question submitted to a meeting, except those matters requiring an Extraordinary Resolution, shall be decided by a majority of the votes (an "**Ordinary Resolution**"). Any matter requiring an Extraordinary Resolution shall be decided by the affirmative vote of Controlling Class Creditors holding not less than 66⅔% of the outstanding principal amount of all Controlling Class Obligations (an "**Extraordinary Resolution**"). Such matters include:

- after the security has become enforceable, authorizing the Indenture Trustee to accept, in satisfaction or partial satisfaction, all or any part of the Collateral;

- after the security has become enforceable, sanctioning the selling of the Collateral or any part thereof or interest therein;

- after the security has become enforceable, authorizing the Indenture Trustee or any other person to bid or tender at any sale of the Collateral or any part thereof and take such actions in connection with such sale as it determines to be in the best interests of all Controlling Class Creditors;

- consenting to any compromise or arrangement by the Issuer with any creditor, creditors or class or classes of creditors or with the holders of any securities of the Issuer whose claims are payable from the Collateral;

- restraining any Debtholder from taking or instituting any suit, action or proceeding for the purpose of realizing on the Collateral or for the execution of any trust or power hereunder or for the appointment of a liquidator, receiver or trustee in bankruptcy or to have the Issuer liquidated or for any other remedy hereunder and to direct such Debtholder to waive any Event of Default on which any suit or proceeding is founded;

- requiring the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any other powers conferred upon it by the Master Trust Indenture of general application to all Classes of Issuer Funding Obligations, including the exercise of any rights of the Issuer under any of the Program Agreements upon the occurrence and during the continuance of an Event of Default, or cancel any declaration of acceleration made pursuant to the Master Trust Indenture upon such terms and/or conditions as may be decided;

- authorizing the Indenture Trustee, for and on behalf of all Debtholders, to file and prove a claim or debt against the Issuer or its property for an amount equivalent to the aggregate amount which may be payable in respect of all Issuer Funding Obligations, to value the Collateral, and to vote such claim or debt at meetings of creditors and generally act for and on behalf of all Debtholders in such proceedings as such Extraordinary Resolution may provide; and

- appointing a committee to exercise, on behalf of all Controlling Class Creditors, any powers of such Controlling Class Creditors as are exercisable by Extraordinary Resolution or other resolution (as specified in the Extraordinary Resolution appointing such committee).

Any resolution or instrument signed by the requisite number of Debtholders or Controlling Class Creditors, as applicable, shall have the same force and effect as a resolution duly passed at a meeting of such Debtholders or Controlling Class Creditors.

Any action or vote taken at a meeting (including by way of written instrument) of Debtholders of a Debtholder Group duly held in accordance with the Master Trust Indenture will be binding on all Debtholders of that Debtholder Group. An Extraordinary Resolution shall bind all Debtholders and all other Specified Creditors.

In determining whether Noteholders of the requisite principal amount have taken any action under the Master Trust Indenture, (i) Senior Notes owned by the Issuer, the Manager or any affiliate of either of them, and (ii) any Class of Notes (or portion thereof) in which the Province of Ontario has an interest will, in each case, be disregarded and deemed not to be outstanding at any time that a Specified Creditor other than the Province of Ontario has an interest in such Class of Notes. In determining whether the Indenture Trustee will be protected in relying upon any such action, only Senior Notes (or, in the case of the Province of Ontario, any Notes) which a responsible officer of the Indenture Trustee knows to be owned by the Issuer, OPG or any affiliate of either of them, or with respect to which the Province of Ontario has an interest pursuant to the Change of Law Protection Agreement, will be so disregarded.

Whenever an action may be taken by Debtholders of a specified percentage of outstanding principal amount of Issuer Funding Obligations and at such time there are outstanding Issuer Funding Obligations of any relevant Series denominated in a foreign currency, then the principal amount of the Issuer Funding Obligations of such Series which will be deemed to be outstanding for purposes of taking such action will be the amount of Canadian dollars which could be obtained for such principal amount at the market exchange rate on the applicable date.

Events of Default

General

Each of the following events is an "**Event of Default**":

(a) the Issuer's failure, for a period of 5 days, to pay interest on any Controlling Class Obligations when such interest becomes due and payable;

(b) the Issuer's failure to pay the principal of any Controlling Class Obligations at the Principal Payment Default Date;

(c) any representation or warranty in the Master Trust Indenture proves to be incorrect in any material respect when made and if capable of remedy, such incorrect representation or warranty is not remedied for a period of 60 days after the Indenture Trustee or Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer requesting remedy of that default and stating that as a result of such default, the interests of such Controlling Class Creditors are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(d) the Issuer's default in the performance, or breach, of any other of its covenants or warranties in the Master Trust Indenture, for a period of 60 days after the Indenture Trustee or Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer requesting remedy of that default and stating that as a result of such default, the interests of such Controlling Class Creditors are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(e) certain events of bankruptcy or insolvency of the Issuer, or the Issuer fails to maintain its existence or status as a Financing Entity;

(f) the Change of Law Protection Agreement ceases to be in full force and effect against the Province of Ontario, or the validity thereof, or the applicability thereof to the Province of Ontario or any Controlling Class Obligations is disaffirmed by the Province of Ontario;

(g) an Acceleration Event has occurred and Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer and the Indenture Trustee specifying the default;

(h) the Issuer's default in the performance of its covenant to deliver payment instructions for a period of three days after the Indenture Trustee has provided written notice thereof;

(i) at any time, the amounts withdrawn from the Program Cash Reserve Account prior to such time exceed the aggregate of (x) 0.50% of the largest outstanding principal amount of all Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations on or prior to such time, (y) the sum of all amounts deposited to the Program Cash Reserve Account, and (z) all interest and earnings (net of losses and investment expenses), if any, on funds credited to the Program Cash Reserve Account; or

(j) a Servicer Default occurs.

If Controlling Class Obligations constituting 25% or more of the outstanding principal amount of all Controlling Class Obligations have been accelerated in accordance with their Funding Obligation Agreements, the thresholds required in clauses (c), (d) or (g) will be deemed to have been met.

Waiver of Default

Subject to the summary provided for below under "*— Acceleration and Remedies — General*", Controlling Class Creditors may, by Ordinary Resolution, waive any past Default under the Master Trust Indenture so long as the Rating Agency Condition in respect of each Series or Tranche of Controlling Class Obligations has been satisfied.

Acceleration and Remedies

General

If an Event of Default (other than an Event of Default described in paragraph (e) or (f)) occurs and is continuing, either the Indenture Trustee or Controlling Class Creditors holding not less than 50% of the outstanding principal amount of all Controlling Class Obligations (treated as one class) may declare the outstanding principal amount of all Issuer Funding Obligations (other than Derivative Funding Obligations) to be immediately due and payable. If Controlling Class Obligations constituting 50% or more of the outstanding principal amount of all Controlling Class Obligations have been accelerated in accordance with their Funding Obligation Agreements, the 50% threshold required will be deemed to have been met. The occurrence of an Event of Default described in paragraph (e) or (f) results in an automatic acceleration of all Issuer Funding Obligations (other than Derivative Funding Obligations).

A declaration of acceleration or an automatic acceleration may be rescinded by Extraordinary Resolution if (i) the Issuer has paid all overdue interest, principal that has become due (other by reason of acceleration) on Controlling Class Obligations and other amounts set out in the Master Trust Indenture, and (ii) all Events of Default (other than non-payment of principal) have been cured or waived.

If Controlling Class Obligations are accelerated, the Indenture Trustee may amongst other things, (i) apply to a court for an order of sequestration and payment of amounts in respect of the Clean Energy Adjustment in accordance with the FHPA, (ii) take possession of the Collateral, (iii) appoint a receiver with respect to the Collateral, (iv) initiate proceedings in any court for the appointment of a receiver or for sale or foreclosure, (v) exercise rights, remedies, powers, privileges and claims under any Program Agreement, including the right to terminate and replace the Manager or the Servicer, or (vi) take any other action, suit, remedy or proceeding authorized or permitted by the Master Trust Indenture or by applicable law. The Indenture Trustee is not obligated to exercise any of its rights or powers under the Master Trust Indenture at the request or direction of any Controlling Class Creditors unless Controlling Class Creditors offer the Indenture Trustee a reasonable indemnity.

See *"Risk Factors — Risks Associated with the Unusual Nature of the Investment Asset" and "Risk Factors — Insolvency-Related Risks Relating to the Issuer"*.

Limitation on Available Amounts on Acceleration

If all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable after the Moratorium Period and before its scheduled payment date, maturity date or redemption date, the estimated Finance Amount used by the Financial Services Manager to determine the Clean Energy Adjustment for a period will be determined based on the extent, if any, to which the amount of the Clean Energy Adjustment is capable of being increased based on the Fair Allocation Amount for such period. See *"Ontario's Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*. However, upon such acceleration, all accelerated Senior Notes will be repaid in full before any further payments of principal are made to holders of subordinated indebtedness, including the subordinated debt held by OPG; therefore, collections of the Clean Energy Adjustment that would otherwise have been available to repay the principal amount of subordinated indebtedness in the absence of acceleration of the Senior Notes will instead be applied to repay accelerated Senior Notes. See *"Capital Markets Platform"*.

Payment Waterfall Upon Acceleration

After acceleration of the Issuer Funding Obligations (other than derivative agreements), any money or other property standing to the credit of an Issuer Account (except as set out below) or otherwise collected by the Indenture Trustee will be applied in the following priority:

(a) first, to the payment or remittance of taxes for which a governmental authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(b) second, to pay fees, expenses and reimbursement amounts owing to the Issuer Trustee and the Indenture Trustee;

(c) third, *pari passu* (i) to pay interest, fees and other amounts (other than principal) owing in respect of Senior Funding Obligations and (ii) to pay all Derivative Funding Obligations (other than termination payments);

(d) fourth, to pay interest, fees and other amounts (other than principal) owing in respect of Subordinated Funding Obligations;

(e) fifth, to pay interest, fees and other amounts (other than principal) owing in respect of Junior Subordinated Funding Obligations;

(f) sixth, to pay principal owing in respect of Warehouse Obligations;

(g) seventh, *pari passu* (A) to pay principal owing in respect of Senior Funding Obligations (other than Warehouse Obligations) and (B) to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is not the defaulting party or the sole affected party;

(h) eighth, to pay fees, expenses and reimbursement amounts owing to the Manager;

(i) ninth, to pay principal owing in respect of Subordinated Funding Obligations;

(j) tenth, to pay principal owing in respect of Junior Subordinated Funding Obligations;

(k) eleventh, to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is the defaulting party or the sole affected party;

(l) twelfth, to pay all indemnity amounts owing to the Manager;

(m) thirteenth, *pari passu* (i) to the payment or remittance of taxes not previously paid pursuant to paragraph (a), and (ii) to pay all amounts owing to Specified Creditors not specifically referred to above; in each case, including, for each referenced party, any amounts payable to their respective affiliates under the terms of any relevant indemnity; and

(n) fourteenth, to pay any remaining amounts to the Issuer.

However, amounts on deposit in a Series Account will first be used to satisfy all obligations owing to the Debtholders or Derivative Counterparties for whom such Series Account was established. Thereafter, such amounts will be applied in accordance with the priorities set out above. In addition, amounts on deposit in the Protection Account will only be used to satisfy the obligations for which those amounts were deposited.

Rights of Specified Creditors

No Specified Creditor will have the right to institute any proceeding, judicial or otherwise, with respect to the Master Trust Indenture, or for the appointment of a receiver or trustee or similar official, or for any other remedy under the Master Trust Indenture. A Controlling Class Creditor may exercise such rights if:

(a) the Issuer or a Controlling Class Creditor has previously given to the Indenture Trustee written notice of a continuing Event of Default;

(b) Controlling Class Creditors, by Ordinary Resolution, have made written request of the Indenture Trustee to institute the proceeding in its own name as Indenture Trustee;

(c) Controlling Class Creditors have offered the Indenture Trustee a satisfactory indemnity; and

(d) the Indenture Trustee has, for 60 days, failed to institute the proceeding.

Subject to certain powers which may only be exercised by Extraordinary Resolution, Controlling Class Creditors, by Ordinary Resolution, will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to all Issuer Funding Obligations. However, the Indenture Trustee may decline to follow such direction if it determines (based on advice from counsel) that such direction (i) conflicts with applicable law or the Master Trust Indenture, (ii) has a substantial likelihood of involving the Indenture Trustee in personal liability or (iii) is unjustly prejudicial to Controlling Class Creditors not taking part such direction. See "*— Debtholder Approvals and Meetings — Debtholder Meetings*" for a description of certain powers which may only be exercised by Extraordinary Resolution. Specified Creditors (other than Debtholders) do not have any right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee. Specified Creditors (other than Debtholders) will only have the right to receive proceeds following an Event of Default.

Limited Recourse

The obligation of the Issuer to pay principal of and interest on the Issuer Funding Obligations or any other amount payable to any Specified Creditor is subject to the allocation and payment provisions in the Master Trust Indenture and the applicable Funding Obligation Agreement and limited to amounts available from the Collateral. Neither the Indenture Trustee, the Manager nor the Issuer Trustee in its individual capacity, nor any holder of any unit in the Issuer, nor any of their respective owners, beneficiaries, agents, officers, directors, employees, successors or assigns will, in the absence of an express agreement to the contrary, be personally liable for the payment of the principal of or interest on the Notes or any other Issuer Funding Obligation, or for the Issuer's covenants and agreements contained in the Master Trust Indenture.

No Petition

Each Specified Creditor, by accepting its rights as a beneficiary under the Master Trust Indenture, agrees that until one year and one day following repayment in full of all Issuer Funding Obligations, it will not commence (or join in commencing) a bankruptcy, insolvency or similar proceeding under the laws of any jurisdiction against the Issuer.

Force Majeure

The Indenture Trustee and the Issuer Trustee will not be responsible or liable for any failure or delay in the performance of their obligations under the Master Trust Indenture arising out of or caused by, directly or indirectly, forces beyond their control, including loss or malfunctions of utilities, communications or computer services.

Satisfaction and Discharge

The Master Trust Indenture will cease to be of further effect with respect to any Class, Series or Tranche of Issuer Funding Obligations when:

(a) (x) in the case of Notes, all Notes of that Class, Series or Tranche which had been outstanding, with certain exceptions set forth in the Master Trust Indenture, have been delivered to the Indenture Trustee for cancellation or been cancelled, or (y) in the case of all other Issuer Funding Obligations, all Issuer Funding Obligations of that Class, Series or Tranche have been paid in full, as certified by the Issuer;

(b) the Issuer has paid all other sums payable by it under the Master Trust Indenture with respect to that Class, Series or Tranche of Issuer Funding Obligations; and

(c) the Issuer has delivered to the Indenture Trustee an officer's certificate and an opinion of external counsel each stating that the conditions precedent in the Master Trust Indenture relating to the satisfaction and discharge with respect to that Class, Series or Tranche of Issuer Funding Obligations have been complied with.

The Master Trust Indenture will cease to be of further effect when all Issuer Funding Obligations have been satisfied and discharged in accordance with the previous paragraph and all other Obligations Secured have been paid in full, as certified by the Issuer.

DESCRIPTION OF SENIOR NOTES

The following description of the Senior Notes is a summary of certain of their material attributes and characteristics, and does not purport to be complete. The terms and conditions set forth in this *"Description of Senior Notes"* section will apply to each Senior Note unless otherwise specified in the Term Sheet applicable to such Offering. For further particulars, reference should be made to the Master Trust Indenture and the Supplemental Indenture and Terms Document, if any, relating to the particular Series or Tranche of Senior Notes.

General

The Senior Notes will be issued under the Master Trust Indenture and will be Funding Obligations issued in connection with the financing program described under the heading "*Capital Markets Platform*". The specific terms and conditions of each Series of Senior Notes will be set forth in the Supplemental Indenture authorizing that Series and the specific terms and conditions of any Tranche of Senior Notes will be set forth in the Supplemental Indenture or the Terms Document authorizing that Tranche.

Under the Master Trust Indenture, the Issuer may issue an unlimited principal amount of Senior Notes. See "*Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations*". The Senior Notes will be direct obligations of the Issuer and secured in the manner provided for under the Master Trust Indenture. See "*Capital Markets Platform — Security*".

The Supplemental Indenture or Terms Document will describe the following terms of the Senior Notes:

- the Series designation;
- stated principal amount of the Senior Notes;
- whether such Senior Notes are of a particular Tranche of Senior Notes;
- the currency or currencies in which such Senior Notes will be denominated and in which payments of principal of, and interest on, such Senior Notes will or may be payable;

- the price at which such Series or Tranche of Senior Notes will be issued;
- the times at which such Series or Tranche of Senior Notes may, pursuant to any optional redemption provisions, be redeemed, and the other terms and provisions of any such redemption;
- the rate per annum at which such Series or Tranche of Senior Notes will bear interest, if any, or the formula or index on which such rate will be determined;
- each Interest Payment Date, each Principal Payment Date and the Principal Payment Default Date for such Series or Tranche of Senior Notes;
- the Principal Accumulation Date(s), if any, and Principal Accumulation Amount(s) for such Series of Senior Notes;
- the initial principal amount of such Senior Notes, and the means for calculating the outstanding principal amount of such Series or Tranche of Senior Notes;
- whether or not application will be made to list such Series or Tranche of Notes on any securities exchange;
- any events of default with respect to such Series or Tranche of Senior Notes;
- if such Series or Tranche of Senior Notes will be issued in whole or in part in the form of a global note, the terms and conditions, if any, upon which such global note may be exchanged for other individual Senior Notes, and the depository for such global note;
- if such Class, Series or Tranche of Senior Notes will be issued in whole or in part in registered form, bearer form or both, and if such Senior Notes will be issued with or without coupons;
- if such Class, Series or Tranche will have the benefit of a credit enhancement agreement or liquidity agreement, and the terms and provisions of the applicable agreement;
- the record date for any Interest Payment Date or Principal Payment Date of such Series or Tranche of Senior Notes, if different from the last of the month before the related Interest Payment Date or Principal Payment Date; and
- whether and under what conditions, additional amounts will be payable to Noteholders of such Series or Tranche of Notes.

Limitations

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer) or of the IESO. The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*.

Payments of Principal and Interest

Interest will accrue on the principal balance of each Series or Tranche of Senior Note at the interest rate specified in the related Term Sheet and will be payable on the Interest Payment Date(s) specified in the related Term Sheet. Principal of each Series or Tranche of Senior Notes will be payable in the amounts and on the Principal Payment Date(s) specified in the related Term Sheet. The Term Sheet applicable to a Series or Tranche of Senior Notes will

also set out the Principal Payment Default Date for such Senior Notes, which is the date on which failure to pay the principal amount of such Senior Notes will result in an Event of Default.

On each Payment Date, the Issuer will, to the extent funds are available therefor from the Collection Account (see "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account*"), transfer to the Interest Accumulation Account the aggregate amount of interest that has accrued on each Series of Senior Notes (together with all other amounts to be accrued for other Issuer Funding Obligations). On each Interest Payment Date for a Series or Tranche of Senior Notes, the Paying Agent will pay to the holders of such Senior Notes interest then due on such Senior Notes using amounts available therefor from the Interest Accumulation Account, the Principal Accumulation Account, the IESO Cash Reserve Account, the Program Cash Reserve Account and the Protection Account. See "*Change of Law Protection Agreement*" and "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration*".

On each Payment Date, the Issuer will, to the extent funds are available therefor from the Collection Account (see "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account*"), transfer to the Principal Accumulation Account the aggregate of the amounts the Issuer is required to accumulate for each Series of Senior Notes (together with all other amounts to be accumulated for other Issuer Funding Obligations). The Term Sheet applicable to a Series or Tranche of Senior Notes will set out the Principal Accumulation Amount(s) and the Payment Dates on which such amounts are to be accumulated for such Senior Notes. On each Principal Payment Date for a Series or Tranche of Senior Notes, the Paying Agent will pay to the holders of such Senior Notes the principal then due on such Senior Notes using amounts available therefor from the Principal Accumulation Account, the Program Cash Reserve Account and the Protection Account. See "*Change of Law Protection Agreement*" and "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration*". Holders of Senior Notes may receive principal payments earlier than an expected Principal Payment Date if an optional redemption occurs and may receive principal payments later than an expected Principal Payment Date if there are insufficient Available Collections. See "*Risk Factors*" for a discussion of factors that may affect the timing of principal payments on a Series or Tranche of Senior Notes. It is not an Event of Default if the stated principal amount of a Series or Tranche of Senior Notes is not paid in full on an expected Principal Payment Date. If the stated principal amount of a Senior Note is not paid in full by its Principal Payment Default Date, an Event of Default will occur. See "*Capital Markets Platform — Events of Default*".

Unless otherwise specified in a Term Sheet, the Issuer has designated the Indenture Trustee as its Paying Agent for all Senior Notes having a place of payment in Toronto, Ontario.

Optional Redemption of Senior Notes

If a Supplemental Indenture for any Series or Tranche of Senior Notes states that such Senior Notes will be redeemable, in whole at any time or in part from time to time, such Senior Notes will be redeemable at the option of the Issuer at the redemption price specified in the Supplemental Indenture. If less than all the Senior Notes of any Series or Tranche are to be redeemed at one time, the Senior Notes of such Series or Tranche to be redeemed will be selected by the Indenture Trustee on a pro rata basis according to the principal amount of such Senior Notes registered in the name of each holder thereof, or in such other manner as the Indenture Trustee may consider equitable.

Notice of any redemption will be delivered to each holder of the Senior Notes to be redeemed, electronically or by mail (postage prepaid) at the address of such holder appearing in the Note register (or published in an authorized newspaper in the case of Senior Notes held in bearer form) or otherwise in accordance with the procedures of the depository, at least 15 days but not more than 30 days before the redemption date, except that redemption notices may be delivered more than 30 days prior to the redemption date if the notice is issued in connection with a satisfaction and discharge of the Master Trust Indenture with respect to such Series or Tranche of Senior Notes. The notice of redemption will state (i) the portion of the principal amount thereof to be redeemed (provided that no Senior Notes in an aggregate principal amount of 1,000 units of the applicable currency or less will be redeemed in part), (ii) the redemption date and (iii) the redemption price. Unless the Issuer defaults in payment of the redemption price, on and after the redemption date, interest will cease to accrue on the Senior Notes or portions of the Senior Notes called for redemption. A replacement note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original note; provided, however, that, in the case of a global note, an appropriate notation may instead be made on such note to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof.

The Term Sheet for each Offering will identify the redemption provisions of the applicable Notes at the time of such Offering.

Purchase for Cancellation

The Issuer may purchase or otherwise acquire, at any time or from time to time, all or any of the outstanding Senior Notes of any Series or Tranche in the market or by invitation for tenders or by private contract at such prices as it may determine in its sole discretion. All such Senior Notes purchased by the Issuer will be cancelled. If, upon a tender, more Senior Notes of a Series or Tranche are tendered at the same lowest price than the Issuer is prepared to accept, the Senior Notes of such Series or Tranche to be purchased will be selected by the Indenture Trustee on a pro rata basis according to the principal amount of such Senior Notes registered in the name of each holder thereof, or in such other manner as the Indenture Trustee may consider equitable.

DEPOSITORY SERVICES

Except as otherwise provided below, the Senior Notes will be issued in "book-entry only" form and must be purchased, transferred, redeemed or exchanged through participants ("**Participants**") in the depository service of a depository chosen by the Issuer (the "**depository**") or its nominee, which include securities brokers and dealers, banks and trust companies. On the closing date of an Offering, the Issuer will cause a global certificate representing the Senior Notes to be delivered to, and registered in the name of, the depository or its nominee. Except as described below, no purchaser of Senior Notes will be entitled to a certificate or other instrument from the Issuer or the depository evidencing that purchaser's ownership thereof, and no purchaser will be shown on the records maintained by the depository except through a book-entry account of a Participant acting on behalf of such purchaser. Each purchaser of Senior Notes will typically receive a customer confirmation of purchase from the registered dealer from which the Senior Notes are purchased in accordance with the practices and procedures of that registered dealer. The practices of registered dealers may vary, but generally, customer confirmations are issued promptly after execution of a customer order. The depository will be responsible for establishing and maintaining book-entry accounts for its Participants having interests in the Senior Notes.

Neither the Issuer, the Indenture Trustee nor the Agents will assume any liability for: (i) any aspect of the records relating to the beneficial ownership of the Senior Notes held by the depository or the payments relating thereto; (ii) maintaining, supervising or reviewing any records relating to the Senior Notes; or (iii) any advice or representation made by or with respect to the depository or those contained in this confidential shelf offering memorandum and relating to the rules governing the depository or any action to be taken by the depository or at the direction of its Participants. The rules governing the depository provide that it acts as the agent and depository for the Participants. As a result, Participants must look solely to the depository and persons, other than Participants, having an interest in the Senior Notes must look solely to Participants for payments made by or on behalf of the Issuer to the depository in respect of the Senior Notes.

If: (i) required by applicable law; (ii) the depository notifies the Issuer in writing that the depository is no longer willing or able to discharge properly the responsibilities of a depository with respect to the Senior Notes and the Issuer is unable to locate a qualified successor; (iii) the Issuer determines the Senior Notes in book-entry only form should be exchanged for definitive certificates and the Issuer delivers a written notice to such effect to the Indenture Trustee; (iv) an Event of Default has occurred and Noteholders holding more than 50% of the Controlling Class Obligations of any Series of Senior Notes determine such book-entry system is no longer in the best interests of the holders of that Series; or (v) the book-entry system is terminated, then certificates representing the Senior Notes will be issued to the beneficial owners of Senior Notes.

Interest on the Senior Notes will be paid directly to CDS while the book-entry only system is in effect. If definitive certificates are issued, interest will be paid by wire transfer of immediately available funds to the accounts specified by the holders thereof or, if no such account is specified, by mailing a cheque to each such holder's registered address. Payment of principal, and the interest due, at maturity, will be paid directly to CDS while the book-entry only system is in effect. If definitive certificates are issued, payment of principal, and interest due, at maturity, will be paid upon surrender thereof at any office of the Trustee or as otherwise specified in the Indenture.

Manner of Effecting Transfer or Redemption

A transfer or redemption of Senior Notes held in "book-entry form" only will be effected through records maintained by the depository or its nominee with respect to interests of Participants, and on the records of Participants with respect to interests of persons other than Participants. Purchasers of such Senior Notes who are not Participants, but who desire to purchase, sell or otherwise transfer ownership of or other interests in the Senior Notes, may do so only through Participants.

DTC, Euroclear and Clearstream, Luxembourg

Where CDS acts as depository for a series of Senior Notes, to the extent the Issuer makes such series of Senior Notes eligible with The Depositary Trust Company ("**DTC**"), Euroclear Bank S.A./N.V., as operator of the Euroclear System ("**Euroclear**") and Clearstream Banking, société anonyme ("**Clearstream, Luxembourg**"), and the Issuer specifies as such in the Term Sheet with respect to the particular series of Senior Notes, holders may hold such series of Senior Notes through the accounts maintained by DTC, Euroclear or Clearstream, Luxembourg, as applicable, as participants in CDS only if they are participants of those systems, or indirectly through organizations which are participants of those systems.

In such case, DTC, Euroclear and Clearstream, Luxembourg will hold omnibus book-entry positions on behalf of their participants through customers' securities accounts in their respective depositaries which in turn will hold such positions in customers' securities accounts in the names of the nominees of the depositaries on the books of CDS. All securities in DTC, Euroclear and Clearstream, Luxembourg are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts.

Transfers of such Senior Notes by persons holding through Euroclear or Clearstream, Luxembourg participants, as applicable, will be effected through CDS, in accordance with CDS rules, on behalf of the relevant European international clearing system by its depositaries; however, such transactions will require delivery of transfer instructions to the relevant European international clearing system by the participant in such system in accordance with its rules and procedures and within its established deadlines (European time). The relevant European international clearing system will, if the transfer meets its requirements, deliver instructions to its depositaries to take action to effect the transfer of the Senior Notes on its behalf by delivering Senior Notes through CDS and receiving payment in accordance with its normal procedures for next-day funds settlement. Payments with respect to the Senior Notes held through Euroclear or Clearstream, Luxembourg will be credited to the cash accounts of Euroclear participants or Clearstream, Luxembourg participants in accordance with the relevant system's rules and procedures, to the extent received by its depositaries.

All information in this confidential shelf offering memorandum concerning CDS, DTC, Euroclear and Clearstream, Luxembourg, reflects the Issuer's understanding of the policies of such organizations which may change at any time without notice.

PLAN OF DISTRIBUTION

The Senior Notes may be sold by the Issuer directly pursuant to applicable statutory exemptions or through agents designated by the Issuer from time to time. Each Term Sheet will identify the Agents engaged in connection with the applicable Offering of Senior Notes and will also set forth the terms of the Offering of Senior Notes, including the net proceeds to the Issuer and, to the extent applicable, any fees payable to the Agents. The Agents will conditionally offer the Senior Notes for sale on a "best efforts" basis, if, as and when issued and delivered by the Issuer in accordance with the conditions contained in an agency agreement (the "**Agency Agreement**") between the Issuer, OPG and the Agents to be entered into on or about the date of each Term Sheet. The Agents will be paid a fee by the Issuer for their services rendered to the Issuer in connection with the offering, issue and sale of the Senior Notes. The obligations of the Agents under the Agency Agreement may be terminated upon the occurrence of certain stated events. The Agents may over-allot or effect transactions which stabilize or maintain the market price of the Senior Notes at a level different than that which might otherwise prevail in the open market. Such transactions, if commenced, may be discontinued at any time.

The Senior Notes may not be offered or sold, directly or indirectly, in Canada or to or for the account of any Canadian resident except, in the case of sales made in any province of Canada, pursuant to an exemption from the prospectus requirements in Section 2.3 of NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(2) of the *Securities Act* (Ontario), also known as the "accredited investor" exemption. In addition, Senior Notes will not be offered or sold, directly or indirectly, to individuals unless those individuals are also "permitted clients" within the meaning of NI 31-103.

Resale of the Senior Notes will be subject to restrictions under applicable securities legislation which vary depending on the relevant jurisdictions. **The Senior Notes may only be sold on a basis that is exempt from the prospectus requirements of applicable securities legislation through an appropriately registered dealer or pursuant to an exemption from the registration requirements of applicable securities legislation**. See *"Restrictions on Resale"*.

This confidential shelf offering memorandum does not constitute an offer to sell or a solicitation of an offer to buy any of the Senior Notes in the United States. The Senior Notes have not been and will not be registered under the U.S. Securities Act or any state securities laws and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as such term is defined in Regulation S under the U.S. Securities Act) unless the Senior Notes are registered under the U.S. Securities Act and applicable state securities laws or an exemption therefrom is available. In addition, until 40 days after the commencement of an Offering, any offer or sale of the Senior Notes within the United States by any dealer (whether or not participating in an Offering) may violate the registration requirements of the U.S. Securities Act if such offer or sale is made otherwise than in accordance with an exemption from the registration requirements of the U.S. Securities Act. Each Agent has agreed that, except as permitted by an Agency Agreement, it will not offer or sell the Senior Notes as part of the distribution of the Senior Notes at any time within the United States or to, or for the account or benefit of, U.S. persons.

RISK FACTORS

An investment in Senior Notes involves certain risks. Prospective investors in the Senior Notes should carefully consider all the information included in this confidential shelf offering memorandum, including the risks described below, before deciding to invest in the Senior Notes. This section does not describe all risks applicable to the Issuer and is intended only as a summary of certain material risks. In addition, prospective investors should consult their own financial and other legal and tax advisors, and should carefully consider, among other matters, the following discussion of risks before deciding whether to purchase Senior Notes.

Judicial, Legislative or Regulatory Risks

Future legal action might challenge or invalidate the FHPA and materially adversely affect a holder's investment in the Senior Notes.

The Investment Asset is a creation of the FHPA, which became effective on June 1, 2017. The Issuer will be the first Financing Entity under the FHPA to issue Funding Obligations as contemplated under the FHPA. The FHPA or any provisions thereof might be directly contested in courts or otherwise become the subject of litigation. The FHPA is novel legislation in Canada and therefore there are no precedents to rely on to support the validity of the FHPA.

As of the date of this confidential shelf offering memorandum, no such litigation has arisen; however, there can be no assurance that a lawsuit challenging the validity of some portion or all of the FHPA will not be filed in the future or that, if filed, such lawsuit will not be successful. If such a lawsuit were successful, and an invalidation of any relevant underlying legislative or regulatory provision were to result that did not constitute a Protection Event under the Change of Law Protection Agreement, a holder of Senior Notes may lose some or all of their investment in the Senior Notes or experience significant delays in recovering their investment in the Senior Notes. Even if the successful lawsuit constitutes a Protection Event, under the terms of the Change of Law Protection Agreement, the Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include any amount in respect of an amount due and payable to a Specified Creditor under the Limited Guarantee).

Future legislative action to change the FHPA, the Change of Law Protection Agreement or the electricity market might materially adversely affect a holder's investment in the Senior Notes.

The FHPA provides that no act or omission of the Crown shall be effective to reduce, impair, postpone or terminate the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment or to impair or postpone the invoicing, collection or remittance of the Clean Energy Adjustment. Ontario does not have a referendum or initiative process by which the FHPA may be amended or repealed. Therefore, the only way for such provisions of the FHPA to be amended or repealed would be through a subsequent legislative action by the Province of Ontario. A determination by the Province of Ontario that, for political or other reasons, the FHPA should no longer be law in Ontario or that the FHPA should be amended to limit or delay the recovery of Clean Energy Adjustments, could result in a decision to make such an amendment, repeal or revocation. Any such action that adversely affects the ability of the Issuer to receive amounts in respect of the Investment Interest so that it can pay Approved Obligations when due and payable (determined after taking into account certain factors described above in the definition of "Protection Event") would be subject to the Change of Law Protection Agreement. Under the Change of Law Protection Agreement, the Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include any amount in respect of an amount due and payable to a Specified Creditor under the Limited Guarantee). See *"Change of Law Protection Agreement"*. However, future legislative action by the Province of Ontario could also be taken that would have the effect of voiding or otherwise rendering invalid the Change of Law Protection Agreement.

Canada does not have any constitutional protection of property rights. While an adverse impact of statutory measures on private property has, in some circumstances, been judicially held to entitle property owners to compensation, such entitlements themselves can also be extinguished by legislation. Accordingly, if the provisions of the FHPA referenced in the previous paragraph were amended or repealed through subsequent legislative action of the Province of Ontario and future legislative action was also taken by the Province of Ontario that had the effect of voiding or otherwise rendering invalid the Change of Law Protection Agreement, a holder of Senior Notes may lose some or all of their investment in the Senior Notes or experience significant delays in recovering their investment in the Senior Notes.

Future judicial action could reduce the value of a holder's investment in the Senior Notes.

The Investment Asset is the creation of the FHPA. There is uncertainty associated with investing in Senior Notes payable from an interest in an asset that depends on legislation for its existence because there is no juridical or regulatory experience implementing and interpreting the legislation or similar legislation in Canada. Because the Investment Asset is a creation of the FHPA, any judicial determination interpreting the FHPA or the Investment Asset might have an adverse effect on a holder of Senior Notes' investment in the Senior Notes.

Potential difficulties in enforcing civil liabilities against the Province of Ontario may arise.

Under the *Proceedings Against the Crown Act* (Ontario), the remedies of injunction and specific performance are not available against the Crown, nor may an order for execution or attachment be made against the Crown, although the remedy of damages is available. Nothing in the Change of Law Protection Agreement or the Program Agreements affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario). As a result, if the Province of Ontario fails to comply with the Change of Law Protection Agreement, the Indenture Trustee's ability to obtain an effective remedy against the Province of Ontario is limited and holders of Senior Notes may lose some or all of their investments in the Senior Notes or experience significant delays in recovering their investments.

Risks Associated with the Unusual Nature of the Investment Asset

Clean Energy Adjustments will not be payable until May 1, 2021 and until such time the IESO will be the sole source of funds for payment on the Senior Notes. Amounts paid by the IESO are not available to pay principal on the Senior Notes.

During the Moratorium Period, no Clean Energy Adjustments are permitted to be collected from Specified Consumers. During the Moratorium Period, a holder of Senior Notes must rely for payment by the Issuer of interest on the Senior

Notes, and the Issuer must rely for payment of all of its Carrying Costs, upon the IESO who is obligated under the Regulations to pay these Carrying Costs to the Issuer. The amounts paid by the IESO with respect to Carrying Costs cannot be applied on account of principal on the Senior Notes. The IESO has granted the Issuer a first-priority security interest in all its accounts receivable from Electricity Vendors, which includes the amounts receivable by the IESO from Electricity Vendors with respect to the global adjustment charge, as security for the performance of its regulatory obligation to pay the Carrying Costs to the Issuer. The IESO also has a $2 billion unsecured credit facility agreement with the Ontario Financing Authority, expiring September 30, 2022, which can be used to pay the Carrying Costs to the Issuer. There can be no assurance that the IESO will continue to have sufficient funds available to pay the Carrying Costs to the Issuer during the Moratorium Period. If the Issuer enforces the security granted to the Issuer by the IESO during this period, there can be no assurance that the IESO's accounts receivable from Electricity Vendors will be sufficient to pay the Carrying Costs to the Issuer and a holder of Senior Notes may suffer material payment delay on the Senior Notes during the Moratorium Period.

The Issuer's ability to enforce security granted by the IESO may be significantly impaired or delayed.

Under various Canadian bankruptcy, insolvency and restructuring statutes or Canadian federal or provincial receivership laws, including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Canada Business Corporations Act*, the *Winding-up and Restructuring Act*, and various provincial corporate statutes (collectively, "**Canadian Insolvency and Restructuring Laws**"), the Issuer's ability to enforce security granted by the IESO may be significantly impaired or delayed. In view of the broad discretionary powers of courts under Canadian Insolvency and Restructuring Laws, it is not possible to predict how long payments of Carrying Costs by the IESO or enforcement of any letter of credit or performance guarantee provided by the IESO could be delayed following commencement of a proceeding under Canadian Insolvency and Restructuring Laws by the IESO or whether or when the Issuer would be able to repossess or dispose of the assets over which it holds a security interest. Canadian Insolvency and Restructuring Laws also contemplate the granting of super priority security interests or charges (which could be in priority to the security of existing secured creditors) on the assets of the debtor company to secure the repayment of any amounts to be borrowed to facilitate the insolvency proceeding, any amounts owing for the fees and costs of professionals involved in the insolvency proceeding, obligations of directors of the company with respect to their statutory liabilities and sometimes other amounts.

Canadian Insolvency and Restructuring Laws also contain provisions enabling an obligor to prepare and file a proposal or a plan of arrangement or reorganization for consideration by all or some of its creditors, to be voted on by the various classes of creditors affected thereby. Such a restructuring proposal or plan of arrangement or reorganization, if accepted by the requisite majority of each class of affected creditors and if approved by the relevant Canadian court, would be binding on all creditors of the applicable obligor within the affected classes, including the Issuer, whether or not the Issuer votes in favour of the restructuring proposal or plan of arrangement or reorganization. Such a proposal or plan of arrangement or reorganization may have the effect of compromising certain rights available to the Issuer with respect to the payment of Carrying Costs or enforcement of any security provided by the IESO.

A holder of Senior Notes may experience material payment delays because the source of funds for payment after the Moratorium Period is limited.

A holder of Senior Notes may suffer material payment delays on the Senior Notes if the collateral securing the Senior Notes is insufficient to pay the accrued interest on and the principal amount of those Senior Notes in full. During the Moratorium Period, a holder of Senior Notes must rely for payment by the Issuer of interest on the Senior Notes, and the Issuer must rely on the IESO for the funds necessary to pay its Carrying Costs, upon the IESO who is obligated under the Regulations to pay these Carrying Costs to the Issuer. Amounts paid by the IESO are not available to pay principal on the Senior Notes. After the Moratorium Period, the only source of funds for payments of interest on and principal of the Senior Notes will be the collateral. The collateral for the Senior Notes will include:

- the Investment Interest, including the right to impose, bill, collect and receive Clean Energy Adjustment amounts, inclusive of the True-up Amount;
- the cash and investments on deposit in the accounts held by the Indenture Trustee; and

- the Issuer's rights under various contracts described in this confidential shelf offering memorandum and under the FHPA.

The Senior Notes will not be insured or guaranteed by the Province of Ontario, the IESO, OPG or any of their respective affiliates, the Indenture Trustee or any other person or entity, except pursuant to the Limited Guarantee provided by the Province of Ontario upon the occurrence of a Protection Event. See *"Change of Law Protection Agreement"*. The Senior Notes will be nonrecourse obligations, secured only by the collateral. Delays in payment on the Senior Notes might result in a reduction in the market value of the Senior Notes and, therefore, the value of a holder's investment in the Senior Notes.

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt or general obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. However, insofar as the Province of Ontario or any such political subdivision, agency or instrumentality is a Specified Consumer, such governmental entity will be obligated, in its capacity as a Specified Consumer, to pay Clean Energy Adjustment amounts that will be collected and remitted to the Issuer in respect of its Investment Interest securing the Senior Notes.

A holder of Senior Notes must rely for payment of principal of and interest on the Senior Notes solely upon the FHPA, rights to enforcement of the FHPA and of various agreements described in this confidential shelf offering memorandum, collections of Clean Energy Adjustment amounts and cash and investments on deposit in the related accounts held pursuant to the Master Trust Indenture.

The Clean Energy Adjustment may not be billed after April 30, 2047, unless further regulations to extend that date are passed.

The Clean Energy Adjustment may not be billed to Specified Consumers after April 30, 2047, unless further regulations to extend that date are passed. If Clean Energy Adjustment amounts billed through this period are not sufficient to repay the Senior Notes in full and further regulations to extend this date are not passed, apart from amounts in the capital accounts, if any, no other funds will be available to pay the unpaid balance due on the Senior Notes.

Foreclosure of the Indenture Trustee's lien on the Investment Interest securing the Senior Notes might not be practical and acceleration of the Senior Notes before maturity might have little practical effect.

Under the Master Trust Indenture, the Indenture Trustee on behalf of the holders of Senior Notes and other creditors has the right to foreclose or otherwise enforce the lien granted to the Indenture Trustee by the Issuer on the collateral securing the Senior Notes. However, in the event of foreclosure, there is likely to be a limited market, if any, for the collateral. Therefore, foreclosure might not be a realistic or practical remedy. Moreover, although principal of the Senior Notes will be due and payable upon acceleration of the Senior Notes before maturity, under the Regulations, the amount of the Clean Energy Adjustment may not be increased to take into account such acceleration (subject to limited exceptions depending on the Fair Allocation Amount at the time). As a result, this limitation on increases to the Clean Energy Adjustment at the time of any acceleration of the Senior Notes prior to maturity will result in principal of the Senior Notes being paid on acceleration as funds become available. However, upon such acceleration, the priority of principal payments to creditors of the Issuer will result in all accelerated Senior Notes being repaid in full before any further payments of principal are made to holders of subordinated indebtedness of the Issuer. In the event of an acceleration, holders of Senior Notes may be paid sooner or later than originally expected.

The Issuer may issue multiple Series of Senior Notes secured by the Investment Interest and some decisions affecting holders of Senior Notes may require the approval of all Series.

The Issuer may issue multiple Series of Senior Notes all of which will be secured by the collateral securing the Senior Notes. The Issuer may not issue additional Series of Senior Notes if the issuance would not satisfy the Rating Agency Condition and certain other conditions precedent in the Master Trust Indenture. See *"Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations"*. If additional Series of Senior Notes are issued, Clean Energy Adjustment amounts collected by or for the benefit of the Issuer will be prorated among the Series of Senior Notes based on the respective amounts of interest and principal due and payable or required to be accumulated in respect of each Series of Senior Notes. Any issuance of additional Series of Senior Notes by the

Issuer could cause reductions or delays in payment on the Senior Notes. In addition, some matters relating to the Senior Notes issued by the Issuer may require the vote of the holders of all Series of Senior Notes. The interests of holders of a particular Series of Senior Notes in these votes might conflict with the interests of the holders of another Series of Senior Notes. Thus, these votes could result in an outcome that is materially unfavorable to holders of a particular Series of Senior Notes.

The Master Trust Indenture contains Events of Default (other than those pertaining to the insolvency of the Issuer or invalidity of the Change of Law Protection Agreement) that can only be declared by Debtholders who hold at least 25% of the outstanding Controlling Class Obligations. If any such Event of Default has occurred and is continuing, Debtholders who hold at least 50% of the outstanding Controlling Class Obligations may accelerate all Issuer Funding Obligations (other than Derivative Funding Obligations). However, it is possible for individual Series of Senior Notes to have their own acceleration events such that those individual Series of Senior Notes may be accelerated while other Series of Issuer Funding Obligations would not be accelerated. In such a case, (i) the allocation of Available Collections to the holders of accelerated Series of Issuer Funding Obligations in a Class would be higher relative to the non-accelerated Series of Issuer Funding Obligations of that Class than it would otherwise be, and (ii) after payment in full of accelerated Senior Notes and other Senior Funding Obligations and once all amounts due and payable on non-accelerated Senior Notes and other Senior Funding Obligations have been satisfied on any principal payment date, amounts remaining for payment of principal would be allocated to the repayment of principal on both accelerated and non-accelerated subordinated debt, as applicable. In certain cases, a declaration of acceleration or an automatic acceleration may also be rescinded by Extraordinary Resolution if (i) the Issuer has paid all overdue interest, principal that has become due (other than by reason of acceleration) on Controlling Class Obligations and other amounts set out in the Master Trust Indenture, and (ii) all Events of Default (other than non-payment of principal) have been cured or waived. See *"Capital Markets Platform — Acceleration and Remedies — General"*.

If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected.

Under certain circumstances it is possible that all outstanding Senior Notes will be accelerated as a Class or that certain Series of Senior Notes will be accelerated while other Series of Senior Notes will not be accelerated. See *"Capital Markets Platform – Acceleration and Remedies"*. The possibility of certain Series of Senior Notes accelerating while other Series of Senior Notes do not accelerate would arise if (i) an Event of Default occurs but Noteholders holding at least 50% of all outstanding Senior Notes do not approve the acceleration of all outstanding Senior Notes, and (ii) holders of Senior Notes of a particular Series approve the acceleration of the Senior Notes of that Series by the requisite majority of holders of that Series as set out in the applicable supplemental indenture for that Series.

If all Senior Notes are accelerated the application of available funds will be as described under *"Capital Markets Platform -- Acceleration and Remedies"* for all Senior Notes. It is possible that holders of 50% or more of the outstanding principal balance of all Senior Notes will approve the acceleration of all Senior Notes even if holders of a particular Series of Senior Notes do not vote in favour of the acceleration of the Senior Notes of that Series.

If only certain Series of Senior Notes are accelerated, then the outstanding principal balance of those Series of Senior Notes will become immediately due and payable but the payment due dates of those Series of Senior Notes that have not been accelerated will not change. In this case, the application of available funds will continue as described under *"Capital Markets Platform -- Payment Waterfalls Prior to Acceleration"*.

Where all Series of Senior Notes or only certain Series of Senior Notes are accelerated, available funds that would otherwise be used to pay the principal amount of subordinated indebtedness will be applied to repay principal of the accelerated Senior Notes. This could result in a holder of Senior Notes that have been accelerated receiving payment of principal sooner than expected. If a Series of Senior Notes has not been accelerated, the payment of principal on such Senior Notes should not occur earlier than expected as the payment due dates for such Senior Notes will not have been accelerated.

Where all Series of Senior Notes or only certain Series of Senior Notes are accelerated, available funds that would otherwise be used to pay the principal amount of the Senior Notes in accordance with the original repayment schedules of such Senior Notes may be applied to repay principal of the accelerated Senior Notes *pari passu* with the principal due on all outstanding Senior Notes (subject to the payment priority given to Warehouse Obligations). If accelerated Senior Notes were not expected to be repaid before a particular Series of Senior Notes at the time the accelerated Senior Notes were issued, the acceleration of such Senior Notes could result in the holder of a particular Series of Senior Notes receiving payment of principal later than expected.

The Issuer may have a co-ownership interest in the Investment Asset with other Financing Entities.

The FHPA authorizes the establishment of one or more Financing Entities that may incur Funding Obligations for the purpose of acquiring Investment Interests. The Master Trust Indenture does not contain any restrictions on the establishment of other Financing Entities or any restrictions on the Transfer by the IESO of specified portions of the Regulatory Asset to other Financing Entities. If additional Funding Obligations are incurred by other Financing Entities to acquire an Investment Interest, the Investment Asset will be co-owned by all Financing Entities (including the Issuer) and consequently Clean Energy Adjustment amounts collected by or for the benefit of the Financing Entities will be prorated among all Investment Interest owners based on the respective amounts of Clean Energy Adjustment amounts invoiced and not yet paid. Any issuance of Funding Obligations by other Financing Entities could cause reductions or delays in payment on the Senior Notes.

If the Clean Energy Adjustment amounts and other funds held in the Issuer Accounts results in investment losses or the investments become illiquid, a holder of Senior Notes might receive payment of principal of and interest on the Senior Notes later than expected.

Funds held in the Issuer Accounts will be invested in Eligible Investments. Eligible Investments include, among other categories, money market funds having a rating in the highest investment category from each applicable Rating Agency. Although investments in these money market funds have traditionally been viewed as highly liquid with a low probability of principal loss, illiquidity and principal losses have been experienced by investors in certain of these funds as a result of disruptions in the financial markets in recent years. If investment losses or illiquidity are experienced, a holder of Senior Notes might experience a delay in payments of principal and interest and a decrease in the value of their investment in the Senior Notes.

Servicing, Operating and Consumer Risks

Payments on the Senior Notes depend on the performance of Electricity Vendors and the IESO.

The Issuer's receipt of Clean Energy Adjustment amounts, which will be used to make payments on the Senior Notes, will depend in part on the skill and diligence of Electricity Vendors and the IESO and their respective successors in performing their respective duties under the FHPA and, with respect to the IESO, the Master Transfer and Servicing Agreement.

The FHPA and the Master Transfer and Servicing Agreement impose new duties and obligations on the IESO and Electricity Vendors. There can be no assurances that the new duties and obligations of the IESO and the Electricity Vendors will be assumed and implemented without difficulty and in accordance with the provisions of the FHPA and the Master Transfer and Servicing Agreement. If the IESO ceases to perform, or inadequately performs, its collection, remittance, forecasting and other functions under the terms of the FHPA and the Master Transfer and Servicing Agreement, it might be difficult to enforce these obligations against the IESO. While the Indenture Trustee has the right to replace the IESO, as servicer, on an Event of Default upon receipt of an Ordinary Resolution, it might be difficult to find a replacement for the IESO or a successor servicer. Also, any successor servicer might have less experience and ability than the IESO and might experience difficulties in collecting Clean Energy Adjustment amounts or providing forecast information, resulting in delays or disruptions to the setting and collection of the Clean Energy Adjustment. Any successor servicer would likely charge fees for the provision of such services and such fees could be material.

If an Electricity Vendor or the IESO fails to collect or remit sufficient Clean Energy Adjustment amounts for any reason, then the IESO's payments to the Issuer in respect of the Clean Energy Adjustments might be delayed or

reduced. In that event, payments on the Senior Notes might be delayed or reduced. In addition, any person into which the IESO may be merged, converted or amalgamated or that may succeed to the properties and assets of the IESO substantially as a whole will assume the role of servicer under the Master Transfer and Servicing Agreement, subject only to the satisfaction of the conditions set forth therein. These conditions do not include either the consent of holders of Senior Notes or satisfaction of the Rating Agency Condition.

Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and as Manager.

The FHPA imposes new duties and obligations on OPG, as Financial Services Manager, and the Program Agreements impose new duties and obligations on OPG, as Manager. There can be no assurances that the new duties and obligations of OPG will be assumed and implemented without difficulty and in accordance with the provisions of the FHPA and the Program Agreements. If OPG, as Financial Services Manager, ceases to perform, or inadequately performs, its statutory duties under the FHPA, including determining the Clean Energy Adjustment (inclusive of the True-up Amount), the Indenture Trustee will have no right to replace OPG as Financial Services Manager. If OPG ceases to perform, or inadequately performs, its management duties under the Management Agreement, the Indenture Trustee has the right to replace the Manager on an Event of Default upon receipt of an Ordinary Resolution but it might be difficult to find a replacement for OPG or a successor manager. Also, any successor manager might have less experience and ability than OPG, resulting in delays or disruptions to the setting and collection of the Clean Energy Adjustment. Any successor manager would likely charge fees for the provision of such services and such fees could be materially higher than the fees charged by OPG.

Inaccurate consumption forecasting or unanticipated delinquencies or write-offs might reduce or delay scheduled payments on the Senior Notes.

Clean Energy Adjustment amounts will be calculated based upon a forecast of Specified Consumer usage to be newly developed based on forecast information provided by the IESO. Under the Regulations, the IESO is required to provide forecast information to the OEB and the Issuer, which forecast information will be used by the OEB to forecast electricity consumption of Specified Consumers in respect of the relevant period. The amount of the Clean Energy Adjustment collected in any period will depend in part on actual electricity usage by Specified Consumers and the amount of collections and write-offs for Specified Consumers. If the IESO or a successor inaccurately forecasts electricity consumption or if OPG uses inaccurate consumer delinquency or write-off data when setting or adjusting the Clean Energy Adjustment, there could be a shortfall or material delay in collections, which might result in missed or delayed payments of principal and interest on the Senior Notes.

Inaccurate forecasting of electricity consumption by the IESO might result from, among other things unanticipated weather, resulting in less electricity consumption than forecast; general economic conditions being worse than expected, causing Specified Consumers to reduce their electricity consumption; the occurrence of a natural disaster, wind storm or an act of terrorism, cyber-attack or other catastrophic event unexpectedly disrupting electrical service and reducing electricity consumption; unanticipated changes in the market structure of the electric industry; Specified Consumers unexpectedly ceasing business or departing from the Province of Ontario; dramatic and unexpected changes in energy prices resulting in decreased electricity consumption; Specified Consumers consuming less electricity than anticipated because of increased energy prices, unanticipated increases in conservation efforts or unanticipated increases in electricity consumption efficiency; differences or changes in forecasting methodology; or Specified Consumers switching to alternative sources of energy, including self-generation or co-generation of electric power in some cases without using Ontario's transmission or distribution system. Self-generators that receive no transmission or distribution service from the Province of Ontario are not liable for the Clean Energy Adjustment. The FHPA does not require exit fees to be charged to any Specified Consumers that might leave the grid to self-generate.

Inaccurate forecasting of delinquencies or write-offs by OPG could result from, among other things unexpected deterioration of the economy, the occurrence of a natural disaster, an act of war or terrorism or other catastrophic events causing greater write-offs than expected or forcing Electricity Vendors to grant additional payment relief to Specified Consumers; the failure of Electricity Vendors to submit accurate and timely information regarding their collections and write-offs; an unexpected change in law that makes it more difficult for Electricity Vendors to terminate service to nonpaying Specified Consumers, or that requires Electricity Vendors to apply more lenient credit standards for Specified Consumers.

Changes to billing and collection practices may reduce the amount of funds available for payments on the Senior Notes.

The methodology for determining the amount of the Clean Energy Adjustment invoiced to each Specified Consumer is specified in FHPA. None of OPG, the IESO or any Electricity Vendor, as it performs its billing and collection functions on the Issuer's behalf, may change this methodology. However, subject to applicable law, tariff and regulatory requirements, billing and collection arrangements with each Specified Consumer may be changed in a manner that delays or reduces the payments to the Issuer in respect of the Clean Energy Adjustment, which might result in missed or delayed payments of principal and interest on the Senior Notes.

Limits on rights to terminate service to Specified Consumers might make it more difficult to collect the Clean Energy Adjustment.

To the extent that Specified Consumers do not pay for their electricity service, Electricity Vendors will not be able to collect the Clean Energy Adjustment from these Specified Consumers. Electricity Vendors have the ability to terminate service for non-payment subject to the terms of their conditions of service, which conditions must be consistent with the OEB's rules regarding disconnection. Under OEB rules, Electricity Vendors are prohibited from disconnecting or threatening to disconnect homes for non-payment during the winter from November 15 to April 30 every year. Historical rates of non-payment are included in the calculations of the Clean Energy Adjustment, but increases in the rates of non-payment would reduce the Clean Energy Adjustment until it is adjusted through the True-up Amount in a subsequent Reference Period.

It might be difficult for the Issuer to collect the Clean Energy Adjustment from Specified Consumers

Under the FHPA, the Issuer may bring an action against a Specified Consumer for non-payment of the Clean Energy Adjustment, but only an Electricity Vendor may terminate service for failure to pay the Clean Energy Adjustment. The FHPA provides that partial payment of electricity invoices shall be allocated pro rata among the Clean Energy Adjustment and other charges on the invoice. Since the Issuer does not have the threat of termination of service available to enforce payment of the Clean Energy Adjustment, it would need to rely on the Electricity Vendor to threaten to terminate service for nonpayment of other portions of the electricity invoice. This inability might reduce the value of a holder's investment in the Senior Notes.

Delinquent or partial payments of electricity bills may make payments on the Senior Notes occur later than expected.

The amount and the rate of collection of the Clean Energy Adjustment, including the True-up Amount, will impact whether there is a delay in the scheduled payments on the Senior Notes. If the Clean Energy Adjustment amounts are collected at a slower rate than expected, OPG might have to make adjustments to the Clean Energy Adjustment for a subsequent Reference Period through the True-up Amount. Until such adjustments are made or, if those adjustments are not timely and accurate, there may be a delay in payments of principal and interest and a decrease in the value of the Senior Notes.

Indemnification obligations of OPG and the IESO are limited and might not be sufficient to protect the investments in the Senior Notes.

OPG will be obligated under the Management Agreement to indemnify the Issuer and the Indenture Trustee only in specified circumstances. Likewise, the IESO will be obligated under the Master Transfer and Servicing Agreement and the Acknowledgement and Indemnity Agreement to indemnify the Issuer and the Indenture Trustee only in specified circumstances.

Furthermore, neither OPG nor the IESO may have sufficient funds available to satisfy its indemnification obligations, and the amount of any indemnification paid by OPG or the IESO, as applicable, might not be sufficient for holders of Senior Notes to recover all of their investment in the Senior Notes. In addition, if OPG or the IESO becomes obligated to provide indemnification, the ratings on the Senior Notes might be downgraded as a result of the circumstances causing the breach.

Power outages could impair payment of the Senior Notes.

Ontario experiences seasonal conditions typical of southeastern Canada. Summers are usually hot with high temperatures in excess of 20° Celsius. Winters include snow and icy conditions that can be damaging to overhead power lines. Transmission and/or distribution and generation facilities could be damaged depending on weather conditions and usage of electricity could be interrupted temporarily or for long periods of time, reducing the Clean Energy Adjustment amounts collected in one or more Reference Periods.

Technological changes that make alternative energy sources more attractive in the future or significant population fluctuations may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment.

Technological developments and/or tax or other economic incentives might result in the introduction of economically attractive, more fuel-efficient, more environmentally-friendly and/or more cost-effective alternatives to purchasing electricity through Electricity Vendors for increasing numbers of Specified Consumers. Manufacturers of self-generation facilities may develop smaller-scale, more fuel-efficient on-site generating and/or storage units that can be cost-effective options for a greater number of Specified Consumers. Moreover, an increase in self-service power may result if extreme weather conditions result in regular shortages of grid-supplied energy or if other factors cause grid-supplied energy to be less reliable. Specified Consumers who self-generate their electricity may use it to offset, or eliminate, their consumption from the grid thereby reducing, or eliminating, the Clean Energy Adjustment amounts payable by such Specified Consumers. Technological developments might allow greater numbers of Specified Consumers to reduce or even altogether avoid the payment of Clean Energy Adjustment amounts under such provisions through on-site generation, including where coupled with on-site storage capacity. This might reduce the kilowatt-hours of electric energy delivered to Specified Consumers by means of an Electricity Vendor's system, thereby causing Clean Energy Adjustment charges to the remaining Specified Consumers to increase. Such increases may reduce the collectability of the Clean Energy Adjustment.

Unexpected significant population decreases in the Province of Ontario or Specified Consumers unexpectedly ceasing business or departing from the Province of Ontario may adversely affect the amount of the Clean Energy Adjustment to be invoiced, collected and recovered from Specified Consumers. The decrease in the population of the Province of Ontario may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment. The increased impact on the remaining Specified Consumers could lead to increased potential consumer defaults and delays, billing lags and write-offs or variations in billing due to variations in electricity consumption.

Insolvency-Related Risks

If the Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed.

Trusts such as the Issuer ordinarily cannot seek protection under the principal Canadian Insolvency and Restructuring Laws (other than a receivership). However, in view of the broad discretionary powers of courts under Canadian Insolvency and Restructuring Laws, the courts' inherent jurisdiction and otherwise, it is not possible to state with certainty that the Issuer could not become subject to Canadian Insolvency and Restructuring Laws. If the Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed. It is not possible to predict how long payments under the Senior Notes could be delayed following commencement of a proceeding under Canadian Insolvency and Restructuring Laws by the Issuer or whether or when the Indenture Trustee would be able to enforce upon or dispose of the assets over which it holds a security interest. Canadian Insolvency and Restructuring Laws also contemplate the granting of super priority security interests or charges (which could be in priority to the security of existing secured creditors) on the assets of the debtor company to secure the repayment of any amounts to be borrowed to facilitate the insolvency proceeding, any amounts owing for the fees and costs of professionals involved in the insolvency proceeding, obligations of directors of the company with respect to their statutory liabilities and sometimes other amounts.

Canadian Insolvency and Restructuring Laws also contain provisions enabling an obligor to prepare and file a proposal or a plan of arrangement or reorganization for consideration by all or some of its creditors, to be voted on by the various classes of creditors affected thereby. Such a restructuring proposal or plan of arrangement or reorganization,

if accepted by the requisite majority of each class of affected creditors and if approved by the relevant Canadian court, would be binding on all creditors of the applicable obligor within the affected classes, including the Indenture Trustee and the Noteholders, whether or not the Indenture Trustee or any holders of Senior Notes votes in favour of the restructuring proposal or plan of arrangement or reorganization. Such a proposal or plan of arrangement or reorganization may have the effect of compromising certain rights available to the Indenture Trustee and the holders of Senior Notes under the Master Trust Indenture or in respect of the collateral.

If the IESO were to become subject to Canadian Insolvency and Restructuring Laws, the Transfers of specified portions of the Regulatory Asset by the IESO may not be respected as true sales of the Regulatory Asset.

Ordinarily, the interests of the Issuer as acquirer of an Investment Interest may be subordinate to statutory deemed trusts and other non-consensual liens, trusts and claims created or imposed by statute or rule of law on the property of the IESO arising prior to the time the corresponding Regulatory Asset was Transferred to the Issuer. This could reduce the amounts that may be available to the Issuer in respect of the Investment Interest and, consequently, the holders of Senior Notes. Section 27(3) of the Act provides that at the time of the Transfer of the Regulatory Asset to a Financing Entity, such Transfer shall be deemed to have been perfected, vested, valid and binding against the IESO and all other persons who have claims of any kind against the IESO. Section 27(4) of the Act provides that section 27(3) applies regardless of whether the persons who have claims have received notice of the Transfer and the property rights and interests acquired by the Transferee shall have priority over any liens in favour of those persons. However, in the event that the IESO becomes insolvent, its insolvency would be subject to federal bankruptcy and insolvency legislation and the effect of these provisions of the Act in such circumstances is untested. The Transfers of the Regulatory Asset to the Issuer will be made in accordance with section 26 of the Act. Section 27(1) of the Act provides that a Transfer of a specified portion of the Regulatory Asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the Transferee. Therefore, the Investment Interest would not form part of the assets of the IESO and would not be available to the creditors of the IESO. However, with respect to certain insolvency events relating to the IESO, it is possible that an insolvency administrator or a creditor of the IESO may attempt to argue that the transactions between the IESO and the Issuer are not true sales of the Regulatory Asset. This position, if accepted by a court applying federal bankruptcy and insolvency laws, could prevent timely or ultimate payment of amounts due to the Issuer and, consequently, due from the Issuer to holders of Senior Notes.

These risks are in addition to the insolvency risks of the IESO noted above under *"Risks Associated with the Unusual Nature of the Investment Asset"*.

If the IESO or any Electricity Vendor were to become subject to Canadian Insolvency and Restructuring Laws, collections that have been commingled may be unrecoverable and the Issuer's ability to enforce its rights against the IESO or such Electricity Vendor may be significantly impaired or delayed.

Under the Master Transfer and Servicing Agreement, collections received by the IESO are to be held by the IESO in a segregated account. Until Clean Energy Adjustments are remitted to the IESO by Electricity Vendors, amounts collected by the Electricity Vendors are to be held by Electricity Vendors in segregated accounts. If the IESO or any Electricity Vendor fails to hold collections in a segregated account, then to the extent that funds are commingled and used for the benefit of the IESO or such Electricity Vendor prior to making required deposits, in the event of the liquidation, insolvency, receivership or administration or other proceeding under Canadian Insolvency and Restructuring Laws of the IESO or the Electricity Vendor, the ability of the Issuer to enforce its rights to the collections in a timely manner may be adversely affected and collections that have been commingled may be unrecoverable. In the event of the insolvency of the IESO, the right of the Issuer under the Master Transfer and Servicing Agreement to appoint a replacement servicer may be stayed or prevented.

These risks are in addition to the insolvency risks of the IESO noted above under *"Risks Associated with the Unusual Nature of the Investment Asset"*.

If OPG were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to enforce its rights against the Manager may be significantly impaired or delayed and the Issuer's assets and liabilities may be substantively consolidated with those of OPG.

Section 53.1 of the *Electricity Act, 1998* (Ontario), as amended by the *Fair Hydro Act, 2017* (Ontario), provides that, regardless of whether a Financing Entity is or is not a subsidiary of OPG: (a) the assets and liabilities of the Financing Entity shall not form part of the assets and liabilities of OPG or any of its subsidiaries (excluding the Financing Entity if it is a subsidiary); and (b) the assets and liabilities of OPG or any of its subsidiaries (excluding the Financing Entity if it is a subsidiary) shall not form part of the assets and liabilities of the Financing Entity. However, in the event that OPG becomes insolvent, its insolvency would be subject to federal bankruptcy and insolvency legislation and the effect of these provisions of the *Electricity Act, 1998* (Ontario), as amended by the *Fair Hydro Act, 2017* (Ontario), in such circumstances is untested. In particular, in the event of the liquidation, insolvency, receivership or administration or other proceeding under Canadian Insolvency and Restructuring Laws of OPG, the ability of the Issuer to enforce certain of its rights in and to the Investment Interest in a timely manner may be adversely affected. Such affected rights may include the right to appoint a replacement Manager. It is possible that the creditors of OPG may attempt to substantively consolidate the assets and liabilities of OPG and the Issuer. The Issuer and OPG have taken steps to minimize this risk. However, no assurance can be given that, in the case of the insolvency of OPG, a court would not order that the Issuer's assets and liabilities be substantively consolidated with those of OPG. Such substantive consolidation would result in all creditors of OPG and the Issuer being paid out of a common pool of assets, with no distinction as to which assets are property of OPG and which assets are property of the Issuer, and could cause payment of the claims of the beneficial owners of the Senior Notes to be subject to substantial delay and to adjustment in timing and amount.

If the Issuer Trustee were to become subject to Canadian Insolvency and Restructuring Laws, the assets and liabilities of the Issuer may be substantively consolidated with the Issuer Trustee.

In the case of the insolvency of the Issuer Trustee, it is possible that the creditors of the Issuer Trustee may attempt to argue that the assets of the Issuer are held by the Issuer Trustee in its personal capacity (and not as trustee of the Issuer) and are to be available to the creditors of the Issuer Trustee. Assuming that the Issuer Trustee deals with the assets of the Issuer in accordance with the provisions of the Declaration of Trust, the assets of the Issuer would not constitute property of the Issuer Trustee available for distribution to the creditors of the Issuer Trustee. An insolvency administrator appointed with respect to the Issuer Trustee may be able to recover from the property of the Issuer a portion of its costs that are incurred until a replacement for the Issuer Trustee, as trustee of the Issuer, is appointed or pending any proceeding in respect of the property of the Issuer. Such costs may exceed the compensation provided for in the Declaration of Trust.

If a Specified Consumer were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to collect Clean Energy Adjustment amounts from such Specified Consumer may be adversely affected.

The application to a Specified Consumer of Canadian Insolvency and Restructuring Laws and related provincial laws could also affect the ability to collect the Clean Energy Adjustments due for the period prior to the insolvency. Federal bankruptcy laws generally discharge bankrupt Specified Consumers who are individuals of their obligation to pay Clean Energy Adjustment amounts due for the period prior to the individual being discharged from bankruptcy.

If amounts in the Issuer Accounts for any Series are invested with entities that become subject to insolvency proceedings, the Issuer's ability to make payments to holders of Senior Notes may be adversely affected.

Amounts that are on deposit from time to time in the Issuer Accounts for any Series may be invested in Eligible Investments. If insolvency proceedings were to be commenced by or against any entity with which an Eligible Investment is made or which is an issuer, obligor or guarantor of any Eligible Investment, the ability of the Indenture Trustee to enforce its rights in respect of any such Eligible Investment and the ability of the Issuer to make payments to holders of Senior Notes in a timely manner may be adversely affected. In order to reduce this risk, the Eligible Investments must satisfy certain ratings criteria. See "*Rating Agency Condition*".

Other Risks

The credit ratings are not an indication of the expected rate of payment of principal on the Senior Notes.

The Senior Notes will be rated by one or more established rating agencies. A rating is not a recommendation to buy, sell or hold the Senior Notes. The ratings merely analyze the probability that the Issuer will repay the total principal amount of each series of Senior Notes at its final principal payment date (which is later than the Principal Payment Date(s)) and will make timely interest payments. The ratings are not an indication that the rating agencies believe that principal payments are likely to be paid on time according to any expected sinking fund schedule. Thus, the Issuer might repay the principal of a holder of Senior Notes later than expected, which might materially reduce the value of a holder's investment in the Senior Notes.

If the ratings on the Senior Notes are withdrawn or revised downward, the value of a holder's investment in the Senior Notes may be adversely affected.

There is no assurance that any credit rating will remain in effect for any given period of time. The ratings on the Senior Notes may be withdrawn or revised downward at any time without notice, which may have an adverse effect on the market price of the Senior Notes. A rating is not a recommendation to buy, sell or hold the Senior Notes. The ratings merely analyze the probability that the Issuer will repay the total principal amount of each series of Senior Notes at its final principal payment date (which is later than the Principal Payment Date(s)) and will make timely interest payments. The ratings are not an indication that the rating agencies believe that principal payments are likely to be paid on time according to any expected sinking fund schedule. Ratings on the Senior Notes may be lowered, qualified or withdrawn at any time without notice.

The credit ratings of the IESO, OPG and the Province of Ontario might affect the market value of the Senior Notes.

The Senior Notes will not be insured or guaranteed by the Province of Ontario, IESO, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*. Although neither the IESO nor OPG are obligors in respect of the Senior Notes, a downgrading of the current credit ratings of the IESO, OPG or the Province of Ontario might have an adverse effect on the market value of the Senior Notes, particularly, with respect to the IESO, during the Moratorium Period when no Clean Energy Adjustments are permitted to be collected from Specified Consumers. Credit ratings might change at any time. A rating agency has the authority to revise or withdraw its rating based solely upon its own judgment.

The absence of an established market for the Senior Notes might limit the ability to resell or refinance the Senior Notes.

There is no public market for the Senior Notes, and the Issuer does not intend to apply for a listing of the Senior Notes on any stock exchange. There can be no assurance as to the liquidity of the trading market for the Senior Notes or that a trading market for the Senior Notes will develop.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of such Senior Notes with liquidity for their investment or that it will continue for the term of such Senior Notes. Accordingly, purchasers of the Senior Notes may be required to bear the financial risk of investing in the Senior Notes until the maturity date of the Senior Notes.

If an active market does develop for the Senior Notes, the market price on the Senior Notes will depend on many factors including, but not limited to, (i) the Issuer's credit rating and the credit rating of the Senior Notes; (ii) the prevailing interest rates being paid on similar securities; (iii) the Issuer's financial condition and future prospects; and (iv) the overall condition of the economy and the financial markets. The condition of the financial markets and prevailing interest rates have fluctuated in the past and are likely to fluctuate in the future. Fluctuations could have an adverse effect on the market price of the Senior Notes.

The Financial Services Manager has the ability to determine whether to refinance Senior Notes maturing after May 2024 through the issuance of another Series of Senior Notes. However, there can be no assurance that Senior Notes can be refinanced on or before their applicable Principal Payment Default Date.

Restrictions on resale might limit the ability to resell the Senior Notes.

The Senior Notes may not be offered or sold, directly or indirectly, in Canada or to or for the account of any Canadian resident except, in the case of sales made in any province of Canada, pursuant to an exemption from the prospectus requirements under applicable securities laws. The Issuer currently does not intend to file a prospectus or similar document with any securities regulatory authority in Canada qualifying the resale of the Senior Notes to the public in any province of Canada in connection with any Offering of Senior Notes. As a result, the Senior Notes purchased pursuant to this confidential shelf offering memorandum will be subject to restrictions on resale, and may only be resold if a further statutory exemption may be relied upon by the investor or if an appropriate discretionary order or consent is obtained pursuant to applicable securities laws. See "Restrictions on Resale".

REPRESENTATIONS AND AGREEMENTS OF PURCHASERS

The distribution of the Senior Notes in Canada is being made on a private placement basis. By purchasing Senior Notes and accepting a purchase confirmation in respect thereof, a purchaser in Canada will be deemed to have represented to the Issuer and the Agents that, as at the date of such purchaser's purchase of Senior Notes:

(a) none of the Issuer, the Agents or any person representing the Issuer or the Agents has made any representations to it (written or oral) with respect to the Issuer, any Offering or sale of the Senior Notes, other than the information contained in this confidential shelf offering memorandum which has been delivered to it;

(b) it is resident in a province of Canada (each an "**Offering Jurisdiction**") and is entitled under applicable securities laws of such Offering Jurisdiction to purchase the Senior Notes without the benefit of a prospectus qualified under those securities laws and any act, solicitation, conduct or negotiation directly or indirectly in furtherance of such purchase and sale has occurred only in one of the provinces of Canada;

(c) the purchaser has been provided the opportunity to receive a copy of the Master Trust Indenture and each of the Supplemental Indentures;

(d) the purchaser has reviewed and acknowledges the terms referred to below under the section entitled "Restrictions on Resale";

(e) it is basing its investment decision solely on this confidential shelf offering memorandum and not on any other information or statement concerning the Issuer or any Offering and it has not become aware of any advertisement in printed media of general and regular paid circulation (or other printed public media), radio, television or telecommunications or other form of advertisement (including electronic display) with respect to the distribution of the Senior Notes;

(f) it has been independently advised as to restrictions with respect to trading in the Senior Notes imposed by applicable securities laws in the jurisdiction in which it resides, confirms that no representation (written or oral) has been made to it by or on behalf of the Issuer or an Agent with respect thereto, acknowledges that it is aware of the characteristics of the Senior Notes, the risks relating to an investment in the Senior Notes and of the fact that it may not be able to resell the Senior Notes except in accordance with limited exemptions under applicable securities legislation and regulatory policy and compliance with the other requirements of applicable law; and it agrees that any certificates representing the Senior Notes will bear a legend indicating that the resale of such Senior Notes is restricted; the purchaser further acknowledges that it has been advised to consult its own legal counsel in its jurisdiction of residence for full particulars of the resale restrictions applicable to it and has reviewed and acknowledges the terms referred to under the heading "Restrictions on Resale"; and the purchaser further acknowledges that if it resells the Senior

Notes in compliance with applicable law it will give notice to the subsequent transferee during the restricted period noted under the heading "Restrictions on Resale" of such restrictions;

(g) it acknowledges the risks relating to an investment in the Senior Notes and it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its prospective investment in the Senior Notes, it and any accounts for which it is acting have the ability to bear the economic risks of the prospective investment and can afford the complete loss of such investment and it acknowledges that it and any accounts for which it is acting may be required to bear the financial risks of this investment for an indefinite period of time;

(h) it acknowledges that: (i) no securities commission or similar regulatory authority has reviewed or passed on the merits of the Senior Notes; and (ii) there is no government or other insurance covering the Senior Notes;

(i) it acknowledges that no person has made any oral or written representation to it that any person will re-sell or re-purchase the Senior Notes, or refund any part or all of the purchase price of the Senior Notes, or that the Senior Notes will be listed on any exchange or quoted on any quotation and trade reporting system, or that any application has been or will be made to list the Senior Notes on any exchange or quote the notes on any quotation and trade reporting system, and no person has given any undertaking to such purchaser relating to the future value or price of the Senior Notes;

(j) none of the funds being used to purchase the Senior Notes are, to the best of the purchaser's knowledge, (i) proceeds obtained by or derived, directly or indirectly, as a result of illegal activities, or (ii) being tendered on behalf of a person or entity who has not been identified to the purchaser;

(k) the funds being used to purchase the Senior Notes and advanced by or on behalf of the purchaser to the Agents do not represent proceeds of crime for the purposes of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada);

(l) the purchaser is responsible to obtain independent investment, legal and tax advice with respect to its purchase of the Senior Notes and accordingly has had the opportunity to acquire an understanding of the transaction described in this confidential shelf offering memorandum and the meanings of all the terms contained herein relevant to such purchase for the purpose of giving acknowledgements, representations and agreements under this confidential shelf offering memorandum;

(m) it (i) is an "accredited investor" (as such term is defined in NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) that is not an individual, unless such individual is also a "permitted client" (as such term is defined in NI 31-103); (ii) is either (A) purchasing the Senior Notes as principal, (B) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation of a jurisdiction of Canada (other than a trust company or trust corporation registered solely under the laws of the Province of Prince Edward Island) or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be, or (C) a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or foreign jurisdiction; and (iii) was not created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in NI 45-106;

(n) the purchaser has provided applicable certifications and/or other information or documentation to the Agents and the Issuer to evidence its status and criteria for compliance with the relevant category of "accredited investor," understands that the Agents and the Issuer may be required to verify that the purchaser satisfies such criteria, and that the purchaser may be required to provide additional information or documentation to the Agents and the Issuer to evidence such compliance;

(o) the purchaser, if resident in the Province of Québec, has agreed that all documents relating to such purchase be in English only, as more particularly described under the heading "Language of Documents". *L'acquéreur, s'il réside dans la Province de Québec, accepte que tous les documents liés à son acquisition soient en langue anglaise uniquement, tel qu'il est plus amplement décrit sous la rubrique «Langue des documents»*;

(p) it will execute, deliver and file such reports, undertakings and other documents relating to his, her or its purchase of the Senior Notes as may be required by applicable securities laws, regulations and rules, or assist the Issuer and the Agents, as applicable, in obtaining and filing such reports, undertakings and other documents;

(q) it is not a U.S. person (as such term is defined in Regulation S under the U.S. Securities Act), none of the Senior Notes are being or will be acquired, directly or indirectly, for the account or benefit of a U.S. person, the purchaser was not offered any of the Senior Notes in the United States, the purchaser did not execute or deliver any agreement in connection herewith in the United States, and the purchaser is aware that the Senior Notes have not been and will not be registered under the U.S. Securities Act or the securities laws of any State of the United States and that the Senior Notes may not be offered or sold in the United States without registration under the U.S. Securities Act or except in compliance with the requirements of an exemption from registration;

(r) if the purchaser is acquiring any Senior Notes as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such account and that it has full power to make the acknowledgements, representations and agreements contained herein on behalf of each such account;

(s) the offer and sale of the Senior Notes is conditional upon the offer and sale being exempt from the prospectus filing requirements of applicable securities law;

(t) the purchaser acknowledges that the Issuer may be required to disclose to applicable securities regulatory authorities the identity of the purchaser and any person with a beneficial interest in the Senior Notes;

(u) except for any rating reports that may have been issued by the applicable Rating Agencies, no agency, governmental authority, regulatory body, stock exchange or other entity has made any finding or determination as to the merit for investment of, nor have any such agencies or governmental authorities, regulatory bodies, stock exchanges or other entities made any recommendation or endorsement with respect to the Senior Notes;

(v) if the purchaser is:

(i) a corporation, it is duly incorporated and is validly subsisting under the laws of its jurisdiction of incorporation and has all requisite legal and corporate power and authority to purchase the Senior Notes and to make such representations and agreements as contemplated herein and has obtained all necessary approvals in respect thereof;

(ii) a partnership, syndicate or other form of unincorporated organization, it has the necessary legal capacity and authority to purchase the Senior Notes and to make such representations and agreements as contemplated herein and has obtained all necessary approvals in respect thereof; or

(iii) an individual, he or she is of the full age of majority, is a "permitted client" as such term is defined in NI 31-103 and is legally competent to purchase the Senior Notes and to make such representations and agreements as contemplated herein;

(w) the purchaser is not an "insider" of the Issuer (within the meaning of Canadian securities laws) and is not registered or required to be registered as a dealer, adviser or otherwise under the securities

laws of any province of Canada (unless in either case it has specifically provided written advice to the contrary to the Issuer and to the Agents);

(x) it will, if requested by the Issuer or the Agent from whom the purchase confirmation is received, provide evidence of the basis of its above representations; and

(y) the Issuer, the Agents and others will rely upon the truth and accuracy of the foregoing acknowledgements, representations and agreements and it agrees that if any of the acknowledgements, representations or agreements deemed to have been made by its purchase of the Senior Notes are no longer accurate, it shall promptly notify the Issuer and the Agents for the applicable Offering of Senior Notes.

In addition, each purchaser of Senior Notes, by purchasing Senior Notes and accepting a purchase confirmation in respect thereof, represents to the Issuer and the Agents for the applicable Offering of Senior Notes that the purchaser:

(a) has been notified by the Issuer:

(i) that the Issuer is required to provide information pertaining to the purchaser of Senior Notes required to be disclosed in Schedule 1 of Form 45-106F1 under NI 45-l06 (including its name, address, telephone number and the number and value of securities purchased), which Form 45-106F1 the Issuer is required to file under NI 45-106;

(ii) that such personal information will be delivered to the applicable Canadian securities regulatory authorities (the "**Commissions**") in accordance with NI 45-106;

(iii) that such personal information is being collected indirectly by the applicable Commission under the authority granted to it in securities legislation;

(iv) that such personal information is being collected for the purposes of the administration and enforcement of securities legislation; and

(v) that the public official in the provinces of Canada who can answer questions about the indirect collection of such personal information is set out in Schedule A of this confidential shelf offering memorandum, and

(b) has authorized the indirect collection of the personal information by the applicable Commission.

By purchasing Senior Notes, the purchaser also acknowledges that its name and other specified information, including the number of Senior Notes it has purchased, may be disclosed to other Canadian securities regulatory authorities and become available to the public in accordance with the requirements of applicable laws and consents to the disclosure of that information. Furthermore, by purchasing the Senior Notes, the purchaser acknowledges that certain information as to its status as an "accredited investor" that the purchaser may have provided to any Agent involved in the trade may be required to be delivered by such Agent to the Issuer under the terms of an Agency Agreement between the Issuer, OPG and the Agents referred to under "Plan of Distribution". By purchasing the Senior Notes, the purchaser consents to the disclosure of such information.

LANGUAGE OF DOCUMENTS

Upon receipt of this confidential shelf offering memorandum, each purchaser hereby confirms that it has expressly requested that all documents evidencing or relating in any way to the sale of the Senior Notes described herein (including for greater certainty any purchase confirmation or any notice) be drawn up in the English language only. *En recevant le présent document, chaque acquéreur confirme par les présentes qu'il a expressément demandé que tous les documents qui attestent la vente des débentures décrites dans les présentes ou qui s'y rapportent de quelque manière que ce soit (y compris, plus particulièrement, une confirmation d'achat ou un avis) soient rédigés en langue anglais seulement.*

RESTRICTIONS ON RESALE

The distribution of the Senior Notes in the provinces of Canada is being made on a private placement basis and is therefore exempt from the requirement that the Issuer prepare and file a prospectus with the relevant Canadian securities regulatory authorities. Accordingly, any resale of the Senior Notes must be made: (a) through an appropriately registered dealer or pursuant to an exemption from the dealer registration requirements of applicable provincial securities laws; and (b) in accordance with, or pursuant to an exemption from, the prospectus requirements of applicable provincial securities laws. These resale restrictions may in some circumstances apply to resales made outside of Canada. Purchasers are advised to seek legal advice prior to any resale of the Senior Notes.

Purchasers are advised that the Issuer does not intend to file a prospectus or similar document with any securities regulatory authority in Canada qualifying the resale of the Senior Notes to the public in any province of Canada in connection with any Offering.

Furthermore, each purchaser of Senior Notes, by its purchase thereof, will be deemed to have represented, acknowledged or confirmed, as the case may be, to the Issuer and any dealer who is involved in the sale of the Senior Notes to such purchaser that such purchaser understands that the Senior Notes are subject to transfer and resale restrictions in Canada and that the certificates representing the Senior Notes (or the relevant ownership statement under a direct registration system or other book-entry system) or other applicable document or notice (including this document) will bear or will notify the purchaser of the following legend:

> "EXCEPT IN THE PROVINCE OF MANITOBA, IN ACCORDANCE WITH NATIONAL INSTRUMENT 45-102 — RESALE OF SECURITIES, UNLESS OTHERWISE PERMITTED UNDER CANADIAN SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS FOUR MONTHS AND A DAY AFTER THE LATER OF (I) THE DATE ON WHICH THE SECURITY IS ISSUED; AND (II) THE DATE THE ISSUER BECOMES A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY OF CANADA.
>
> IN THE PROVINCE OF MANITOBA, UNLESS OTHERWISE PERMITTED UNDER APPLICABLE CANADIAN SECURITIES LAWS OR WITH THE PRIOR WRITTEN CONSENT OF THE APPLICABLE REGULATORS, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS TWELVE MONTHS AND A DAY AFTER THE DATE THE PURCHASER ACQUIRED THE SECURITY."

The Issuer is not and does not intend to become a reporting issuer.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of such Series of Senior Notes with liquidity for their investment or that it will continue for the life of such Senior Notes. Accordingly, purchasers of the Senior Notes may be required to bear the financial risk of investing in the Senior Notes until the maturity date.

REPORTING REQUIREMENTS

The Issuer is not a reporting issuer or the equivalent thereof under the securities legislation in any jurisdiction. Accordingly, the Issuer is not subject to the continuous reporting and disclosure requirements prescribed by such securities legislation. Therefore, there is no requirement that the Issuer comply with such requirements, including, without limitation, the requirements to provide prompt notification of material changes by way of press releases, to formally file disclosure documents with applicable securities regulatory authorities or to prepare and file annual audited financial statements or quarterly unaudited financial statements. However, the Issuer will provide audited annual financial statements and unaudited quarterly financial statements in accordance with the terms of the Master Trust Indenture. See *"Capital Markets Platform — Covenants of the Issuer — Financial Statements; Statement as to Compliance"*.

STATUTORY RIGHTS OF ACTION

Securities legislation in certain of the provinces of Canada provides purchasers, in addition to any other rights they may have at law, with a remedy for rescission or damages where an offering memorandum or any amendment to it, and in some cases, advertising and sales literature used in connection therewith, contains a misrepresentation. These remedies, or notice with respect thereto, must be exercised or delivered, as the case may be, by the purchaser within the time limit prescribed, and are subject to the defences contained, in the applicable securities legislation. Purchasers should refer to the applicable provisions of the securities legislation of their province for the particulars of these rights or consult with a legal advisor. The following is a summary of the rights of rescission or rights to damages available to purchasers of the Senior Notes.

Rights for Purchasers in Ontario

Section 5.2 of Ontario Securities Commission Rule 45-501 — *Ontario Prospectus and Registration Exemptions* provides that when an offering memorandum, such as this confidential shelf offering memorandum, is delivered to an investor to whom securities are distributed in reliance upon the "accredited investor" prospectus exemption in section 73.3 of the *Securities Act* (Ontario) or a predecessor exemption to section 73.3 of the *Securities Act* (Ontario) the right of action referred to in section 130.1 of the *Securities Act* (Ontario) ("**Section 130.1**") is applicable, unless the prospective purchaser is:

(a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act;

(b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

(c) a Schedule III bank, meaning an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

(d) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada); or

(e) a subsidiary of any person referred to in paragraphs (a), (b), (c) or (d), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by the directors of the subsidiary.

Section 130.1(1) provides such investors who purchase securities offered by an offering memorandum with a statutory right of action against the Issuer of securities for rescission or damages in the event that the offering memorandum and any amendment to it contains a "misrepresentation". The term "misrepresentation" is defined to mean an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make any statement not misleading in the light of the circumstances in which it was made. These remedies, or notice with respect to these remedies, must be exercised or delivered, as the case may be, by the purchaser within the time limits prescribed by applicable securities laws.

Where this confidential shelf offering memorandum is delivered to a prospective purchaser of Senior Notes in connection with a trade made in reliance on section 73.3 of the *Securities Act* (Ontario), and this document contains a misrepresentation, the purchaser will have, without regard to whether the purchaser relied on the misrepresentation, a statutory right of action against the Issuer for damages or, while still the owner of Senior Notes, for rescission, in which case, if the purchaser elects to exercise the right of rescission, the purchaser will have no right of action for damages, provided that the right of action for rescission will be exercisable by the purchaser only if the purchaser commences the action not more than 180 days after the date of the transaction that gave rise to the cause of action; or, in the case of any action other than an action for rescission, the earlier of: (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or (ii) three years after the date of the transaction that gave rise to the cause of action.

The Issuer will not be liable for a misrepresentation if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation.

In an action for damages, the Issuer will not be liable for all or any portion of the damages that the Issuer proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

In no case will the amount recoverable for the misrepresentation exceed the price at which the Senior Notes were offered.

The liability of all persons and companies referred to above is joint and several. The Issuer, however, shall not be liable where it is not receiving any proceeds from the distribution of the securities being distributed and the misrepresentation was not based on information provided by the Issuer, unless the misrepresentation, (a) was based on information that was previously publicly disclosed by the Issuer, (b) was a misrepresentation at the time of its previous public disclosure and (c) was not subsequently publicly corrected or superseded by the Issuer prior to the completion of the distribution of the securities being distributed.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express provisions of the *Securities Act* (Ontario) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Saskatchewan

Section 138 of *The Securities Act, 1988* (Saskatchewan), as amended (the "**Saskatchewan Act**") provides that where an offering memorandum (such as this confidential shelf offering memorandum) or any amendment to it is sent or delivered to a purchaser and it contains a misrepresentation (as defined in the Saskatchewan Act), a purchaser who purchases a security covered by the offering memorandum or any amendment to it has, without regard to whether the purchaser relied on the misrepresentation, a right of action for rescission against the Issuer or a selling security holder on whose behalf the distribution is made or has a right of action for damages against:

(a) the Issuer or a selling security holder on whose behalf the distribution is made;

(b) every promoter and trustee of the Issuer or the selling security holder, as the case may be, at the time the offering memorandum or any amendment to it was sent or delivered;

(c) every person or company whose consent has been filed respecting the offering, but only with respect to reports, opinions or statements that have been made by them;

(d) every person who or company that, in addition to the persons or companies mentioned in (a) to (c) above, signed the offering memorandum or the amendment to the offering memorandum; and

(e) every person who or company that sells securities on behalf of the Issuer or selling security holder under the offering memorandum or amendment to the offering memorandum.

Such rights of rescission and damages are subject to certain limitations including the following:

(a) if the purchaser elects to exercise its right of rescission against the Issuer or selling security holder, it will have no right of action for damages against that party;

(b) in an action for damages, a defendant will not be liable for all or any portion of the damages that he, she or it proves do not represent the depreciation in value of the securities resulting from the misrepresentation relied on;

(c) no person or company, other than the Issuer or a selling security holder, will be liable for any part of the offering memorandum or any amendment to it not purporting to be made on the authority of

an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, unless the person or company failed to conduct a reasonable investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation or believed that there had been a misrepresentation;

(d) in no case will the amount recoverable exceed the price at which the securities were offered; and

(e) no person or company is liable in an action for rescission or damages if that person or company proves that the purchaser purchased the securities with knowledge of the misrepresentation.

In addition, no person or company, other than the Issuer or selling security holder, will be liable if the person or company proves that:

(a) the offering memorandum or any amendment to it was sent or delivered without the person's or company's knowledge or consent and that, on becoming aware of it being sent or delivered, that person or company immediately gave reasonable general notice that it was so sent or delivered; or

(b) with respect to any part of the offering memorandum or any amendment to it purporting to be made on the authority of an expert, or purporting to be a copy of, or an extract from, a report, an opinion or a statement of an expert, that person or company had no reasonable grounds to believe and did not believe that: (i) there had been a misrepresentation, or (ii) the part of the offering memorandum or any amendment to it did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or an extract from, the report, opinion or statement of the expert.

Not all defences upon which the Issuer or others may rely are described herein. Please refer to the full text of the Saskatchewan Act for a complete listing.

The liability of all persons and companies referred to above is joint and several.

Similar rights of action for damages and rescission are provided in section 138.1 of the Saskatchewan Act in respect of a misrepresentation in advertising and sales literature disseminated in connection with an offering of securities.

Section 138.2 of the Saskatchewan Act also provides that, subject to certain limitations and defences, where an individual makes a verbal statement to a purchaser that contains a misrepresentation relating to the security purchased and the verbal statement is made either before or contemporaneously with the purchase of the security, the purchaser has, without regard to whether the purchaser relied on the misrepresentation, a right of action for damages against the individual who made the verbal statement.

Section 141(1) of the Saskatchewan Act provides a purchaser with the right to void the purchase agreement and to recover all money and other consideration paid by the purchaser for the securities if the securities are sold in contravention of the Saskatchewan Act, the regulations to the Saskatchewan Act or a decision of the Financial and Consumer Affairs Authority of Saskatchewan.

Section 141(2) of the Saskatchewan Act also provides a right of action for rescission or damages to a purchaser of securities to whom an offering memorandum or any amendment to it was not sent or delivered prior to or at the same time as the purchaser enters into an agreement to purchase the securities, as required by Section 80.1 of the Saskatchewan Act.

The rights of action for damages or rescission under the Saskatchewan Act are in addition to and do not derogate from any other right which a purchaser may have at law.

Section 147 of the Saskatchewan Act provides that no action will be commenced to enforce any of the foregoing rights more than:

(a) in the case of an action for rescission or cancellation, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of any other action, other than an action for rescission or cancellation, the earlier of:

(i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action; or

(ii) six years after the date of the transaction that gave rise to the cause of action.

The Saskatchewan Act also provides that a purchaser who has received an amended offering memorandum delivered in accordance with subsection 80.1(3) of the Saskatchewan Act has a right to withdraw from the agreement to purchase the securities by delivering a notice to the person who or company that is selling the securities, indicating the purchaser's intention not to be bound by the purchase agreement, provided such notice is delivered by the purchaser within two business days of receiving the amended offering memorandum.

This summary is subject to the express provisions of the Saskatchewan Act and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Nova Scotia

The right of action for rescission or damages described herein is conferred by section 138 of the *Securities Act* (Nova Scotia). Section 138 provides, in the relevant part, that in the event that this confidential shelf offering memorandum (which shall for the purposes hereof be considered to include any document or record incorporated or deemed to be incorporated by reference herein), together with any amendments hereto (which shall for the purposes hereof be considered to include any document or record incorporated or deemed to be incorporated by reference therein), or any advertising or sales literature (as defined in the *Securities Act* (Nova Scotia)) contains an untrue statement of material fact or omits to state a material fact that is required to be stated or that is necessary in order to make any statements contained herein or therein not misleading in light of the circumstances in which it was made (a "misrepresentation"), a purchaser of Senior Notes is deemed to have relied upon such misrepresentation if it was a misrepresentation at the time of purchase and has, subject to certain limitations and defences, a statutory right of action for damages against the Issuer, its trustees, any person who signed this confidential shelf offering memorandum, any selling security holder and the directors of any such selling security holder at the date of this confidential shelf offering memorandum or, alternatively, while still the owner of the Senior Notes, may elect instead to exercise a statutory right of rescission against the Issuer, in which case the purchaser will have no right of action for damages against any person listed above, including the Issuer, provided that, among other limitations:

(a) no action may be commenced to enforce the right of action for rescission or damages by a purchaser resident in Nova Scotia under Section 138 later than 120 days after the date payment was made for the Senior Notes (or after the date on which initial payment was made for the Senior Notes where payments subsequent to the initial payment are made pursuant to a contractual commitment assumed prior to, or concurrently with, the initial payment);

(b) no person will be liable if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation;

(c) no person or company, other than the Issuer, is liable under Section 138 if the person or company proves that:

(i) this confidential shelf offering memorandum, or any amendment hereto, was sent or delivered to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its delivery, the person or company gave reasonable general notice that it was delivered without the person's or company's knowledge or consent;

(ii) after delivery of this confidential shelf offering memorandum, or the amendment hereto, and before the purchase of the Senior Notes by the purchaser, on becoming aware of any

misrepresentation in this confidential shelf offering memorandum, or the amendment hereto, or any record incorporated or deemed incorporated by reference herein, the person or company withdrew the person's or company's consent to this confidential shelf offering memorandum, or amendment hereto, or such record, and gave reasonable general notice of the withdrawal and the reason for it; or

(iii) with respect to any part of this confidential shelf offering memorandum, or amendment hereto, or any record incorporated or deemed to be incorporated by reference herein, purporting to be made on the authority of an expert, or to be a copy of, or an extract from a report, an opinion or a statement of an expert, the person or company had no reasonable grounds to believe and did not believe that there had been a misrepresentation, or that the relevant part of this confidential shelf offering memorandum, or amendment hereto, or such record, did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or extract from, the report, opinion or statement of the expert;

(d) no person or company, other than the Issuer, is liable under Section 138 with respect to any part of this confidential shelf offering memorandum, or amendment hereto, or any record incorporated or deemed incorporated by reference herein, not purporting to be made on the authority of an expert, or to be a copy of, or an extract from, a report, opinion or statement of an expert, unless the person or company failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation, or believed that there had been a misrepresentation;

(e) in the case of an action for damages, no person will be liable for all or any portion of the damages that it proves do not represent the depreciation in value of the Senior Notes resulting from the misrepresentation; and

(f) in no case will the amount recoverable under Section 138 in any action exceed the price at which the Senior Notes were offered to the purchaser.

The liability of all persons or companies referred to above is joint and several with respect to the same cause of action. A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person or company who is jointly and severally liable to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.

The foregoing statutory right of action for rescission or damages conferred by Section 138 of the *Securities Act* (Nova Scotia) is in addition to and without derogation from any other right or remedy available at law or otherwise to the purchaser. This summary is subject to the express provisions of the *Securities Act* (Nova Scotia) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions may have at law.

Rights for Purchasers in New Brunswick

Section 2.1 of New Brunswick Securities Commission Rule 45-802 provides that the statutory rights of action in rescission or damages referred to in Section 150 of the *Securities Act* (New Brunswick) ("**Section 150**") apply to information relating to an offering memorandum, such as this confidential shelf offering memorandum, that is provided to a purchaser of securities in connection with a distribution made in reliance on the "accredited investor" prospectus exemption in Section 2.3 of NI 45-106. Section 150 provides investors who purchase securities offered for sale in reliance on an exemption from the prospectus requirements of the *Securities Act* (New Brunswick) with a statutory right of action for damages against (i) the Issuer; (ii) the selling security holder on whose behalf the distribution was made; (iii) every person who was a director of the Issuer as at the date of the offering memorandum; and (iv) every person who signed the offering memorandum in the event that an offering memorandum provided to such investor contains a "misrepresentation". Alternatively, if the investor purchased the securities from a person referred to in (i) or (ii) above, an investor may elect a right of rescission, in which case the investor shall have no right of action for damages. "Misrepresentation" means an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

Where this confidential shelf offering memorandum is delivered to a prospective purchaser of Senior Notes in connection with a trade made in reliance on Section 2.3 of NI 45-106, and this document (including any documentation incorporated or deemed to be incorporated by reference) contains a misrepresentation, a purchaser who purchases the securities will be deemed to have relied on the misrepresentation and will have, subject to certain limitations and defences, a statutory right of action against the Issuer for damages or, while still the owner of Senior Notes, for rescission. If the purchaser elects to exercise the right of rescission, the purchaser will have no right of action for damages. The right of action for rescission will be exercisable by the purchaser only if the purchaser commences the action against the defendant, not more than 180 days after the date of the transaction that gave rise to the cause of action; or, in the case of any action other than an action for rescission, the earlier of: (i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action, or (ii) six years after the date of the transaction that gave rise to the cause of action.

No person other than the Issuer or the selling security holder is liable under Section 150 if the person proves that:

(a) the offering memorandum was delivered to the purchaser without the person's knowledge or consent and that, on becoming aware of its delivery, the person gave written notice to the Issuer that it was delivered without the person's knowledge or consent;

(b) upon becoming aware of a misrepresentation in the offering memorandum the person withdrew the person's consent to the offering memorandum and gave written notice to the Issuer of the withdrawal and the reason for the withdrawal; or

(c) with respect to any part of the offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, the person had no reasonable grounds to believe and did not believe there had been a misrepresentation or that the relevant part of the offering memorandum did not fairly represent the report, opinion or statement of the expert or was not a fair copy of, or extract from, the report, opinion or statement of the expert.

In addition, no person other than the Issuer or the selling security holder is liable under Section 150 with respect to any part of an offering memorandum not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert unless (i) the person failed to conduct such reasonable investigations as to provide reasonable grounds for a belief that there had been no misrepresentation or (ii) the person believed that there had been misrepresentation.

The defendant will not be liable for a misrepresentation if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation.

In an action for damages, the defendant will not be liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

In no case will the amount recoverable for the misrepresentation exceed the price at which the Senior Notes were offered.

The liability of all persons referred to above is joint and several.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express provisions of the Securities Act (New Brunswick) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Prince Edward Island

The right of action for rescission or damages described herein is conferred by Section 112 of the *Securities Act* (Prince Edward Island). Section 112 provides, that in the event that this confidential shelf offering memorandum contains a "misrepresentation", a purchaser who purchased the Senior Notes during the period of distribution, without regard to whether the purchaser relied upon such misrepresentation, has a statutory right of action for damages against the Issuer, the selling security holder on whose behalf the distribution was made, every trustee of the Issuer as at the date of the confidential shelf offering memorandum, and every person who signed the confidential shelf offering memorandum. Alternatively, the purchaser while still the owner of the Senior Notes may elect to exercise a statutory right of action for rescission against the Issuer or the selling security holder on whose behalf the distribution is made. "Misrepresentation" means an untrue statement of a material fact, or an omission to state a material fact that is required to be stated by the *Securities Act* (Prince Edward Island), or an omission to state a material fact that needs to be stated so that a statement is not false or misleading in light of the circumstances in which it is made. Statutory rights of action for rescission or damages by a purchaser are subject to the following limitations:

(a) no action will be commenced to enforce the right of action for rescission by a purchaser, resident in Prince Edward Island, later than 180 days after the date of the transaction that gave rise to the cause of action;

(b) in the case of any action other than an action for rescission, the earlier of;

  (i) 180 days after the purchaser first had knowledge of the facts given rise to the cause of action; or

  (ii) three years after the date of the transaction giving rise to the cause of action;

(c) no person will be liable if the person proves that the purchaser purchased the security with knowledge of the misrepresentation;

(d) no person other than the Issuer and selling security holder will be liable if the person proves that:

  (i) the confidential shelf offering memorandum was sent to the purchaser without the person's knowledge or consent and that, on becoming aware of it being sent, the person had promptly given reasonable notice to the Issuer that it had been sent without the knowledge and consent of the person;

  (ii) the person, on becoming aware of the misrepresentation in the confidential shelf offering memorandum, had withdrawn the person's consent to the confidential shelf offering memorandum and had given reasonable notice to the Issuer of the withdrawal and the reason for it; or

  (iii) with respect to any part of the confidential shelf offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, statement or opinion of an expert, the person had no reasonable grounds to believe, and did not believe that:

    (A) there had been a misrepresentation; or

    (B) the relevant part of the confidential shelf offering memorandum:

      a. did not fairly represent the report, statement or opinion of the expert, or

      b. was not a fair copy of, or an extract from, the report, statement, or opinion of the expert.

Not all defences upon which the Issuer or others may rely are described herein. Please refer to the full text of the *Securities Act* (Prince Edward Island) for a complete listing.

If the purchaser elects to exercise a right of action for rescission, the purchaser will have no right of action for damages.

In no case will the amount recoverable in any action exceed the price at which the Senior Notes were offered to the purchaser.

In an action for damages, the defendant will not be liable for any damages that the defendant proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express conditions of the *Securities Act* (Prince Edward Island) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Manitoba

Pursuant to section 141.1(1) of *The Securities Act* (Manitoba) (the "**Manitoba Act**"), where this confidential shelf offering memorandum, or any amendment to this confidential shelf offering memorandum, is sent or delivered to a purchaser in the Province of Manitoba and such document contains a misrepresentation, a purchaser who purchases Senior Notes offered by this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum is deemed to have relied on that misrepresentation, if it was a misrepresentation at the time of purchase and, subject to the defenses described in the Manitoba Act, has:

(a) a right of action for damages against:

(i) the Issuer;

(ii) each of its trustees at the date of this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum; and

(iii) every person or company who signed this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum; and

(b) while still an owner of the Senior Notes, a right of rescission against the Issuer;

provided that:

(c) no person or company is liable if the person or company proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation;

(d) in an action for damages, the defendant is not liable for all or any portion of the damages that he, she or it proves do not represent the depreciation in value of the Senior Notes resulting from the misrepresentation relied on; and

(e) in no case will the amount recovered exceed the price at which the Senior Notes were offered to the public.

Where a purchaser elects to exercise a right of rescission against the Issuer, the purchaser will have no right of action for damages against the Issuer or against a person or company referred to in (a)(ii) or (iii) above.

No person or company other than the Issuer is liable:

(a) if the person or company proves that this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum was sent without the person's or company's knowledge or consent and that, after becoming aware of its being sent, the person or company promptly gave reasonable notice to the Issuer that it was so sent;

(b) if the person or company proves that after becoming aware of any misrepresentation in this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum, the person or company withdrew the person's or company's consent to it and gave reasonable notice to the Issuer of the person's or company's withdrawal and the reason for it;

(c) if the person or company proves that with respect to any part of this confidential shelf offering memorandum or of any amendment to this confidential shelf offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, the person or company had no reasonable grounds to believe and did not believe that:

(i) there had been a misrepresentation; or

(ii) the relevant part of this confidential shelf offering memorandum or of the amendment to this confidential shelf offering memorandum:

(A) did not fairly represent the report, opinion or statement of the expert; or

(B) was not a fair copy of or extract from the report, opinion or statement of the expert; or

(d) with respect to any part of this confidential shelf offering memorandum or of the amendment to this confidential shelf offering memorandum not purporting to be made on an expert's authority and not purporting to be a copy of, or an extract from, the expert's report, opinion or statement, unless the person or company:

(i) did not conduct an investigation, sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; or

(ii) believed that there had been a misrepresentation.

Pursuant to section 141.4 of the Manitoba Act, but subject to the other provisions thereof, no action shall be commenced to enforce any of the foregoing rights more than:

(a) in the case of an action for rescission, 180 days from the date of the transaction that gave rise to the cause of action, or

(b) in the case of an action for damages, the earlier of:

(i) 180 days after the date that the plaintiff first had knowledge of the facts giving rise to the cause of action, or

(ii) two years after the date of the transaction that gave rise to the cause of action.

In an action for damages, the Issuer will not be liable for all or any part of the damages that the Issuer proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

The rights of action for rescission or damages under the Manitoba Act are in addition to and do not derogate from any other right that the purchaser may have at law.

This summary is subject to the express provisions of the Manitoba Act and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Alberta, British Columbia, Newfoundland and Labrador and Québec

By purchasing Senior Notes hereunder, purchasers in Alberta, British Columbia, Newfoundland and Labrador and Québec not entitled to the statutory rights described above, in consideration of their purchase of Senior Notes and upon accepting a purchase confirmation in respect thereof, are hereby granted a contractual right of action for damages or rescission that is the same as the statutory right of action, if any, provided to residents of Ontario who purchase Senior Notes.

General

The foregoing summaries are subject to the express provisions of the applicable securities law of each jurisdiction, and the regulations, rules and policy statements thereunder and reference is made thereto for the complete text of such provisions.

The rights of action described in this confidential shelf offering memorandum are in addition to and without derogation from any other right or remedy that the purchaser may have at law.

INDENTURE TRUSTEE

The Indenture Trustee, BNY Trust Company of Canada, will be the registrar for the Senior Notes, and the register for the transfer of Senior Notes will be kept at its principal office in Toronto, Ontario.

LEGAL MATTERS

Certain Canadian legal matters in connection with the offering of Senior Notes will be passed upon by Torys LLP on behalf of the Issuer and by Osler, Hoskin & Harcourt LLP on behalf of the Agents.

GLOSSARY

The following glossary contains definitions of certain terms that are used throughout this confidential shelf offering memorandum.

"**Acceleration**" means, with respect to a Funding Obligation, (a) a portion of the principal amount owing in respect of the Funding Obligation has become due and payable by a Financing Entity before the scheduled payment date, maturity date or redemption date, or (b) a party to a derivative agreement in respect of the Funding Obligation has elected to close-out or terminate the agreement, resulting in an obligation on a Financing Entity to pay a termination amount, close-out amount or similar amount.

"**Acceleration Event**" means the acceleration of any Series of Controlling Class Obligations pursuant to and in accordance with its Funding Obligation Agreement.

"**Act**" means the *Ontario Fair Hydro Plan Act, 2017*.

"**Adherence Compliance Certificate**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Adverse Effect**" has the meaning set out under *"Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations"*.

"**Agency Agreement**" has the meaning set out under *"Plan of Distribution"*.

"**Agents**" has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**Approved Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Available Collections**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Collection Account"*.

"**Borrowing**" means a borrowing or drawing by the Issuer pursuant to a liquidity agreement, a loan agreement or a credit enhancement agreement.

"**Canadian Insolvency and Restructuring Laws**" has the meaning set out under *"Risk Factors — Risks Associated with the Unusual Nature of the Investment Asset"*.

"**Carrying Costs**" has the meaning ascribed to the term "carrying costs" in the Regulations.

"**CDS**" has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**Certified Primary Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Change of Law Protection Agreement**" means the change of law protection agreement dated as of December 21, 2017 among the Province, the Issuer and the Indenture Trustee, as amended, supplemented, restated or otherwise modified from time to time.

"**Class**" has the meaning set out under *"Capital Markets Platform — Subordination Provisions"*.

"**Clean Energy Adjustment**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Clean Energy Benefits**" means the value of the benefits determined to be derived by or accruing to Specified Consumers as a result of the Clean Energy Initiative, including as a result of Clean Energy Costs.

"**Clean Energy Costs**" means the value of the costs allocated to Specified Consumers as a result of the Clean Energy Initiative, including as a result of past, present and expected costs incurred in respect of

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* (Ontario) or any provision that is the successor to that provision, which relate to contracts or amounts for

(i) renewable energy generation or capacity;

(ii) conservation and demand management;

(iii) energy storage;

(iv) energy efficiency; and

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed;

(b) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(c) such other costs or estimated costs as may be prescribed by the Regulations.

"**Clean Energy Initiative**" means the policies of the Ontario government related to

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies;

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies;

(c) promoting conservation, demand management and energy efficiency; and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system.

"**Clearstream, Luxembourg**" has the meaning set out under *"Depository Services . — DTC, Euroclear and Clearstream, Luxembourg"*.

"**Collateral**" has the meaning set out under *"Capital Markets Platform — Security"*.

"**Collection Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Collection Account"*.

"**Collection Account Waterfall**" has the meaning set out under *"Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account"*.

"**Commission**" has the meaning set out under *"Representations and Agreements of Purchasers"*.

"**Confidential Information**" has the meaning set out under *"Confidentiality"*.

"**Controlling Class Creditors**" means the Debtholders holding Controlling Class Obligations.

"**Controlling Class Obligations**" means: (a) Senior Funding Obligations until such time as all Senior Funding Obligations have been paid in full; then (b) if all Senior Funding Obligations have been paid in full, Subordinated Funding Obligations until such time as all Subordinated Funding Obligations have been paid in full; and finally (c) if all Senior Funding Obligations and Subordinated Funding Obligations have been paid in full, Junior Subordinated Funding Obligations until such time as all Junior Subordinated Funding Obligations have been paid in full.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by the FHPA.

"**Crown**" means Her Majesty the Queen in Right of Ontario.

"**DBRS**" means DBRS Limited and its successors.

"**Debtholder**" means a Noteholder or a Lender.

"**Debtholder Group**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Declaration of Trust**" means the declaration of trust made as of December 20, 2017 under which the Issuer was established, as amended, supplemented, restated or otherwise modified from time to time.

"**Default**" means the occurrence of any event which, after the passage of time, the required notification to the Indenture Trustee and, if required, approval by the required Controlling Class Creditors, would become an Event of Default.

"**depository**" has the meaning set out under *"Depository Services"*.

"**Derivative Counterparty**" means any party to any derivative agreement other than the Issuer or the Indenture Trustee.

"**Derivative Funding Obligations**" means Funding Obligations arising under, or in connection with, derivative agreements.

"**DTC**" has the meaning set out under *"Depository Services . — DTC, Euroclear and Clearstream, Luxembourg"*.

"**Electricity Vendor**" means

(a) a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a "distribution system" within the meaning of that Act;

(b) a person licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity;

(c) the IESO in circumstances where it directly invoices a Specified Consumer for electricity used in Ontario; or

(d) such other person as may be prescribed by the Regulations.

"**Eligible Deposit Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Eligible Institution**" means (a) a trust company or Schedule I chartered bank (or an affiliate thereof) incorporated under the laws of Canada or any province thereof (i) which has either (x) a long-term unsecured debt rating of "A" or better by DBRS, or (y) a short-term deposit rating of "R-1 (low)" or better by DBRS, and (ii) which has either (x) a long-term unsecured debt rating of "A2" or better by Moody's, or (y) a short-term deposit rating of "P-1" or better by Moody's, or (b) any institution that otherwise satisfies the Rating Agency Condition.

"**Eligible Investments**" means instruments or investment property that evidence:

(a) direct obligations of, or obligations fully and unconditionally guaranteed as to timely payment by, Canada or the United States of America;

(b) demand or time deposits of, unsecured certificates of deposit of, money market deposit accounts of, bank deposit products of or bankers' acceptances issued by, any depository institution (including, but not limited to, bank deposit products of the Indenture Trustee, acting in its commercial capacity) incorporated or organized under the laws of the United States of America, Canada or any state or province thereof and subject to supervision and examination by applicable banking authorities, so long as the commercial paper or other short-term debt obligations of such depository institution are, at the time of deposit, rated at least "R-1 (low)" and "P 1" by each of DBRS and Moody's, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(c) commercial paper (including commercial paper of the Indenture Trustee, acting in its commercial capacity), which at the time of purchase is rated at least "R-1 (low)" and "P-1" by each of DBRS and Moody's, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(d) investments in money market funds having a rating in the highest investment category granted thereby (including funds for which the Indenture Trustee or any of its affiliates is investment manager or advisor) from DBRS and Moody's;

(e) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States of America, Canada or their respective agencies or instrumentalities, entered into with Eligible Institutions;

(f) repurchase obligations with respect to any security or whole loan entered into with an Eligible Institution or with a registered broker/dealer acting as principal and that meets the ratings criteria set forth below:

(i) a broker/dealer (acting as principal) registered as a broker or dealer under the *Securities Act* (Ontario) (any such broker/dealer being referred to in this definition as a "**broker/dealer**"), the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's and "R-1" by DBRS at the time of entering into such repurchase obligation; or

(ii) an unrated broker/dealer, acting as principal, that is a wholly-owned subsidiary of a non-bank or bank holding company the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's and "R-1" by DBRS at the time of purchase so long as the obligations of such unrated broker/dealer are unconditionally guaranteed by such non-bank or bank holding company; and

(g) any other investment permitted by each of the Rating Agencies;

in each case maturing not later than the business day preceding the next Payment Date, Interest Payment Date or Principal Payment Date, as applicable (for the avoidance of doubt, investments in money market funds or similar instruments that are redeemable on demand shall be deemed to satisfy the foregoing requirement). Notwithstanding the foregoing, no securities or investments that mature in 30 days or more shall be "Eligible Investments" unless the issuer thereof has (x) either a short-term unsecured debt rating of at least "P-1" from Moody's or a long-term unsecured debt rating of at least "A2" from Moody's and also has (y) either a short-term unsecured debt rating of at least "R-1 (low)" from DBRS or a long-term unsecured debt rating of at least "A" from DBRS.

"**Eligible Securities Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Euroclear**" has the meaning set out under *"Depository Services . — DTC, Euroclear and Clearstream, Luxembourg"*.

"**Event of Default**" has the meaning set out under *"Capital Markets Platform — Event of Default"*.

"**Extraordinary Resolution**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Fair Adjustment**" has the meaning set out under *"Ontario's Fair Hydro Plan — Background"*.

"**Fair Allocation Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*.

"**FHPA**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Finance Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Financial Services Manager**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Financing Entity**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Financing Plan**" means the written plan entitled "Financing Plan" prepared by the Financial Services Manager as required under the FHPA to be used by the Financial Services Manager to evaluate whether potential Funding Obligations should be incurred for the purposes of a Financing Entity acquiring and financing an Investment Interest in accordance with the FHPA or for the purposes of a Refinancing, and includes any amendments thereto.

"**Funding Obligations**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Funding Obligation Agreement**" means any Note, any Supplemental Indenture (including any Terms Document), any liquidity agreement, any liquidity agreement, any credit enhancement agreement or any derivative agreement.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**HOEP**" has the meaning set out under *"The Electricity Industry in Ontario — Electricity Prices"*.

"**IESO**" means the Independent Electricity System Operator.

"**IESO Cash Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — IESO Cash Reserve Account"*.

"**IESO Cash Reserve Deposit Amount**" means an amount equal to the aggregate of:

(a) 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations determined as of the Payment Date occurring in April, 2021; and

(b) an amount estimated by the Manager, acting reasonably, as the amount of Carrying Costs payable by the Issuer during May, June and July, 2021 on outstanding Issuer Funding Obligations and any Issuer Funding Obligations to be issued in accordance with the Financing Plan, provided that such estimate satisfies the Rating Agency Condition.

"**IESO Cash Reserve Required Amount**" means, on any Payment Date on or after the Payment Date in November, 2021, the amount, if any, by which (a) an amount equal to 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations,

exceeds (b) the amount on deposit in the Program Cash Reserve Account, determined after giving effect to all settlements on such Payment Date.

"**IESO Security Agreement**" means the security agreement made by the IESO in favour of the Issuer to secure its obligations to pay the Issuer's Carrying Costs pursuant to the Master Transfer and Servicing Agreement.

"**Indemnity Agreement**" means the Indemnity Agreement dated December 21, 2017 by OPG in favour of the Indenture Trustee.

"**Indenture**" means the Master Trust Indenture, as supplemented by any Supplemental Indenture.

"**Indenture Trustee**" means BNY Trust Company of Canada and its successors.

"**Interest Accrual Amount (Junior Subordinated)**" means, in respect of any Payment Date and all Junior Subordinated Funding Obligations, the amount of interest that accrued on such Junior Subordinated Funding Obligations during the period from and including the issuance date of such Junior Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Junior Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accrual Amount (Senior)**" means, in respect of any Payment Date and all Senior Funding Obligations, the amount of interest that accrued on such Senior Funding Obligations during the period from and including the issuance date of such Senior Funding Obligations or the last date to which interest has been paid in respect of such Senior Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accrual Amount (Subordinated)**" means, in respect of any Payment Date and all Subordinated Funding Obligations, the amount of interest that accrued on such Subordinated Funding Obligations during the period from and including the issuance date of such Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accumulation Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Interest Accumulation Account"*.

"**Interest Payment Date**" means each business day on which interest is due and payable in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as set out in the related Funding Obligation Agreement.

"**Investment Asset**" has the meaning set out under *"Ontario's Fair Hydro Plan — Investment Interest"*.

"**Investment Interest**" has the meaning set out under *"Ontario's Fair Hydro Plan — Investment Interest"*.

"**Investor Presentation**" has the meaning set out on page (iii) of this confidential shelf offering memorandum.

"**Issuer**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Issuer Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Issuer Funding Obligation**" means Funding Obligations of the Issuer.

"**Issuer Trustee**" means Computershare Trust Company of Canada.

"**Junior Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Junior Subordinated" in the related Funding Obligation Agreement.

"**Junior Subordinated Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**LDCs**" has the meaning set out under *"The Electricity Industry in Ontario"*.

"**Lender**" means any Person providing credit facilities, note purchase facilities or advances under a liquidity agreement, liquidity agreement or credit enhancement agreement, as applicable.

"**Limited Guarantee**" has the meaning set out under *"Change of Law Protection Agreement"*.

"**Management Agreement**" means the management agreement dated as of December 20, 2017 between the Manager and the Issuer, and acknowledged by the Indenture Trustee, as amended, supplemented, restated or otherwise modified from time to time.

"**Manager**" means OPG, as manager of the Issuer appointed under the Management Agreement.

"**Manitoba Act**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in Manitoba"*.

"**Master Agreement**" means an agreement in the form of a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated as of December 21, 2017 between the Issuer and the IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Master Trust Indenture**" means the trust indenture dated as of December 21, 2017 between the Issuer, as issuer, and the Indenture Trustee, as amended, supplemented, restated or otherwise modified from time to time.

"**Material Effect**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Moody's**" means Moody's Investors Service, Inc. and its successors.

"**Moratorium Period**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**MTSA Acknowledgement**" means the acknowledgement and indemnity agreement dated December 21, 2017 by the IESO in favour of the Indenture Trustee.

"**NI 31-103**" has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**NI 45-106**" has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**Non-Investment Grade Rated Electricity Vendor**" has the meaning set out under *"The Transferor and Servicer"*.

"**Note**" means any note of any Class, Series or Tranche created pursuant to a Supplemental Indenture and authenticated and delivered from time to time under the Master Trust Indenture.

"**Noteholders**" means a Person in whose name a Note is registered in the Note register or the bearer of any Note held in bearer form (including a global note in bearer form), as the case may be.

"**Obligations Secured**" means all present and future debts, expenses and liabilities, direct or indirect, absolute or contingent, due, owing or accruing due or owing from time to time by the Issuer to the Specified Creditors in their

capacity as such. For greater certainty, amounts owing to any Specified Creditors by the Issuer at any time shall include (a) the unpaid face amount of any Notes issued on a discount basis; (b) the principal amount owing at such time, together with the accrued and unpaid interest on interest bearing Notes or Borrowings; (c) accrued fees, whether or not then due and payable; and (d) any evidence of indebtedness issued pursuant to or in respect of an amount owing under a Program Agreement (other than amounts payable by the Issuer to its beneficiaries pursuant to the Declaration of Trust or a promissory note issued by the Issuer to a beneficiary as contemplated in the Declaration of Trust).

"**OEB**" means the Ontario Energy Board.

"**Offering**" has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**Offering Jurisdiction**" has the meaning set out under *"Representations and Agreements of Purchasers"*.

"**OPA**" has the meaning set out under *"The Electricity Industry in Ontario — Key Industry Participants — The IESO*.

"**OPG**" means Ontario Power Generation Inc.

"**Ordinary Resolution**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Participants**" has the meaning set out under *"Depository Services"*.

"**Paying Agent**" means any Person authorized by the Issuer to pay any Obligations Secured on behalf of the Issuer.

"**Payment Date**" means the 15th day of each calendar month or, if such day is not a business day, the next business day.

"**Person**" means any individual, corporation, limited liability company, unlimited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Post-Suspension Refinancing**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Pre-Approved Refinancing**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Predecessor IESO**" has the meaning set out under *"The Electricity Industry in Ontario — Key Industry Participants — The IESO"*.

"**Primary Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Principal Accumulation Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Principal Accumulation Account"*.

"**Principal Accumulation Amount**" means, in respect of any Series of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations and a Payment Date, the amount specified for such Payment Date in the related Funding Obligation Agreement plus any amounts specified in the related Funding Obligation Agreement in respect of prior Payment Dates which were not deposited to the Principal Accumulation Account; provided that if the Issuer has delivered a refinancing notice in respect of such Series, the Principal Accumulation Amounts in respect of such Series shall be adjusted as provided for in such refinancing notice.

"**Principal Accumulation Date**" means, in respect of any Series of Issuer Funding Obligations, other than Derivative Funding Obligations, the date, if any, specified in the related Funding Obligation Agreement.

"**Principal Payment Date**" means each business day on which principal is due and payable in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as set out in the related Funding Obligation Agreement.

"**Principal Payment Default Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the related Funding Obligation Agreement.

"**Program Account**" means each of the Collection Account, the Principal Accumulation Account, the Interest Accumulation Account, the Program Cash Reserve Account, the IESO Cash Reserve Account, the Refinancing Account and the Protection Account.

"**Program Agreements**" means the Master Trust Indenture, each Supplemental Indenture, the Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, the MTSA Acknowledgement, the Indemnity Agreement, each transfer notice delivered under the Master Transfer and Servicing Agreement, any Co-Owner Agreements, the IESO Security Agreement, the Change of Law Protection Agreement, the Notes, any derivative agreements, credit enhancement agreements, liquidity agreements, loan agreements, underwriting agreements, agency agreements or note purchase agreements and all other documents and certificates delivered in connection therewith.

"**Program Cash Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Program Cash Reserve Account"*.

"**Program Cash Reserve Required Amount**" means (a) on each Payment Date prior to the Payment Date in May, 2021, nil, and (b) on each Payment Date thereafter, an amount equal to 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations after giving effect to all settlements on such Payment Date, or such lesser amount proposed by the Manager that satisfies the Rating Agency Condition.

"**Protection Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Protection Account"*.

"**Protection Event**" has the meaning set out under *"Change of Law Protection Agreement — Protection Event"*.

"**Rating Agency**" means, with respect to any Issuer Funding Obligation, each nationally recognized statistical rating organization or designated rating organization, as specified in the related Funding Obligation Agreement, selected by the Manager to rate such Issuer Funding Obligation.

"**Rating Agency Condition**" has the meaning set out under *"Rating Agency Condition"*.

"**Reference Period**" means:

(a) the period beginning on July 1, 2017 and ending on October 31, 2017; and

(b) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed by the Regulations

(i) every six-month period following the period mentioned in (a);

(ii) any period shorter than six months, as may be prescribed by the Regulations.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the FHPA.

"**Refinancing Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Refinancing Account"*.

"**Regulated Price Plan**" or "**RPP**" has the meaning set out under *"The Electricity Industry in Ontario — Electricity Prices*.

"**Regulations**" means the regulations promulgated under the FHPA.

"**Regulatory Asset**" has the meaning set out under *"Ontario's Fair Hydro Plan — Regulatory Asset"*.

"**Required Principal Accumulation Amount (Senior)**" means, in respect of any Principal Payment Date, the aggregate of the Principal Accumulation Amounts in respect of all Senior Funding Obligations for all Payment Dates up to and including such Principal Payment Date, less all amounts that have been applied to principal repayments of Senior Funding Obligations on or prior to such Principal Payment Date.

"**Required Principal Accumulation Amount (Subordinated)**" means, in respect of any Principal Payment Date, the aggregate of the Principal Accumulation Amounts in respect of all Subordinated Funding Obligations for all Payment Dates up to and including such Principal Payment Date, less all amounts that have been applied to principal repayments of Subordinated Funding Obligations on or prior to such Principal Payment Date.

"**Saskatchewan Act**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in Saskatchewan"*.

"**Section 130.1**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in Ontario"*.

"**Section 150**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in New Brunswick"*.

"**Securities Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Securities Account"*.

"**Senior Funding Obligation**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Senior" in the related Funding Obligation Agreement.

"**Senior Notes**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Senior Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**Series**" means, with respect to any Class of Issuer Funding Obligations, the Series of the Class specified in the related Funding Obligation Agreement.

"**Series Account**" means each Series Finance Reserve Account and each Series Capital Reserve Account.

"**Series Capital Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Series Accounts — Series Capital Reserve Account"*.

"**Series Finance Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Series Accounts — Series Finance Reserve Account"*.

"**Servicer**" means the IESO, as servicer under the Master Transfer and Servicing Agreement.

"**Servicer Default**" means:

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of three business days after written notice of such failure is received by the Servicer from the Issuer or after discovery of such failure by a responsible officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, to duly observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in the Master Transfer and Servicing Agreement or in any other Program Agreement to which it is a party (other than as provided in (a) above), which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or (B) such failure is discovered by a responsible officer of the Servicer;

(c) any representation or warranty made by the Servicer in the Master Transfer and Servicing Agreement, any other Program Agreement to which it is a party, any transfer notice or any monthly servicer report shall prove to have been incorrect when made, which has a material adverse effect on the Issuer and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer by the Issuer or (ii) such failure is discovered by a responsible officer of the Servicer;

(d) an insolvency event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs.

"**Specified Claims**" has the meaning set out under *"Change of Law Protection Agreement"*.

"**Specified Consumer**" has the meaning set out under *"Ontario's Fair Hydro Plan — Background"*.

"**Specified Creditors**" means, collectively, Noteholders, Lenders, the Paying Agent, the Indenture Trustee, the Issuer Trustee, the Manager, the Servicer, the Province of Ontario, Derivative Counterparties, credit enhancers, Rating Agencies and counterparties to underwriting agreements, agency agreements or note purchase agreements, in each case, to the extent of their claims related to Program Agreements, and any other Person that is owed a payment obligation by the Issuer that gives rise to a Finance Amount in respect of the Issuer.

"**Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Subordinated" in the related Funding Obligation Agreement.

"**Subordinated Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**Supplemental Indenture**" means a supplemental indenture to the Master Trust Indenture between the Issuer and the Indenture Trustee.

"**Suspension Event**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Suspension Notice**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Term Sheet**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Terms Document**" means, with respect to any Tranche of Notes, a supplement to the related Supplemental Indenture.

"**Tranche**" means, with respect to any Series of Notes, Notes of such Series which have identical terms, conditions and Tranche designation. Notes of a single Tranche may be issued on different dates.

"**Transfer**" has the meaning specified in the *Ontario Fair Hydro Plan Act, 2017*, and "**Transferred**" and "**Transferee**" shall have corresponding meanings.

"**True-up Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Unitholders**" has the meaning set out under *"The Issuer"*.

"**U.S. Securities Act**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Warehouse Facilities**" has the meaning set out under *"Short Term Indebtedness"*.

"**Warehouse Obligations**" means Senior Funding Obligations incurred pursuant to a Funding Obligation Agreement that provide the Issuer with a revolving facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period and does not provide any other type of credit facility.

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SCHEDULE A – CANADIAN PROVINCIAL SECURITIES REGULATORY AUTHORITIES

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: (403) 297-2082
Public official contact regarding indirect collection of information: FOIP Coordinator

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Inquiries: (604) 899-6854
Toll free in Canada: 1-800-373-6393
Facsimile: (604) 899-6581
Email: FOI-privacy@bcsc.bc.ca
Public official contact regarding indirect collection of information: FOI Inquiries

The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: (204) 945-2561
Toll free in Manitoba 1-800-655-5244
Facsimile: (204) 945-0330
Public official contact regarding indirect collection of information: Director

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll free in Canada: 1-866-933-2222
Facsimile: (506) 658-3059
Email: info@fcnb.ca
Public official contact regarding indirect collection of information: Chief Executive Officer and Privacy Officer

Government of Newfoundland and Labrador Financial Services Regulation Division
P.O. Box 8700
Confederation Building
2nd Floor, West Block
Prince Philip Drive
St. John's, Newfoundland and Labrador A1B 4J6
Attention: Director of Securities
Telephone: (709) 729-4189
Facsimile: (709) 729-6187
Public official contact regarding indirect collection of information: Superintendent of Securities

Nova Scotia Securities Commission
Suite 400, 5251 Duke Street
Duke Tower
P.O. Box 458
Halifax, Nova Scotia B3J 2P8
Telephone: (902) 424-7768
Facsimile: (902) 424-4625
Public official contact regarding indirect collection of information: Executive Director

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Telephone: (416) 593-8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-8122
Email: exemptmarketfilings@osc.gov.on.ca
Public official contact regarding indirect collection of information: Inquiries Officer

Prince Edward Island Securities Office
95 Rochford Street, 4th Floor Shaw Building
P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: (902) 368-4569
Facsimile: (902) 368-5283
Public official contact regarding indirect collection of information: Superintendent of Securities

Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Telephone: (514) 395-0337 or 1-877-525-0337
Facsimile: (514) 873-6155 (For filing purposes only)
Facsimile: (514) 864-6381 (For privacy requests only)
Email: financementdessocietes@lautorite.qc.ca (For corporate finance issuers)
Public official contact regarding indirect collection of information: Corporate Secretary

Financial and Consumer Affairs Authority of Saskatchewan
Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5842
Facsimile: (306) 787-5899
Public official contact regarding indirect collection of information: Director

EXHIBIT 1

INVESTOR PRESENTATION

(See attached.)

Blackline_Fair Hydro Trust - Confidential Offering Memorandum.pdf

This confidential shelf offering memorandum constitutes an offering of these securities only in those jurisdictions and to those persons where and to whom they may be lawfully offered for sale. This confidential shelf offering memorandum is not, and in no circumstances is to be construed as, a prospectus or advertisement or public offering of these securities. ***No securities commission or similar authority in Canada or in any other jurisdiction has reviewed this material or in any way passed upon the merits of the securities offered hereunder and any representation to the contrary is an offence.*** *Persons who acquire securities pursuant to this confidential shelf offering memorandum will not have the benefit of the review of this material by any securities commission or similar authority. The information contained in this confidential shelf offering memorandum has been furnished or supplied by the Issuer based on the most accurate information available as at the date hereof and there is no representation or warranty by the Agents as to the accuracy or completeness of such information. These securities have not been and will not be registered under the United States Securities Act of 1933, as amended (the "****U.S. Securities Act****") or any state securities laws and may not be offered or sold within the United States or to, or for the account of, U.S. persons (within the meaning of Regulation S under the U.S. Securities Act) unless registered under the U.S. Securities Act and applicable state securities laws or an exemption from such registration is available. See "Plan of Distribution". This confidential shelf offering memorandum is confidential and contains certain information not publicly disclosed. No one is authorized to make any representation or give any warranty on behalf of the Issuer other than those representations and warranties made or referred to in this confidential shelf offering memorandum.*

The information contained in this confidential shelf offering memorandum and delivered in connection with the private placement of the Senior Notes by the Issuer is confidential, is for the confidential use of only those persons to whom it is delivered in connection with the offering solely for the purpose of considering the purchase of the Senior Notes and its use for any other purpose is prohibited. By accepting this confidential shelf offering memorandum, each prospective purchaser agrees that it will not transmit, reproduce or make available to anyone, other than their respective advisors (so long as they advise such advisors of the confidential nature of such document), this confidential shelf offering memorandum (including any Term Sheets) or any information contained herein, and will not use such information (or permit its advisors to use such information) for any purpose other than to evaluate an investment in the Senior Notes pursuant to an Offering.

CONFIDENTIAL SHELF OFFERING MEMORANDUM

New Issue By Way of Private Placement

January ~~7~~ 22, 2018

FAIR HYDRO TRUST

Senior Secured Notes

Fair Hydro Trust (the "**Issuer**"), a special purpose trust established under the laws of the Province of Ontario by Computershare Trust Company of Canada, acting as trustee of the Issuer, and caused to be established by Ontario Power Generation Inc. ("**OPG**"), as Financial Services Manager (as hereinafter defined), has created a program providing for the offering and issuance of senior secured notes (the "**Senior Notes**"), in one or several offerings. The Issuer was established in connection with the *Ontario Fair Hydro Plan Act, 2017* (together with the regulations promulgated thereunder, the "**FHPA**"). Under the FHPA, OPG is appointed as financial services manager (in such capacity, the "**Financial Services Manager**") and is given the authority to, among other things, establish, or cause to be established, one or more financing entities (each, a "**Financing Entity**") to incur payment obligations (referred to as "**Funding Obligations**") for the purposes prescribed under the FHPA. The Issuer is a Financing Entity under the FHPA and the Senior Notes are Funding Obligations being offered for the purposes of the FHPA.

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*. The Senior Notes will be limited recourse obligations, secured only by the collateral described in this confidential shelf offering memorandum. See *"Capital Markets Platform —Acceleration and Remedies — Limited Recourse"* and *"Risk Factors"*.

The specific terms of any offering of Senior Notes, including, without limitation, the aggregate principal amount of Senior Notes being offered, the currency of the Senior Notes, the issue price (at par, at a discount or at a premium), the issue, delivery and maturity dates, any redemption or repayment provisions, the rating of the Senior Notes at the time of such offering, the interest (either fixed or floating and the circumstances, if any, under which the rate may be

adjusted), the interest rate basis and interest payment dates, will be established by the Issuer and set forth in a term sheet (a "**Term Sheet**") that will accompany, be incorporated by reference in and form an integral part of this confidential shelf offering memorandum. Unless otherwise specified in a Term Sheet, the Senior Notes will not be listed on any securities exchange.

The offering of Senior Notes from time to time (each, an "**Offering**") will be made pursuant to exemptions from the prospectus requirements of applicable securities laws in each of the provinces of Canada only to "accredited investors" (as such term is defined in National Instrument 45-106 – *Prospectus Exemptions* ("**NI 45-106**") and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) that are purchasing the Senior Notes as principal and that are not individuals unless those individuals are also "permitted clients" (as such term is defined in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**")). Purchasers of Senior Notes will be obliged to establish their qualification to invest in accordance with the requirements of the securities laws of the jurisdiction in which they reside. See *"Representations and Agreements of Purchasers"*. As each Offering will be made pursuant to exemptions from prospectus requirements of applicable securities laws, there will be restrictions on the resale of the Senior Notes. See *"Risk Factors"* and *"Restrictions on Resale"*.

The Senior Notes may be sold by the Issuer directly pursuant to applicable statutory exemptions or through agents designated by the Issuer from time to time (the "**Agents**"). See *"Plan of Distribution"*. Each Term Sheet will identify the Agents engaged to conditionally offer the Senior Notes for sale on a best efforts basis, subject to prior sale, in connection with the applicable Offering of Senior Notes and will also set forth the terms of such Offering of Senior Notes, including the net proceeds to the Issuer and, to the extent applicable, any fees payable to the Agents.

Subscriptions for the Senior Notes will be received subject to rejection or allotment in whole or in part and the right is reserved to close the subscription books at any time without notice. The Senior Notes will be delivered and recorded in book-entry form through CDS Clearing and Depository Services Inc. ("**CDS**") or another depository selected by the Issuer in accordance with the master trust indenture governing the Senior Notes. The Senior Notes will be represented by fully registered book-entry notes held by, or on behalf of, such depository, or a successor thereof, as the custodian of the book-entry notes, in its name or the name of its nominee.

The Senior Notes will be issued under and will be entitled to the benefits of a master trust indenture dated as of December 21, 2017 between the Issuer, as issuer, and BNY Trust Company of Canada, as indenture trustee, as amended, supplemented, restated or otherwise modified from time to time.

In making an investment decision, prospective investors acknowledge that they have not relied on the Agents or any person affiliated with the Agents for investment or other advice and are relying on their own examination of the terms of an Offering, including the merits and risks involved and creditworthiness of the Issuer. Prospective investors are not to construe the contents of this document as legal, tax, accounting or investment advice. Prior to investing in the Senior Notes, prospective investors should consult with their legal, tax, accounting and investment advisors to determine the consequences of an investment in the Senior Notes. See *"Risk Factors"* for a discussion of certain factors that should be considered by prospective purchasers of Senior Notes.

The Issuer is not a "reporting issuer" (as such term is defined under applicable Canadian securities laws) in any jurisdiction. The Issuer will only distribute the Senior Notes in Canada under exemptions from the prospectus requirements of the securities laws of the provinces where they are sold. The Senior Notes may only be traded in Canada under exemptions from the prospectus requirements of the securities laws of the provinces in which they are traded and only through dealers registered or exempt from the dealer registration requirements of applicable Canadian securities laws. See *"Restrictions on Resale"*.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of Senior Notes with liquidity for their investment or that it will continue for the term of the applicable Senior Notes. Accordingly, purchasers of the Senior Notes may be required to bear the financial risk of investing in such Senior Notes until the maturity date of such Senior Notes.

No person is authorized to give any information or make any representation other than those contained in this confidential shelf offering memorandum in connection with an Offering and any decision to purchase Senior Notes should be based solely on the information contained herein. The Term Sheet applicable to such Offering and the investor presentation (the "**Investor Presentation**"), attached hereto as Exhibit 1, are incorporated by reference and included in, respectively, and form an integral part of, this confidential shelf offering memorandum. The information contained in the Investor Presentation is current only as of the date thereof. The Investor Presentation may be updated and replaced by the Issuer in connection with an Offering and such updated Investor Presentation will be attached as Exhibit 1, and will be included in, and form an integral part of, this confidential shelf offering memorandum delivered in respect of such Offering.

This confidential shelf offering memorandum, including the Investor Presentation attached hereto, and any Term Sheets, are provided on a confidential basis to prospective investors for informational use solely in connection with their consideration of the purchase of Senior Notes. Use for any other purpose is not authorized. Each Offering will be made solely on the basis of the information contained herein or incorporated by reference which has been furnished by the Issuer. No Agent makes any representation or warranty, express or implied, as to the accuracy, adequacy or completeness of such information. Furthermore, no Agent has independently verified the information in this confidential shelf offering memorandum and has no responsibility for the accuracy, adequacy or completeness of any such information.

This confidential shelf offering memorandum does not contain all of the information that would normally appear in a prospectus qualified under applicable Canadian securities laws. Neither the delivery of this confidential shelf offering memorandum, at any time, nor any sales made pursuant hereto, will imply that the information contained herein is correct as of any time subsequent to the date set forth on the face page hereof and the Issuer and the Agents will not update such information except as may be required by applicable law.

Capitalized terms used and not otherwise defined in this confidential shelf offering memorandum have the meanings ascribed to them in the glossary starting on page ~~[92]~~**95** of this confidential shelf offering memorandum. An index of defined terms used in this confidential shelf offering memorandum **specifying on which page such terms are defined** is provided starting on page ~~[104]~~**107** of this confidential shelf offering memorandum. All figures in this confidential shelf offering memorandum are in Canadian dollars unless otherwise noted.

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CAUTION REGARDING FORWARD-LOOKING INFORMATION

Some of the statements contained in this confidential shelf offering memorandum, including those relating to the Issuer's expectations, forecasts, strategic and other statements, are forward-looking information within the meaning of securities laws. Forward-looking information is contained in the summary and in the sections titled *"Ontario's Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*, *"Subordinated Debt"* and *"Risk Factors"* of this confidential shelf offering memorandum and *"Fair Allocation Amount"*, *"Financing Plan / Strategy"*, *"Financing Structure"*, *Aggregate Financing Program"* and *"Consumer Bill Forecast with FHP"* of the Investor Presentation. The forward-looking statements contained in this confidential shelf offering memorandum are presented for the purposes of assisting potential purchasers in making an investment decision regarding the Senior Notes and may not be appropriate for other purposes.

Often, but not always, forward-looking information can be identified by the use of forward-looking terminology such as "may", "will", "expect", "believe", "estimate", "plan", "could", "should", "would", "outlook", "forecast", "anticipate", "foresee", "continue" or the negative of these terms or variations of them or similar terminology. Forward-looking information is based on the reasonable assumptions, estimates, analysis and opinions of management of the Issuer made in light of its experience and perception of trends, current conditions and expected developments, as well as other factors that the Issuer believes to be relevant and reasonable at the date that such statements are made. A variety of factors, many of which are beyond the Issuer's control, may cause actual results to differ materially from the expectations expressed in the forward-looking statements. These factors include, but are not limited to, the following risks:

Judicial, Legislative or Regulatory Risks:

- Future legal action might challenge or invalidate the FHPA and materially adversely affect a holder's investment in the Senior Notes.
- Future legislative action to change the FHPA, the Change of Law Protection Agreement or the electricity market might materially adversely affect a holder's investment in the Senior Notes.
- Future regulatory action to change the rules applicable to the operation of the electricity market might materially adversely affect a holder's investment in the Senior Notes.
- Future judicial action could reduce the value of a holder's investment in the Senior Notes.
- Potential difficulties in enforcing civil liabilities against the Province of Ontario may arise.

Risks Associated with the Unusual Nature of the Investment Asset:

- Clean Energy Adjustments will not be payable until May 1, 2021 and until such time the IESO will be the sole source of funds for payment on the Senior Notes. Amounts paid by the IESO are not available to pay principal on the Senior Notes.
- The Issuer's ability to enforce security granted by the IESO may be significantly impaired or delayed.
- A holder of Senior Notes may experience material payment delays because the source of funds for payment after the Moratorium Period is limited.
- The Clean Energy Adjustment may not be billed after April 30, 2047, unless further regulations to extend that date are passed.
- Foreclosure of the Indenture Trustee's lien on the Investment Interest securing the Senior Notes might not be practical and acceleration of the Senior Notes before maturity might have little practical effect.
- The Issuer may issue multiple Series of Senior Notes secured by the Investment Interest and some decisions affecting holders of Senior Notes may require approval of all Series.
- If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected.
- The Issuer may have a co-ownership interest in the Investment Asset with other Financing Entities.
- If the Clean Energy Adjustment amounts and other funds held in the Issuer Accounts results in investment losses or the investments become illiquid, a holder of Senior Notes might receive payment of principal of and interest on the Senior Notes later than expected.

Servicing, Operating and Consumer Risks

- Payments on the Senior Notes depend on the performance of Electricity Vendors and the IESO **in performing their respective obligations under the FHPA and, with respect to the IESO, the Master Transfer and Servicing Agreement**.
- Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and as Manager.
- Inaccurate consumption forecasting or unanticipated delinquencies or write-offs might reduce or delay scheduled payments on the Senior Notes.
- Changes to billing and collection practices may reduce the amount of funds available for payments on the Senior Notes.
- Limits on rights to terminate service to Specified Consumers might make it more difficult to collect the Clean Energy Adjustment.
- It might be difficult for the Issuer to collect the Clean Energy Adjustment from Specified Consumers.
- Delinquent or partial payments of electricity bills may make principal payments on the Senior Notes occur later than expected.
- Indemnification obligations of OPG and the IESO are limited and might not be sufficient to protect the investments in the Senior Notes.
- Power outages could impair payment of the Senior Notes.
- Technological changes that make alternative energy sources more attractive in the future or significant population fluctuations may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment.

Insolvency-Related Risks

- If the Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed.
- If the IESO were to become subject to Canadian Insolvency and Restructuring Laws, the Transfers of specified portions of the Regulatory Asset by the IESO may not be respected as true sales of the Regulatory Asset.
- If any Electricity Vendor or the IESO were to become subject to Canadian Insolvency and Restructuring Laws, collections that have been commingled may be unrecoverable and the Issuer's ability to enforce its rights against such Electricity Vendor or the IESO may be significantly impaired or delayed.
- If OPG were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to enforce its rights against OPG may be significantly impaired or delayed and the Issuer's assets and liabilities may be substantively consolidated with those of OPG.
- If the Issuer Trustee were to become subject to Canadian Insolvency and Restructuring Laws, the assets and liabilities of the Issuer may be substantively consolidated with the Issuer Trustee.
- If a Specified Consumer were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to collect Clean Energy Adjustment amounts from such Specified Consumer may be adversely affected.
- If amounts in the Issuer Accounts for any Series are invested with entities that become subject to insolvency proceedings, the Issuer's ability to make payments to holders of Senior Notes may be adversely affected.

Other Risks:

- The credit ratings are not an indication of the expected rate of payment of principal on the Senior Notes.
- If the ratings on the Senior Notes are withdrawn or revised downward, the value of a holder's investment in the Senior Notes may be adversely affected.
- The credit ratings of the IESO, OPG and the Province of Ontario might affect the market value of the Senior Notes.
- The absence of an established market for the Senior Notes might limit the ability to resell or refinance the Senior Notes.
- Restrictions on resale might limit the ability to resell the Senior Notes.

Please also see *"Risk Factors"*.

The Issuer does not intend, or assume any obligation, to update any forward-looking information except as may be required by applicable law.

CONFIDENTIALITY

THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM IS FOR THE CONFIDENTIAL USE OF ONLY THOSE PERSONS, AND THEIR RESPECTIVE REPRESENTATIVES, TO WHOM IT IS TRANSMITTED, SOLELY TO ENABLE SUCH PERSONS TO EVALUATE AN INVESTMENT IN THE NOTES DESCRIBED IN THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM. BY ACCEPTING A COPY OF THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM, EACH PROSPECTIVE PURCHASER AGREES THAT ALL INFORMATION CONTAINED HEREIN, ALL DOCUMENTS DELIVERED IN CONNECTION HEREWITH AND ALL OTHER INFORMATION OBTAINED BY PROSPECTIVE PURCHASERS IN RELATION TO THE ISSUER (COLLECTIVELY, THE "**CONFIDENTIAL INFORMATION**") IS CONFIDENTIAL, THAT NONE OF THE CONFIDENTIAL INFORMATION WILL BE COPIED, TRANSCRIBED, RECORDED OR TRANSMITTED BY THE RECIPIENT FOR ANY REASON OR USED FOR ANY PURPOSE OTHER THAN EVALUATING AN INVESTMENT IN THE NOTES, AND THAT THE RECIPIENT WILL HOLD ALL OF THE CONFIDENTIAL INFORMATION IN CONFIDENCE AND WILL NOT PROVIDE ANY OF IT TO ANY THIRD PARTIES OTHER THAN PERSONS RETAINED TO ADVISE THE RECIPIENT WITH RESPECT TO THE PURCHASE OF THE NOTES (SO LONG AS THEY ADVISE SUCH PERSONS OF THE CONFIDENTIAL NATURE OF SUCH CONFIDENTIAL INFORMATION), WITHOUT THE PRIOR WRITTEN CONSENT OF THE ISSUER.

DOCUMENTS INCORPORATED BY REFERENCE

A Term Sheet containing the specific variable terms in respect of an Offering will be delivered to prospective purchasers of Senior Notes together with this confidential shelf offering memorandum and will be deemed to be incorporated into this confidential shelf offering memorandum as of the date of such Term Sheet, solely for the purposes of the Senior Notes issued under such Term Sheet.

Any statement contained in the confidential shelf offering memorandum or in any document incorporated or deemed to be incorporated by reference in the confidential shelf offering memorandum shall be deemed to be modified or superseded, to the extent that a statement contained herein or in any other subsequent document which is or is deemed to be incorporated by reference in the confidential shelf offering memorandum, modifies or supersedes such prior statement. The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information set forth in the document which it modifies or supersedes. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. Any statement so modified or superseded shall not constitute a part of the confidential shelf offering memorandum, except as so modified or superseded.

The information contained in the Investor Presentation is current only as of the date thereof. The Investor Presentation may be updated and replaced by the Issuer in connection with ~~an~~**a future** Offering and such updated Investor Presentation will be attached as Exhibit 1, and will be included in, and form an integral part of, this confidential shelf offering memorandum delivered in respect of such Offering.

MARKET AND INDUSTRY DATA

Certain of the information contained herein concerning the electricity industry in Ontario is based upon or derived from information provided by third party sources, including industry publications and other publicly available industry sources. Neither the Issuer nor the Agents guarantee the accuracy of such information and neither the Issuer nor the Agents have independently verified the assumptions upon which projections of future trends and performance are based. This information and data is subject to change and cannot always be verified with complete certainty due to limits on the availability and reliability of raw data, the voluntary nature of the data gathering process and other limitations and uncertainties inherent in any statistical survey of market or industry data. As a

result, prospective purchasers should be aware that the information and data set forth herein, and estimates and beliefs based on such information and data, may not be reliable.

REFERENCES TO THE FHPA AND RELATED REGULATIONS

This confidential shelf offering memorandum describes certain provisions of the *Ontario Fair Hydro Plan Act, 2017* and the regulations made pursuant to that Act. These descriptions include simplified and summary descriptions of the terms and requirements of the legislation and do not purport to be comprehensive, definitive or determinative. All references in this confidential shelf offering memorandum to the terms and requirements of the *Ontario Fair Hydro Plan Act, 2017* and the regulations made pursuant to that Act are qualified in their entirety by reference to the specific terms and requirements set forth in such legislation, copies of which are available at www.ontario.ca/laws/statute/17o16.

SUMMARY

This summary does not contain all the information prospective purchasers should consider before investing in the Senior Notes. Prospective purchasers should read this entire confidential shelf offering memorandum carefully, including the section entitled "Risk Factors". Capitalized terms used and not otherwise defined in this summary have the meanings ascribed to them in the glossary starting on page ~~92~~ 95 of this confidential shelf offering memorandum. An index of defined terms used in this summary is provided starting on page ~~104~~ 107 of this confidential shelf offering memorandum.

Issuer:	Fair Hydro Trust, a special purpose trust established under the laws of the Province of Ontario.
Manager:	Ontario Power Generation Inc. ("**OPG**"), pursuant to the terms of the Management Agreement.
Limitations:	The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer) or of the IESO. The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG, IESO or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"— Change of Law Protection Agreement"*.
Ontario Fair Hydro Plan Act:	On June 1, 2017, the Ontario Legislature passed the Ontario Fair Hydro Plan Act, 2017 (the "FHPA"). The FHPA was enacted to: (i) ensure that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers (a category of consumers that generally is comprised of residential consumers, small businesses and farms); (ii) recognize that Clean Energy Benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in Ontario; and (iii) align Clean Energy Costs with Clean Energy Benefits, in order to provide fairness for Specified Consumers over time. As a result, from July 1, 2017 until April 30, 2018, electricity rates payable by Specified Consumers will in effect be the rate that would result in a representative consumer being charged an invoice amount that is 25%[1] less than the rate that would otherwise have been determined by the Ontario Energy Board (the "**OEB**") under its Regulated Price Plan[2] for that period. Under the FHPA, OPG is appointed as Financial Services Manager and is given the authority to, among other things, establish, or cause to be established, one or more Financing Entities to incur Funding Obligations for the purposes prescribed under the FHPA. The Issuer is a Financing Entity under the FHPA and the Notes are Funding Obligations being offered for the purposes of the FHPA. See *"Ontario's Fair Hydro Plan — Background"*.
Summary of the Fair Hydro Financing	The implementation of the Fair Hydro Plan is intended to be financed

[1] The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax previously granted by the Ontario government.

[2] Specified Consumers, as a class, are not a one-to-one equivalent class to the RPP consumer class.

Program:

by the Issuer through the Fair Hydro financing program. The program provides for the offering and issuance by the Issuer of Senior Notes, in any number of Series, in one or several Offerings. A Term Sheet will describe particulars of the terms of each Series of Senior Notes and will be incorporated by reference and form an integral part of this confidential shelf offering memorandum. Each Series of Senior Notes will be issued under the Master Trust Indenture, as supplemented by a Supplemental Indenture authorizing that Series.

Transferor and Servicer:

The Independent Electricity System Operator (the "**IESO**") is a ~~not for profit~~**non-share** corporation established under the *Electricity Act, 1998* (Ontario). As a non-share capital corporation, the IESO does not have any shareholders or owners and is governed by an independent board of directors appointed by the Minister of Energy. The IESO manages the operation and reliability of Ontario's bulk power system and administers the wholesale electricity market.

Each month, the IESO will determine the shortfall resulting from the rate reduction mandated by the FHPA and record the amount in a variance account. The IESO has the right, exercisable in accordance with the FHPA, to recover the balance recorded in the variance account from Specified Consumers (such right, the "**Regulatory Asset**"). ~~The FHPA provides that the OEB shall, from time to time and in accordance with the Regulations, determine and set rates payable by Specified Consumers to allow for the IESO to recover the balance recorded in the variance account and that the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from Specified Consumers before May 1, 2021.~~ Pursuant to the Master Transfer and Servicing Agreement, the IESO may, on a monthly basis, offer to Transfer specified portions of the Regulatory Asset to the Issuer in accordance with the FHPA. See *"The Transferor and Servicer"*.

Investment Interest:

Upon completion of a Transfer by the IESO of a specified portion of the Regulatory Asset, the Issuer will acquire an Investment Interest in the Investment Asset, which is a current and irrevocable property right consisting of the rights specified in the FHPA, including the right to impose, invoice, collect, receive and recover the Clean Energy Adjustment from Specified Consumers in accordance with the FHPA. See *"— Clean Energy Adjustment"* below and *"Ontario's Fair Hydro Plan — Regulatory Asset"*, *"Ontario's Fair Hydro Plan — Investment Interest"* and *"The Transferor and Servicer"*.

Clean Energy Adjustment:

The FHPA imposes an irrevocable and non-bypassable charge referred to as the Clean Energy Adjustment that will be determined by the Financial Services Manager and will be converted by the OEB into a cent per kWh rate and added to the electricity invoices sent to Specified Consumers. See *"— Statutory Duties of the OEB"* below.

The required Clean Energy Adjustment will be determined by the Financial Services Manager for each month in a Reference Period and consists of the sum (without duplication) of: (i) the estimated Finance Amount in respect of the Reference Period, which will include an estimate of all repayments, redemptions, funding costs **(including interest and principal on the Senior Notes)**, derivative payments,

required **reserve account** deposits, Issuer expenses and taxes, and other amounts paid or payable during such Reference Period, and (ii) the True-up Amount for such Reference Period, all divided by the number of months in the applicable Reference Period.

The "**True-up Amount**" is comprised of the cumulative Finance Amounts in respect of all preceding Reference Periods less the cumulative Clean Energy Adjustment amounts remitted to the Issuer in respect of all preceding Reference Periods plus other anticipated shortfalls. The True-up Amount ~~may~~**will** also reflect **any** historical and reasonably foreseeable differences between the estimated and actual Finance Amount; between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs; and variations in billings due to variations in electricity consumption. In determining such differences, the Financial Services Manager is required to have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of Specified Consumers, an Electricity Vendor or the IESO, whether in its capacity as an Electricity Vendor or its activities as agent or otherwise under the FHPA. The Financial Services Manager is obligated to calculate the True-up Amount in respect of each Reference Period so long as all Funding Obligations and other Finance Amounts have not been paid in full. The Financial Services Manager may also, at any time during a Reference Period, determine an interim True-up Amount if, among other things, it reasonably forecasts that the collection of the Clean Energy Adjustment will be insufficient to pay the estimated Finance Amount for a Reference Period.

Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and other financing expenses of the Issuer. Based on the Fair Allocation Amount **determined and** provided by the Province, from July 1, 2017 until April 30, 2021 (the "**Moratorium Period**"), no Clean Energy Adjustment amounts are permitted to be collected from Specified Consumers. During the Moratorium Period, the sole source of funds for payment **of interest** on the Senior Notes, and the Issuer's other Carrying Costs, will be the amounts the IESO is obligated to pay under the Regulations during such period. See *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*. **Amounts so contributed by the IESO are not available to pay principal on the Senior Notes.**

Non-bypassability:

The FHPA mandates that an amount in respect of the Clean Energy Adjustment shown on an invoice issued to a Specified Consumer is determinative of the amount of the consumer's indebtedness resulting from the Clean Energy Adjustment, and is irrevocable on invoicing such Specified Consumer and may not be set off or bypassed. See *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

Payment of Carrying Costs

The IESO, which is rated A(high) by DBRS and Aa2 by Moody's, is required under the Regulations to pay and remit to the Issuer any amounts charged to the IESO by the Issuer in respect of Carrying

until July 31, 2021:

Costs incurred in respect of the period from June 1, 2017 to July 31, 2021. Under the Regulations, Carrying Costs include all funding costs, such as interest on the Senior Notes, and other expenses of the Issuer, other than repayment of principal on any debt obligations of the Issuer (such as principal on the Senior Notes).

Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's carrying costs statement, the IESO is required to deliver the amount specified therein to the Issuer. See *"The Transferor and Servicer"*. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring September 30, 2022, which is permitted to be used **by the IESO** to pay the ~~Issuer's~~ Carrying Costs **to the Issuer**. The amounts paid by the IESO to fund these Carrying Costs will be recorded by the IESO in the variance account and form part of the Regulatory Asset that the IESO is expected to Transfer to the Issuer in a subsequent period. Upon such Transfer, the Issuer will acquire a corresponding Investment Interest.

As security for the performance of ~~its~~**the IESO's** obligation under the Regulations to pay the ~~Issuer's~~ Carrying Costs **to the Issuer**, the IESO has granted the Issuer a first-priority security interest in all accounts receivable owing to the IESO from Electricity Vendors, including amounts owing with respect to the global adjustment charge. See *"The Transferor and Servicer"*. For a further description of the global adjustment charge, see *"The Electricity Industry in Ontario — Electricity Prices"*.

Acceleration of Indebtedness:

A holder of Senior Notes must rely solely on the Clean Energy Adjustment amounts collected and any available reserve accounts for repayment of principal on the Senior Notes. Accordingly, if all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable during the Moratorium Period and before its scheduled payment date, maturity date or redemption date, the source of funds for repayment of principal may be limited.

If all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable after the Moratorium Period and before its scheduled payment date, maturity date or redemption date, then the estimated Finance Amount used by the Financial Services Manager to determine the Clean Energy Adjustment for a period will be determined without regard to the fact that such amount has become due and payable, unless and only to the extent that the amount of the Clean Energy Adjustment is capable of being increased based on the Fair Allocation Amount for such period. See *"— Fair Allocation Amount & Financing Plan"* below. However, upon such acceleration, all accelerated Senior Notes will be repaid in full before any further payments of principal are made to holders of subordinated indebtedness, including the subordinated debt held by OPG; therefore, collections of the Clean Energy Adjustment that would otherwise have been available to repay the principal amount of

subordinated indebtedness in the absence of acceleration of the Senior Notes will instead be applied to repay accelerated Senior Notes. See *"— Subordinated Debt"* below.

Statutory Duties of the OEB:

The OEB is an independent public regulatory agency established under the *Ontario Energy Board Act, 1998*. The *Ontario Energy Board Act, 1998* provides the OEB with the authority to regulate participants (e.g. OEB licensees) in Ontario's electricity market, including the activities of transmitters and distributors as well as the IESO (all **of whom are** Electricity Vendors for the purposes of the FHPA).

Under the Regulations, the OEB is responsible for determining the rates at which Specified Consumers are to be invoiced to recover the Clean Energy Adjustment. The rates are expressed as a cent per kWh rate and are determined by the OEB by dividing (i) the aggregate Clean Energy Adjustment as determined by the Financial Services Manager in respect of the relevant period of time by (ii) a forecast of electricity consumption of Specified Consumers in respect of such period, based on forecast information provided by the IESO to the OEB. See ~~*"— Statutory and Servicing Duties of the IESO"* below~~***The Transferor and Servicer"***.

Statutory Duties of Electricity Vendors:

Electricity is distributed to almost all Specified Consumers in Ontario through a network of local distributors. See "*The Electricity Industry in Ontario*" and the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Ontario electricity market and these local distributors.

The FHPA requires Electricity Vendors to invoice their Specified Consumers for a charge in respect of the Clean Energy Adjustment, as determined by applying the rate set by the OEB, which is required to be included as a separate line item on each invoice sent to Specified Consumers. Electricity Vendors are also required to collect, as agent of ~~all~~**the Issuer and any other** Financing Entities~~, of which the Issuer is the first~~ **that may be established**, amounts in respect of the Clean Energy Adjustment, deposit such amounts into a segregated account established for the purpose of receiving those amounts and hold such amounts in trust for the benefit of the Financing Entities until remitted to the IESO for the benefit of the Financing Entities (initially, only the Issuer). If an Electricity Vendor does not receive payment in full of an invoice issued to a Specified Consumer, the Electricity Vendor shall allocate any payment received to the Clean Energy Adjustment and the other amounts payable under the particular invoice in the manner set out in the FHPA. It is a deemed condition of their distribution license issued by the OEB that Electricity Vendors comply with the FHPA.

As security for any failure of an Electricity Vendor that does not have an investment grade rating from DBRS and Moody's to remit Clean Energy Adjustment amounts collected under the FHPA, the IESO is required, pursuant to the Master Transfer and Servicing Agreement, to provide to the Issuer on or prior to the first day of the first billing period when the Clean Energy Adjustment is being invoiced to Specified Consumers, a letter of credit from a provider that satisfies

	the Rating Agency Condition or a performance guarantee or such other form of security that is acceptable to the Issuer and that satisfies the Rating Agency Condition. The amount of the security required is based on a formula as set out in the Master Transfer and Servicing Agreement and will be equal to: (a) **the product of** (i) 50% of estimated Clean Energy Adjustment amounts that are to be collected over a twelve-month period by all such non-investment grade rated Electricity Vendors, **and** (ii) ~~multiplied by~~ a fraction equal to 45/365 (representing the 45-day period during which funds are expected to be held by such non-investment grade rated Electricity Vendors prior to being remitted to the Issuer); or (b) such other lesser amount that satisfies the Rating Agency Condition. See *"The Transferor and Servicer."*
Management Duties of OPG:	Pursuant to the Management Agreement, the Issuer has delegated to OPG, as Manager, all of the powers and duties of managing the Issuer, including determining whether to incur Funding Obligations (including Offerings of Senior Notes) to acquire an Investment Interest or refinance existing Funding Obligations; negotiating and executing, on behalf of the Issuer, all agreements; maintaining accounts and banking records; preparing any offering documents to be furnished by the Issuer to prospective purchasers of Funding Obligations (including the Senior Notes); and preparing financial statements and tax filings on behalf of the Issuer. In addition to the powers and duties delegated to the Manager under the Management Agreement, OPG is also required to comply with its duties as Financial Services Manager under the FHPA, including preparing the Financing Plan to evaluate whether potential Funding Obligations should be incurred for the purposes of Financing Entities acquiring and financing an Investment Interest, determining the amount of the Clean Energy Adjustment inclusive of the calculation of any True-up Amount, notifying the OEB of the Clean Energy Adjustment inclusive of any True-up Amount and ensuring that Funding Obligations are incurred in a manner consistent with the Financing Plan. OPG may also administer the Investment Interest on behalf of the Issuer and any other Financing Entities. Subject to OEB approval and as provided for in the FHPA, OPG is entitled to charge the Issuer a fee, comprised of a base fee and a variable fee, to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer or in relation to the establishment, management and administration of the Issuer and its Investment Interest. The priority of the Manager's entitlement to fees is subject to the payment priorities set forth in the Master Trust Indenture. The Province of Ontario is the sole shareholder of OPG and thereby has the power to determine the composition of OPG's board of directors. See *"The Electricity Industry in Ontario — Key Industry Participants — Ontario Power Generation Inc."* and *"The Manager"*.
Statutory and Servicing Duties of the IESO:	Following the Moratorium Period, the IESO is required, as agent of the Financing Entities (of which the Issuer is currently the only one), to receive Clean Energy Adjustment amounts paid to it from Electricity Vendors, deposit such amounts promptly into a segregated account established for the purpose of receiving amounts in respect of the Clean Energy Adjustment, hold such amounts in trust on behalf of the Financing Entities (of which the Issuer is currently the only one)

and remit such amounts on a monthly basis, subject to daily remittance being required in certain limited circumstances. Pursuant to the Master Transfer and Servicing Agreement, monthly remittances of amounts received in respect of the Clean Energy Adjustment will occur on the 18th business day of each calendar month. In addition, the IESO will provide certain reporting and other servicing duties in favour of the Issuer, including providing forecast information to the OEB and the Issuer, **which forecast information will be used by the OEB to forecast electricity consumption of Specified Consumers in respect of the relevant period,** making commercially reasonable efforts to cause Electricity Vendors to establish segregated accounts into which Clean Energy Adjustment amounts are deposited, remitting such amounts and fulfilling certain additional reporting requirements. Generally, all servicing duties provided by the IESO to the Issuer are provided at no cost to the Issuer. However, the Issuer will reimburse the IESO for certain direct costs relating to the performance by the IESO of its duties and obligations under the Master Transfer and Servicing Agreement that are otherwise not recovered or recoverable by the IESO under the *Electricity Act, 1998* (Ontario). See *"The Transferor and Servicer."*

Change of Law Protection Agreement:

Pursuant to the Change of Law Protection Agreement, upon a Protection Event and delivery by the Indenture Trustee of a written payment demand, the Province of Ontario is required to make payments in respect of all "Approved Obligations" when due and payable into the Protection Account (which~~, provided that the Notes are Approved Obligations,~~ includes payments of amounts that are due and payable in respect of **Senior** Notes), although the amount of the Province of Ontario's payment obligations in a particular period may differ depending on whether an Acceleration has occurred. See *"Change of Law Protection Agreement"*. The Issuer and the Indenture Trustee must ensure that amounts deposited into the Protection Account are applied to pay Specified Creditors to whom amounts are due and payable under an Approved Obligation in accordance with the provisions of the Master Trust Indenture. See *"Capital Markets Platform"*.

Generally, an "**Approved Obligation**" under the Change of Law Protection Agreement includes all obligations of the Issuer (except for amounts required to be deposited into any capital account or finance reserve account, or any obligation for the Issuer to pay itself any remaining amounts in the Collection Account pursuant to the Master Trust Indenture), including obligations of the Issuer under the Notes, subject to the satisfaction of certain adherence conditions for those obligations that constitute "Certified Primary Obligations", as defined in the Change of Law Protection Agreement. Subject to certain limited exceptions for refinancings, a "Certified Primary Obligation" includes all Notes, as well as certain other obligations of the Issuer under derivative agreements or under contracts with terms of greater than three years that are not terminable by the Issuer on less than three years' notice under which the Manager, acting reasonably, expects aggregate payments by the Issuer during the term of the contract in an amount in excess of $5,000,000.

It will be a condition to any Offering of Senior Notes that such Senior Notes constitute Approved Obligations under the Change

of Law Protection Agreement.

Protection Event:

Each of the following constitutes a "**Protection Event**" for purposes of the Change of Law Protection Agreement:

(a)

(i) the Ontario legislature repeals, and does not replace on an equivalent basis, or amends, the ~~FHPA~~**Act** or any portion thereof, as in effect on the date hereof;

(ii) the Ontario legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals, and does not replace on an equivalent basis, the regulations made under the ~~FHPA~~**Act** or any portion thereof, as in effect on the date hereof;

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof; or

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province of Ontario or an entity controlled by the Province of Ontario,

(vi) in each case, that (X) adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in any of clauses (i) to (v) above, or (Y) adversely affects the enforceability of, or adversely changes, the terms and conditions of the Change of Law Protection Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the ~~FHPA~~**Act**, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable and that has the effect of the Issuer not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to

such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in this paragraph (b).

(c) **The occurrence of a Protection Event in and of itself will not result in the acceleration of the Senior Notes.**

(d) The Province of Ontario's obligation to make payments under the Change of Law Protection Agreement upon a Protection Event and subsequent delivery of a written payment demand by the Indenture Trustee is referred to as the "**Limited Guarantee**".

(e) Upon paying amounts when due and payable in respect of Approved Obligations, including the Senior Notes, into the Protection Account, the Province of Ontario will be subrogated and entitled to all of the rights and interests of applicable Specified Creditors (including Noteholders) under and in respect of the Approved Obligations to the extent of the amounts paid.

(f) **Under the Change of Law Protection Agreement, the right to deliver a written payment demand on occurrence of a Protection Event to enforce the Limited Guarantee is the only remedy available to the Indenture Trustee (and to Specified Creditors, to the extent they are permitted to exercise any rights, interests or elections under and in accordance with the Master Trust Indenture). Specified Creditors are not permitted to exercise any rights, interests, or elections under the Change of Law Protection Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Master Trust Indenture (in effect as of the date hereof).** **See *"Capital Markets Platform — Acceleration and Remedies — Rights of Specified Creditors".***

Approved Obligations & Adherence Conditions:

Under the Management Agreement, the Manager is required to ensure that all obligations of the Issuer are and remain Approved Obligations under the Change of Law Protection Agreement.

The Limited Guarantee shall apply to all Certified Primary Obligations that meet the following adherence conditions:

(a) the Certified Primary Obligation when incurred is an Obligation Secured under the Master Trust Indenture;

(b) OPG, as Financial Services Manager, delivers a certificate to the Indenture Trustee on or before the incurrence of such obligation certifying that it has complied with all of its obligations to the Province of Ontario and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation; and

(c) the Province of Ontario has not provided a Suspension Notice to

the Indenture Trustee, OPG and the Issuer.

All Senior Notes shall constitute Obligations Secured under the Master Trust Indenture and therefore condition (a) above will be satisfied for all Offerings of Senior Notes. It will be a condition to any Offering of Senior Notes that OPG deliver the adherence certificate required pursuant to (b) above or that the Province of Ontario designates in writing that the Senior Notes are Approved Obligations. The Change of Law Protection Agreement provides that delivery of an adherence certificate shall be determinative of satisfaction of this adherence condition, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such certificate may be relied upon as conclusive evidence of same.

Suspension Notice & Post-Suspension Refinancing

The Change of Law Protection Agreement will remain in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, including all Senior Notes.

However, in the following limited circumstances, the Province of Ontario may deliver a Suspension Notice under the Change of Law Protection Agreement: (i) if there has been an acceleration of Funding Obligations in accordance with the provisions of the Master Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement; (ii) if there has been an uncured breach of covenant, uncured default in performance, or uncured representation, warranty or certification that proves to be incorrect in any material respect on the date made, in each case of OPG (or its officers, in the case of a certification) to the Province of Ontario in connection with its obligations to the Province of Ontario pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations; or (iii) if the Financial Services Manager is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove the Financial Services Manager as the Manager.

Upon delivery of a Suspension Notice, the Limited Guarantee shall not apply in respect of obligations incurred by the Issuer (excluding certain refinancings of Approved Obligations as described below) and certain material amendments of outstanding obligations of the Issuer.

Notwithstanding delivery of a Suspension Notice, the Limited Guarantee shall continue to apply to: (i) any Approved Obligations that were incurred prior to the suspension and (ii) any Funding Obligations incurred by the Issuer following a suspension that satisfy the terms and conditions of the Change of Law Protection Agreement, provided that the proceeds of such incurrence are to be used for the purpose of repaying one or more series of Approved Obligations. Accordingly, subject to compliance with the Change of Law Protection Agreement, any Senior Notes or other Funding Obligations that may be issued following a suspension to refinance Senior Notes

that were Approved Obligations issued prior to a suspension will continue to have the benefit of the Limited Guarantee.

See *"Change of Law Protection Agreement"*.

Fair Allocation Amount & Financing Plan:

The Fair Allocation Amount is an amount calculated under the FHPA by the Minister of Energy in respect of each Reference Period that, among other things, allocates the estimated value of Clean Energy Costs in proportion to the relative attribution of the value of Clean Energy Benefits among Specified Consumers. See *"Ontario's Fair Hydro Plan"*.

The Financial Services Manager is required to prepare a Financing Plan under the FHPA to evaluate whether potential Funding Obligations should be incurred by the Issuer or other Financing Entities for the purposes of acquiring an Investment Interest or for the purposes of a Refinancing. In preparing the Financing Plan, the Financial Services Manager must have regard to certain principles, including that Funding Obligations should be incurred such that, along with any Funding Obligations already incurred, the estimated Finance Amount that would, subject to any Refinancing, become due and payable during a Reference Period will reasonably align with the Fair Allocation Amount determined in respect of such Reference Period as of the date the Funding Obligations were incurred.

In other words, the Financing Plan should contemplate the issuance of Funding Obligations from time to time, with terms that would result in Clean Energy Adjustments being payable by Specified Consumers that align with the purposes of the FHPA. Notwithstanding the above, the FHPA provides that each Funding Obligation **that is issued** is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated Finance Amount with the Fair Allocation Amount.

The Financing Plan allows for the issuance of a variety of short and long term debt. See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Financing Plan and the Fair Allocation Amount.

Subordinated Debt:

Concurrent with every issuance of senior debt by the Issuer, including any Offering of Senior Notes, it is expected that OPG will subscribe for subordinated debt and junior subordinated debt of the Issuer in an amount equal to no more than 49% of all of the Issuer's Funding Obligations, approximately 44% of which is expected to be funded through equity investments in OPG by the Province of Ontario with the remaining 5% being funded from OPG's available funds, including all or a portion of the proceeds of any offerings by OPG of medium term notes.

Under the Master Trust Indenture, the Issuer will be required at all times to ensure that: (i) the aggregate outstanding principal amount of all subordinated debt and junior subordinated debt be not less than 35% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations; and (ii) the aggregate outstanding principal amount of all junior subordinated debt be not less than 10%

	of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations.
Use of Proceeds:	The proceeds from each Offering may be used ~~to~~**for one or more of the following purposes:** (i) **to** acquire an Investment Interest pursuant to the FHPA and the Master Transfer and Servicing Agreement, (ii) **to** refinance indebtedness of the Issuer (including other Series of Senior Notes), (iii) **to** pay Offering and related costs of the Issuer and (iv) **to** fund specific reserve accounts as required. The Term Sheet for each Offering of Senior Notes will identify the amount of proceeds that will be used for such specified purposes.
Interest Rate:	Fixed, floating or otherwise, as determined by the Issuer and as set out in the Term Sheet applicable to such Offering.
Interest Payment Dates:	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Principal Accumulation Amount(s):	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Principal Payment Date(s) and Principal Payment Amount(s):	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Principal Payment Default Date:	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Ranking:	Subject to the applicable payment waterfalls set out in the Master Trust Indenture, the Senior Notes will be direct, secured and unsubordinated obligations of the Issuer, and will at all times rank equally and proportionately with each other and all other senior indebtedness issued by the Issuer from time to time pursuant to the Indenture, without discrimination or preference. See "*Capital Markets Platform — Subordination Provisions*", *"Capital Markets Platform — Acceleration and Remedies — Payment Waterfall Upon Acceleration"*.
Security:	All indebtedness and other obligations of the Issuer, including the Senior Notes, will be secured by a first ranking charge against all property and assets of the Issuer, including each Issuer Account (and all funds and property credited thereto), all rights and benefits, and powers of the Issuer under the FHPA and all rights, benefits and power under all Program Agreements, including under the Limited Guarantee. Under the Master Trust Indenture, the Issuer is required to maintain certain reserves: the IESO Cash Reserve Deposit Amount (an amount equal to the aggregate of (i) 0.50% of the aggregate amount of all outstanding senior, subordinated and junior subordinated funding obligations determined as of April 15, 2021, and (ii) an amount estimated as the amount of Carrying Costs payable during May, June and July 2021, provided such amount in (ii) satisfies the Rating Agency Condition) will be deposited by the IESO by April 30, 2021. There is also a Program Cash Reserve Account which will begin to be

funded from Clean Energy Adjustments following the Moratorium Period until it reaches the Program Cash Reserve Required Amount (on each Payment Date on and after May 15, 2021, an amount equal to 0.50% of the aggregate amount of all outstanding senior, subordinated and junior subordinated funding obligations determined as of such date, or such lesser amount that satisfies the Rating Agency Condition). Funds in the IESO Cash Reserve Account will be applied to pay Carrying Costs after April 2021 to the extent that funds can be so applied such that the aggregate amount of funds in the IESO Cash Reserve Account and Program Cash Reserve Account is maintained at the Program Cash Reserve Required Amount.

In connection with the incurrence of any Series of Notes, the Issuer may (i) establish a Series Account for purposes of accumulating funds used to make principal payments or for purposes of reserving funds to pay finance charges, and/or (ii) enter into a credit enhancement agreement or liquidity agreement. Whether a Series of Senior Notes has the benefit of a Series Account or any credit enhancement agreement or liquidity agreement will be determined from time to time by the Issuer and set out in the Term Sheet applicable to such Offering.

See "*Capital Markets Platform — Security*".

Priority of Payments:

Prior to an Event of Default and acceleration of the Issuer Funding Obligations (other than Derivative Funding Obligations), amounts available for disbursement will generally be applied in the following order of priority:

- taxes;
- trustee fees, expenses and reimbursement amounts (up to a specified cap);
- payment of or accumulations in respect of interest for Senior Funding Obligations, *pari passu* with payments under derivative agreements (other than termination payments);
- payment of or accumulations in respect of interest for Subordinated Funding Obligations;
- payments of or accumulations in respect of interest for Junior Subordinated Funding Obligations;
- payment of or accumulations in respect of principal for Warehouse Obligations (see *"Warehouse Facilities"*);
- accumulations in respect of principal for Senior Funding Obligations (other than Warehouse Obligations), *pari passu* with termination payments under derivative agreements (other than as provided below);
- fees and other amounts (other than principal and interest) on Senior Funding Obligations;

- the Manager's fees, expenses and reimbursement amounts;
- payment of or accumulations in respect of principal for Subordinated Funding Obligations;
- fees and other amounts (other than principal and interest) on Subordinated Funding Obligations;
- payment of or accumulations in respect of principal for Junior Subordinated Funding Obligations;
- replenishment of Program Cash Reserve Account;
- replenishment of Series Accounts (other than accounts established for Subordinated Funding Obligations or Junior Subordinated Funding Obligations);
- replenishment of Series Accounts established for Subordinated Funding Obligations;
- fees and other amounts (other than principal and interest) on Junior Subordinated Funding Obligations;
- replenishment of Series Accounts established for Junior Subordinated Funding Obligations;
- termination payments under derivative agreements where the counterparty is the defaulting party or sole affected party;
- beneficiaries of the Issuer;
- indemnity amounts owing to the Manager; and
- all other obligations not specifically dealt with above.

- After an Event of Default and acceleration of the Issuer Funding Obligations (other than Derivative Funding Obligations), amounts available to the Issuer or otherwise held by the Indenture Trustee will generally be applied in the following order of priority:
  - taxes;
  - trustee fees, expenses and reimbursement amounts;
  - interest, fees and other amounts (other than principal) on Senior Funding Obligations and payments under derivative agreements (other than termination payments), *pari passu*, then Subordinated Funding Obligations (other than principal) and then Junior Subordinated Funding Obligations (other than principal);
  - principal for Warehouse Obligations;
  - *pari passu*, principal on Senior Funding Obligations (other than Warehouse Obligations) and termination payments

under derivative agreements (other than where the counterparty is the defaulting party or sole affected party);

- the Manager's fees, expenses and reimbursement amounts;
- principal for Subordinated Funding Obligations and then Junior Subordinated Funding Obligations; and
- all other obligations not specifically dealt with above.

- Notwithstanding the above, amounts held in a Series Account will be applied in accordance with the relevant Funding Obligation Agreement and amounts held in the Protection Account will be applied in accordance with the specific written payment statement and would not otherwise modify the provisions of the applicable payment waterfalls set out in the Master Trust Indenture.
- See "*Capital Markets Platform — Payment Waterfall Prior to Acceleration*" and "*Capital Markets Platform — Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

Currency: Senior Notes may be denominated in any currency. The currency for a particular Series of Senior Notes will be set out in the Term Sheet applicable to such Offering.

Minimum Subscription: Minimum principal amount of 100,000 units of the applicable currency and integral multiple of 1,000 units of the applicable currency. The minimum subscription and denomination of the Senior Notes may be varied as set out in the Term Sheet applicable to such Offering.

Optional Redemption: Senior Notes may be subject to redemption prior to maturity at the times and redemption price set out in the Term Sheet applicable to such Offering.

Purchase for Cancellation: The Issuer may, at any time, purchase at any price all or any of the Senior Notes in the market or by invitation for tenders or by private contract. Any Senior Notes so purchased shall be cancelled.

Distribution Method: The Senior Notes may be offered and sold by the Issuer on a private placement basis in Canada to "accredited investors" (as such term is defined in NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) who purchase the Senior Notes as principal and that are not individuals unless those individuals are also "permitted clients" (as such term is defined in NI 31-103).

By purchasing Senior Notes and accepting a purchase confirmation in respect thereof, a purchaser will be agreeing with and representing to the Issuer and any Agent participating in the trade that the purchaser is an accredited investor purchasing as principal along with certain other matters. See *"Representations and Agreements of Purchasers"*.

Book-Entry Form: The Senior Notes will be delivered and recorded in book-entry form only through CDS or another depository selected by the Issuer in

	accordance with the Master Trust Indenture. Each Series of Senior Notes will be evidenced by a global note held by such depository, registered in its name or the name of its nominee, on behalf of all holders of such Series of Senior Notes. Subject to limited exceptions, no purchasers of Senior Notes will be entitled to a certificate or other instrument from the Issuer or CDS evidencing that purchaser's ownership thereof, and no holder of a Senior Note will be shown on the records maintained by CDS except through book-entry accounts of a participant of CDS acting on behalf of owners. See *"Depository Services"*.
Resale Restrictions:	Resale of the Senior Notes will be subject to restrictions under applicable securities legislation which vary depending on the relevant jurisdictions. **The Senior Notes may only be sold on a basis that is in accordance with, or pursuant to an exemption from, the prospectus requirements of applicable provincial securities laws and only through an appropriately registered dealer or pursuant to an exemption from the dealer registration requirements of applicable provincial securities laws.** See *"Restrictions on Resale"*.
Risk Factors:	The purchase of the Senior Notes is subject to risks. Prospective investors should carefully consider the risk factors and other information in this confidential shelf offering memorandum and the Term Sheet for each Offering before purchasing Senior Notes, including the discussion set forth under *"Risk Factors"*, and any additional disclosure set out in the Term Sheet for each Offering.
Indenture Trustee:	BNY Trust Company of Canada.
Issuer Trustee:	Computershare Trust Company of Canada.

THE ELECTRICITY INDUSTRY IN ONTARIO

General Overview

The following summary of the electricity industry in Ontario does not purport to be comprehensive or definitive. It is a general and high-level overview of the ~~history~~**historical context** and **the current** manner in which the industry operates, including how real-time energy supply needs are met.

The Ontario electricity industry is principally comprised of three components:

- *Generation*: the production of electricity from various forms of energy, such as wind, solar, ~~hydropower~~**hydroelectric**, natural gas and nuclear;
- *Transmission*: the transfer of electricity across high-voltage power lines from **large** generating facilities to local ~~areas~~**distribution systems** and large ~~directly~~ **transmission-**connected consumers**, as well as to and from inter-jurisdictional entities**; and
- *Distribution*: the delivery of electricity within local areas to homes and businesses ~~using lower~~**, as well as the delivery of electricity from small distribution-connected generating facilities, using low** voltage power lines.

The structure of Ontario's electricity industry underwent significant changes in the late 1990s and early 2000s. Prior to April 1, 1999, Ontario Hydro, a Crown corporation, supplied most of Ontario's electricity generation and transmission needs. Consistent with initiatives taken in other electricity markets in North America at the time, the electricity industry was restructured in order to encourage greater competition. Ontario's competitive wholesale electricity market was opened by the IESO on May 1, 2002 and the market is used to administer the purchase and sale of wholesale electricity in Ontario.

Since the opening of the competitive market, Ontario's power supply mix has experienced significant change. As a result of provincial government policy, coal-fired generation has been eliminated and a significant amount of new capacity has been added as a result of new natural gas powered capacity, new wind and solar capacity and additional baseload nuclear generation capacity. These changes**, along with the transmission and distribution system investments needed to support these changes,** have resulted in significantly increased costs of electricity to consumers in Ontario.

While electricity supply in Ontario has increased, the province's electricity demand as reported by the IESO has fallen over the last decade, largely due to changes in economic conditions and conservation measures. Moreover, the addition of smaller scale wind and solar generation embedded in the distribution system has reduced the level of demand that is supplied by transmission-connected generation. Reducing electricity demand by encouraging conservation and demand management has been a key part of the Government of Ontario's plan to reduce greenhouse gas emissions from the province's electricity sector. Shorter-term fluctuations in electricity demand are impacted by variations in seasonal weather conditions.

Real-time energy supply needs are met through the wholesale electricity market administered by the IESO. Generators offer their generation into this real-time energy market, or "spot market", to be scheduled and dispatched by the IESO. The IESO receives hourly offers from electricity generators and importers to provide energy, along with bids **to withdraw energy** by **certain** domestic loads and exporters, and then schedules the lowest-cost offers and bids needed to meet demand. Most generators in Ontario also have bilateral contracts with the IESO ~~or receive~~ **(i.e. power purchase agreements) and one large generator, OPG, receives OEB-**regulated prices, or payment amounts, that provide for payments in addition to wholesale market settlements that are paid to generators.

Key Industry Participants

Ontario Power Generation Inc.

OPG is a corporation formed under the *Business Corporation Act* (Ontario). The Province of Ontario is the sole shareholder of OPG and thereby has the power to determine the composition of OPG's board of directors. In 1999, when Ontario Hydro was split up in anticipation of deregulation, OPG was formed to hold the generation assets of the former Ontario Hydro. OPG has divested itself of certain of those assets, but remains the largest generator in Ontario.

OPG is Ontario's largest clean energy generator. As at the date hereof, OPG operated two nuclear generating stations, 66 hydroelectric generating stations, three thermal generating stations, and one wind power facility. OPG's mandate is to provide low cost power in a safe, clean, reliable and sustainable manner for the benefit of its customers and its sole shareholder, the Province of Ontario. OPG's electricity generation accounts for a significant portion of the total energy generated and injected into Ontario's electricity transmission system. OPG is one of the most experienced and largest generating companies in Canada with a broad set of relationships and capabilities. OPG is also experienced in successful complex financing arrangements of large capital projects, including the recently completed Lower Mattagami project.

Additional information about OPG is provided in the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum and is available at www.opg.com.

The IESO

The IESO is a non-share capital corporation created under the *Electricity Act, 1998* (Ontario). It was created as an amalgamation of two predecessor entities, one of which was also called the IESO ("**Predecessor IESO**") and the other of which was called the Ontario Power Authority ("**OPA**"). Predecessor IESO was responsible for managing the reliability of the provincial transmission system and operating the wholesale electricity markets in Ontario. The OPA was formed to plan the provincial power system and to procure electricity resources. The OPA entered into bilateral power **or capacity** purchase contracts with generators and other electricity resource providers. These two entities were merged statutorily on January 1, 2015 into the IESO, which now carries out all of these functions. As a non-share capital corporation, the IESO does not have any shareholders or owners and is governed by an independent board of directors appointed by the Minister of Energy.

Additional information about the IESO is provided in the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum and is available at www.ieso.ca.

The Ontario Energy Board

The OEB is a non-share capital corporation created under the *Ontario Energy Board Act, 1998*. The OEB is an independent and impartial **administrative tribunal and** public regulatory agency. The *Ontario Energy Board Act, 1998* provides the OEB with the authority to license and regulate the participants in Ontario's electricity market, including the activities of the IESO, transmitters and distributors~~, which~~**. The IESO and distributors** are ~~also~~ Electricity Vendors for the purposes of the FHPA.

The OEB has the following objectives in relation to the electricity industry:

(a) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(b) to promote the education of consumers;

(c) to promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry;

(d) to promote electricity conservation and demand management in a manner consistent with the policies of the Province of Ontario, including having regard to the ~~consumers~~**consumer's** economic circumstances;

(e) to facilitate the implementation of a smart grid in Ontario; and

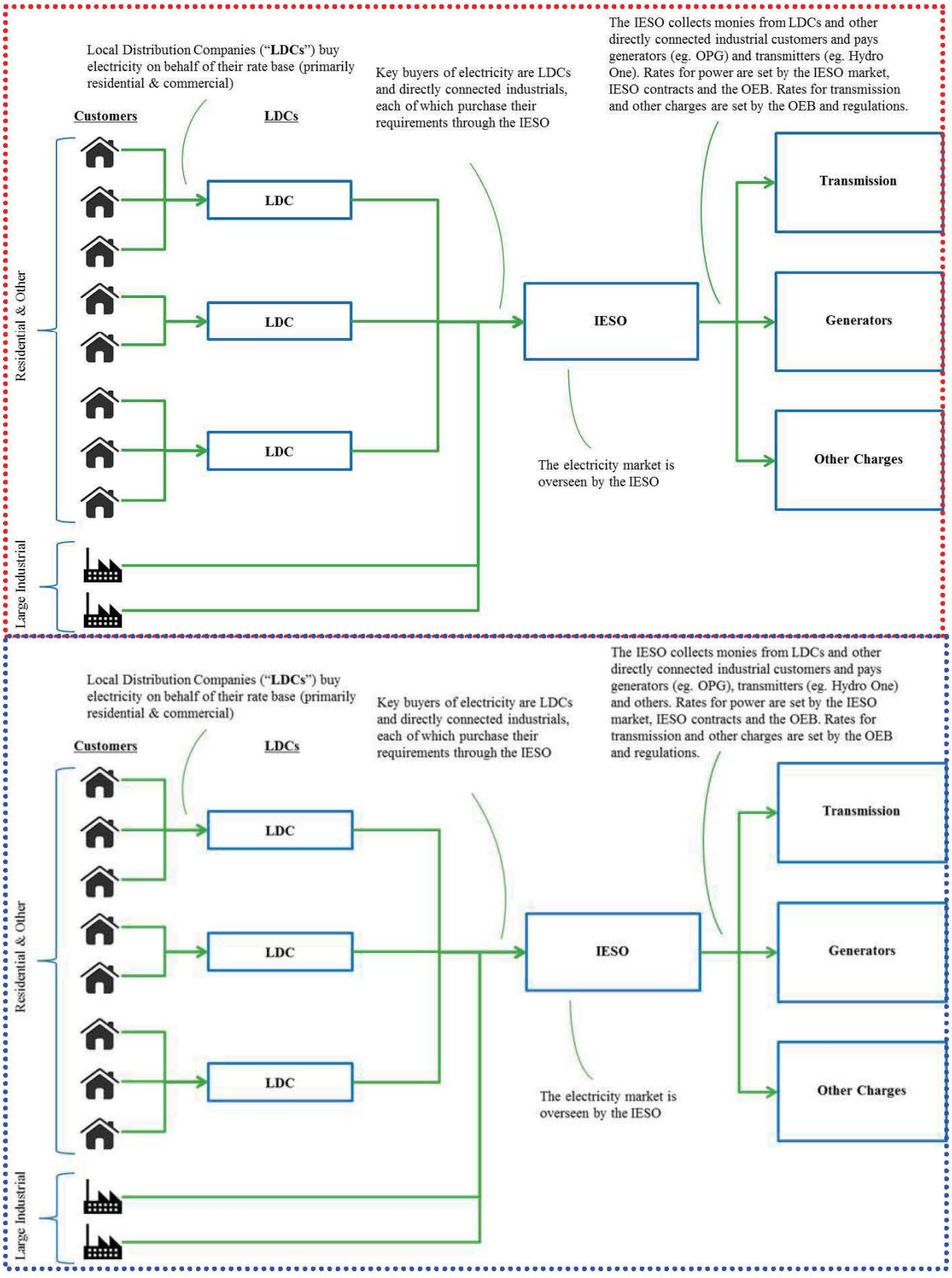
(f) to promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Ontario government, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

The OEB is responsible for, among other things, approving transmission and distribution rates in Ontario, as well as payment amounts for OPG's nuclear and hydroelectric generation. It also approves the construction, expansion, or reinforcement of transmission lines greater than two kilometres in length, as well as mergers, acquisitions, amalgamations and divestitures ~~involving~~**affecting regulated assets and regulated entities, such as** distributors~~,~~ **and** transmitters ~~and other entities which it licenses~~. The activities of transmitters and distributors are subject to the conditions of their transmission and distribution licenses, as applicable, which require compliance with a number of industry codes issued by the OEB, as well as with the market rules that are administered by the IESO. These codes and other requirements prescribe minimum standards of conduct and service for licensed participants in the electricity market.

Electricity Vendors

As part of the restructuring of Ontario's electricity industry, the province's municipally-owned electricity distributors were reorganized into separate business corporations. These distributors are typically referred to in Ontario as local distribution companies, or "**LDCs**". An LDC is responsible for distributing electricity to customers in its OEB-licensed service territory, and in some cases to other distributors. A service territory may cover large portions or all of a particular municipality, or an otherwise-defined geographic area. Distribution customers include residential, commercial and industrial end-users, **as well as institutions** such as governments, schools and hospitals. At multi-unit buildings within an LDC's service territory, there may be a unit sub-metering service provider that provides metering services for each individual unit. These sub-metering service providers are also licensed by the OEB.

The following diagram depicts the flow of funds between the key industry participants:


Local Distribution Companies ("LDCs") buy electricity on behalf of their rate base (primarily residential & commercial)
Customers
LDCs
Key buyers of electricity are LDCs and directly connected industrials, each of which purchase their requirements through the IESO
The IESO collects monies from LDCs and other directly connected industrial customers and pays generators (eg. OPG) and transmitters (eg. Hydro One). Rates for power are set by the IESO market, IESO contracts and the OEB. Rates for transmission and other charges are set by the OEB and regulations.
LDC
LDC
LDC
IESO
Transmission
Generators
Other Charges
The electricity market is overseen by the IESO
Residential & Other
Large Industrial
Local Distribution Companies ("LDCs") buy electricity on behalf of their rate base (primarily residential & commercial)
Customers
LDCs
Key buyers of electricity are LDCs and directly connected industrials, each of which purchase their requirements through the IESO
The IESO collects monies from LDCs and other directly connected industrial customers and pays generators (eg. OPG), transmitters (eg. Hydro One) and others. Rates for power are set by the IESO market, IESO contracts and the OEB. Rates for transmission and other charges are set by the OEB and regulations.
LDC
LDC
LDC
IESO
Transmission
Generators
Other Charges
The electricity market is overseen by the IESO
Residential & Other
Large Industrial

See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding LDCs.

Electricity Prices

There are **two** main components that make up the commodity cost of electricity in Ontario, the Hourly Ontario Energy Price ("**HOEP**") and the global adjustment charge.

- The HOEP is set by the IESO based on bids and offers in the real-time energy market that is administered by the IESO.

- The global adjustment charge is established monthly by the IESO in accordance with regulations and is the amount **of money** necessary to pay certain other costs to generators and other suppliers that are not compensated by the HOEP, including the cost of energy supply contracts with generators and payments made to OPG pursuant to OEB-established payment amounts.

Prior to the FHPA being passed, the amount collected generally over an annual basis by the IESO on account of the HOEP and global adjustment charge was approximately equal to the IESO's current payables to generators and other electricity resource suppliers, subject to certain periodic true-ups, fees and adjustments to keep the IESO whole.

At the request of the Minister of Energy in 2004, the OEB created the "**Regulated Price Plan**" or "**RPP**", which establishes time-of-use and tiered prices primarily for residential, farm and small commercial customers. Prior to the introduction of the FHPA, the RPP prices were reviewed and changed every six months by the OEB based on an updated forecast and any accumulated differences between the amounts collected from RPP consumers and the amount paid to generators in previous periods. RPP prices are now established in accordance with the FHPA. Most Specified Consumers are billed for electricity based on the Regulated Price Plan, although some Specified Consumers may be invoiced the HOEP and the global adjustment charge by their LDC for electricity they have consumed. The IESO has also stated that there is one Specified Consumer connected directly to the transmission system and settled by the IESO, not an LDC.

While most residential and small commercial consumers in Ontario choose to purchase their electricity under the RPP, consumers in Ontario may instead choose to buy their electricity from ~~a~~ **an OEB-**licensed retailer pursuant to a retail contract that provides a rate for electricity over a specified period. These customers are also required to pay the global adjustment charge in addition to the rate under their retail contract.

In addition to the HOEP and global adjustment charges, or RPP prices, as the case may be, electricity consumers pay a number of other uplifts and charges, such as transmission and distribution tariffs.

ONTARIO'S FAIR HYDRO PLAN

Background

On June 1, 2017, the Ontario Legislature passed the FHPA. From July 1, 2017 until April 30, 2018, electricity rates payable by Specified Consumers (a category of consumers that generally is comprised of residential consumers, small businesses and farms) will in effect be the rate that would result in a representative consumer being charged an invoice amount that is 25%[3] less than the rate that would otherwise have been determined by the OEB for that period absent Ontario's Fair Hydro Plan (such adjustment, together with the further adjustments described below in this section, the "**Fair Adjustment**").

Under the FHPA, a "**Specified Consumer**" is:

[3] The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax previously granted by the Ontario government.

(a) a person who has an account with an Electricity Vendor for the supply of electricity in the Province of Ontario and meets any one of the following criteria:

(i) the person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed by the Regulations;

(ii) the person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed by the Regulations;

(iii) the person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22(6) of that Act;

(iv) the person's account with the Electricity Vendor relates to

(A) a dwelling;

(B) a property within the meaning of the *Condominium Act, 1998*;

(C) a residential complex within the meaning of subsection 2(1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act; or

(D) a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*; or

(v) the person satisfies such criteria as may be prescribed by the Regulations; or

(b) such other person as may be prescribed by the Regulations.

Electricity bills for Specified Consumers for the period between May 1, 2018 and April 30, 2019 are to increase by the rate of inflation (or remain unchanged in the event inflation is negative). Permitted increases after April 30, 2019 will be determined by the Ontario government through additional regulations, though the Ontario government has indicated that rate increases will be held to the rate of inflation until 2021.

Under the FHPA, OPG is appointed as Financial Services Manager and given the authority to, among other things, establish, or cause to be established, one or more Financing Entities to incur Funding Obligations to fund the acquisition of an Investment Interest. The Issuer is a Financing Entity under the FHPA and the Senior Notes are Funding Obligations under the FHPA.

Regulatory Asset

Under the FHPA, each month the IESO determines the shortfall that results from the Fair Adjustment as compared to what the IESO would have been entitled to receive without the Fair Adjustment and records this amount, together with the costs of financing the shortfall, the amounts charged to the IESO by the Issuer in respect of the Carrying Costs of the Issuer**, when applicable,** ~~[~~and certain other amounts~~]~~ ~~***[NTD: IESO to confirm what other amounts are included]***~~ in a variance account. The IESO has the right, exercisable in accordance with the FHPA ~~and the Regulations~~, to recover the balance recorded in the variance account from Specified Consumers (such right, the "**Regulatory Asset**"). The FHPA provides that the OEB shall, from time to time and in accordance with the Regulations, determine and set rates payable by Specified Consumers to allow for the IESO to recover the balance recorded in the variance account and that the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from Specified Consumers before May 1, 2021. The IESO may, in accordance with the FHPA, Transfer a specified portion of the Regulatory Asset to a Financing Entity for a cash purchase price equal to the amount recorded in the variance account in respect of such specified portion of the Regulatory Asset. Upon

receipt by the IESO of payment by the Financing Entity, the IESO retains no further right, title or interest in the corresponding Investment Interest.

Investment Interest

By acquiring an Investment Interest, the Financing Entity is financing a portion of the shortfall that ~~results from~~gives rise to the ~~Fair Adjustment~~Regulatory Asset and, as an owner of the Investment Interest, will be entitled to recover its Finance Amount (the costs of such financing). While a Financing Entity may choose to acquire an Investment Interest by accepting a Transfer of the corresponding specified portion of a Regulatory Asset, it is under no obligation to do so.

If the IESO and a Financing Entity agree to the Transfer of a specified portion of the Regulatory Asset from the IESO, such Transfer results in the creation of a current and irrevocable property right that is immediately vested in the Financing Entity, free and clear of any adverse claim (such right, the "**Investment Asset**", and an ownership interest therein, an "**Investment Interest**"). The Investment Asset consists, collectively, of the following rights and interests of Financing Entities that own an Investment Interest (among other things):

(a) the right and interest to impose, invoice, collect, receive and recover the Clean Energy Adjustment from Specified Consumers, including the right to determine the Clean Energy Adjustment in accordance with the FHPA;

(b) the right to receive, collect and recover the Clean Energy Adjustment that is imposed, invoiced and recoverable under the FHPA, including any amounts in respect of the Clean Energy Adjustment that are held by Electricity Vendors or the IESO;

(c) the right to enforce the duties and obligations under the FHPA of each Electricity Vendor to impose, attribute, charge and invoice for the Clean Energy Adjustment;

(d) the right to enforce the duties and obligations under the FHPA of each Electricity Vendor and the IESO to collect, receive and remit amounts received by it in respect of the Clean Energy Adjustment, including all collections and the proceeds of any enforcement action undertaken by any Electricity Vendor to recover payment of the Clean Energy Adjustment;

(e) all rights of any kind related to any of the other property rights or interests that comprise the Investment Interest; and

(f) all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs (a) to (e), regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Clean Energy Adjustment

The "**Clean Energy Adjustment**" is the amount calculated in accordance with the FHPA and payable by Specified Consumers to cover the cost of financing the shortfall that ~~results from~~gives rise to the ~~Fair Adjustment~~Regulatory Asset. The Financial Services Manager will determine the amount of the Clean Energy Adjustment payable by Specified Consumers for each month of a Reference Period. The Clean Energy Adjustment is based on an estimate of the amount payable by a Financing Entity in a Reference Period in respect of the Finance Amount and the True-up Amount (each as described below).

The "**Finance Amount**" in respect of the Issuer for a period of time is an amount determined by the Financial Services Manager as follows:

(a) after eliminating any duplication in the following amounts, calculating the sum of the following amounts:

(i) amounts paid or payable during the period in respect of the payment by or on behalf of the Issuer or the provision by or on behalf of the Issuer for the payment of all or a portion of the principal amount advanced to the Issuer under a Funding Obligation;

(ii) interest, commitment fees or other similar costs payable by or on behalf of the Issuer in respect of Funding Obligations that are paid or payable during the period;

(iii) amounts payable by or on behalf of the Issuer to redeem, prepay or repurchase Funding Obligations incurred by or on behalf of the Issuer, including any premium, make-whole or other amount payable to give effect to the prepayment redemption or repurchase, that are paid or payable during the period;

(iv) payments required to be made in respect of any derivative agreements during the period, including ordinary course payments, payments on termination and payments made in connection with margining or collateral arrangements;

(v) amounts deposited, as required under the governing documents of Funding Obligations, into capital accounts or finance reserve accounts during the Reference Period;

(vi) Issuer expenses, including fees (including fees charged by the Financial Services Manager), charges, costs, indemnities, reimbursements and other amounts incurred or committed to by or on behalf of the Issuer as a result of an activity authorized or permitted under the FHPA, and any taxes on such amounts, in each case that are paid or payable during the period;

(vii) taxes paid or payable by or on behalf of the Issuer, incurred directly or indirectly by the Issuer , or for which the Issuer is otherwise liable as a result of any activity, undertaking, transaction or event authorized or permitted under the FHPA that are payable during the period; and

(viii) amounts paid or payable by or on behalf of the Issuer during the period to any guarantor or surety that made a payment of an amount due and payable under a Funding Obligation, including pursuant to a guarantee, indemnity, contract of insurance or agreement entered into under subsection 5(2) or (3) of the FHPA;

(b) after eliminating any duplication in the following amounts, calculating the sum of the following amounts:

(i) amounts withdrawn, as required under the governing documents of Funding Obligations, from capital accounts or finance reserve accounts during the period;

(ii) amounts received during the period in respect of Carrying Costs;

(iii) the aggregate of all amounts received by or on behalf of the Issuer in respect of Funding Obligations during the period;

(iv) the principal amount of Funding Obligations incurred by the Issuer that are applied to refinance existing Funding Obligation during the period;

(v) any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements, in each case during the period;

(vi) amounts received by or on behalf of the Issuer as a refund of tax during the period; and

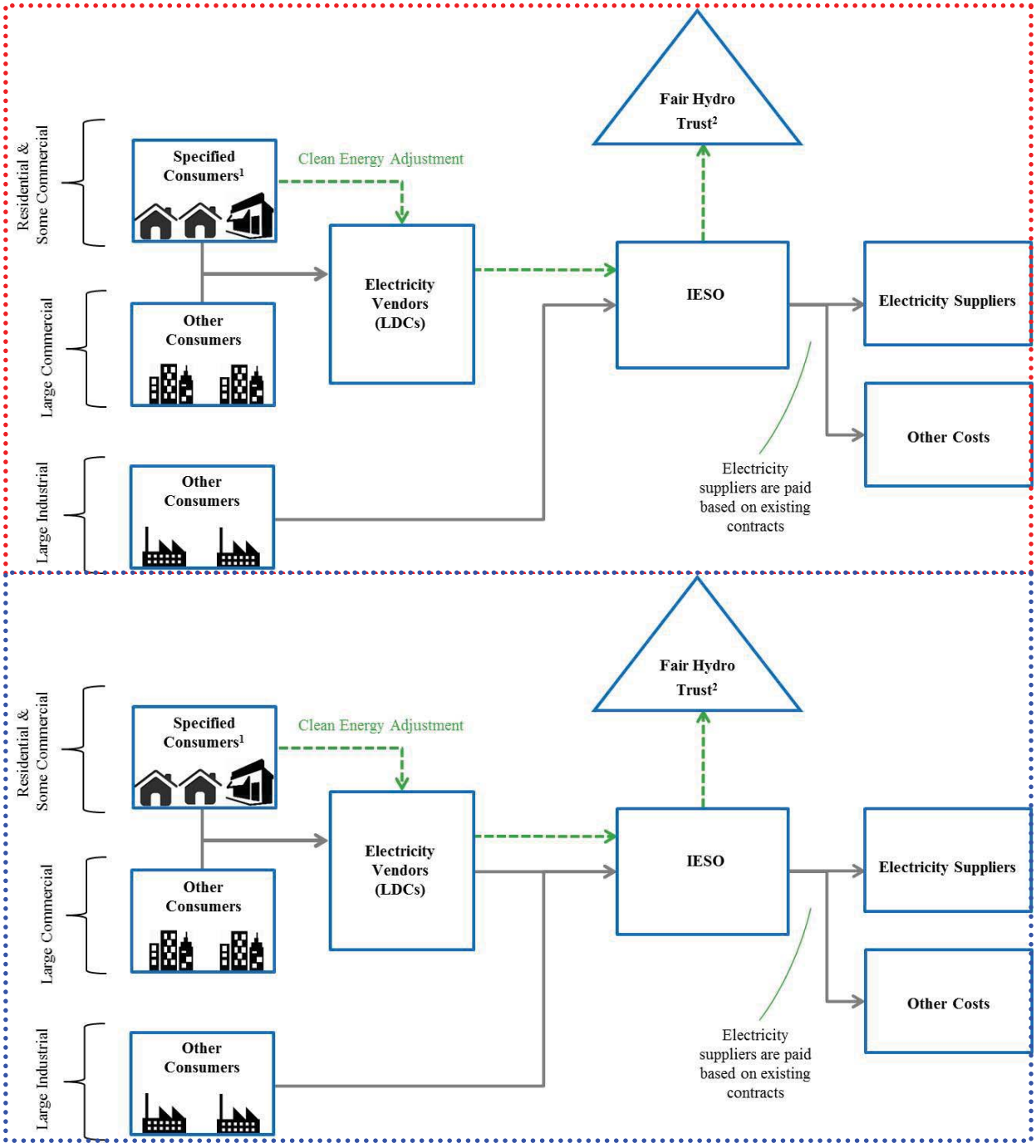
(c) subtracting the sum calculated under (b) from the sum calculated under (a).

In determining the Clean Energy Adjustment, the Financial Services Manager must also calculate a "**True-up Amount**" in accordance with the Regulations. The True-up Amount is comprised of the cumulative Finance Amounts in respect of all preceding Reference Periods less the cumulative Clean Energy Adjustment amounts remitted to the Issuer in respect of all preceding Reference Periods plus other anticipated shortfalls. The True-up Amount ~~may~~**will** also reflect **any** historical and reasonably foreseeable differences between the estimated and actual Finance Amount; between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs; and variations in billings due to variations in electricity consumption. In determining such differences, the Financial Services Manager is required to have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of Specified Consumers, an Electricity Vendor or the IESO, whether in its capacity as an Electricity Vendor or its activities as agent or otherwise under the FHPA. The Regulations obligate the Financial Services Manager to calculate the True-up Amount in respect of each Reference Period so long as all Funding Obligations and other Finance Amounts have not been paid in full. After the final scheduled payment date of the Funding Obligation that has the latest maturity date of all outstanding Funding Obligations, the Financial Services Manager will calculate the True-up Amount quarterly. The Financial Services Manager may also at any time during a Reference Period determine an interim True-up Amount if, among other things, it reasonably forecasts that the collection of the Clean Energy Adjustment will be insufficient to pay the estimated Finance Amount for a Reference Period.

The Financial Services Manager must notify the OEB of the Clean Energy Adjustment for each Reference Period. The OEB must accept this amount and will determine the rates at which Specified Consumers are to be invoiced to recover the Clean Energy Adjustment. The rates are expressed as a cent per kWh amount and are determined by the OEB by dividing (i) the Clean Energy Adjustment provided by the Financial Services Manager in respect of the relevant period ~~of time~~ by (ii) a forecast of electricity consumption of Specified Consumers in respect of such period based on forecast information provided by the IESO. Electricity Vendors are required to invoice their Specified Consumers for the Clean Energy Adjustment, as determined by applying the rate set by the OEB, which is required to be included as a separate line item on each invoice. Electricity Vendors are required to collect, as agent of the Financing Entities (of which the Issuer is currently the only one), amounts in respect of the Clean Energy Adjustment, deposit such amounts into a segregated account established for the purpose of receiving those amounts, and hold such amounts in trust for the benefit of the Financing Entities (of which the Issuer is currently the only one) until remitted to the IESO for the benefit of the Financing Entities (of which the Issuer is currently the only one). If an Electricity Vendor does not receive payment in full of an invoice issued to a Specified Consumer, the Electricity Vendor shall allocate any payment received ~~on a *pro rata* basis~~ to the Clean Energy Adjustment and the other amounts payable under the particular invoice in the manner set out in the FHPA. It is a deemed condition of their licenses that Electricity Vendors comply with their obligations under the FHPA. ~~If there are any amounts that are collected by the Electricity Vendor, but not remitted to the IESO to remit to the Issuer during a Reference Period, such shortfall will be included in the True-up Amount for the subsequent period.~~

An amount in respect of the Clean Energy Adjustment shown on an invoice issued to a Specified Consumer is determinative of the amount of such Specified Consumer's indebtedness resulting from the Clean Energy Adjustment and is irrevocable upon invoicing and may not be set off or bypassed, except to the extent that the invoice reflects a clerical, typographical or calculation-related error. Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and other financing expenses of the Issuer. From July 1, 2017 until April 30, 2021 (the "**Moratorium Period**"), no Clean Energy Adjustments are permitted to be collected from Specified Consumers. During the Moratorium Period, the sole source of funds for payment on the Senior Notes, and the Issuer's other Carrying Costs, will be the amounts the IESO is obligated to pay **to the Issuer** under the Regulations during such period. See *"— IESO Payment of Carrying Costs during the Moratorium Period"* below. Once it starts being included on such invoices, the Clean Energy Adjustment will be collected until all outstanding Funding Obligations and other Finance Amounts have been repaid in full. Subject to the FHPA, the Clean Energy Adjustment will be collected and remitted to the Issuer to pay the Finance Amount, including the principal and interest on the Senior Notes and all other administrative and other financing expenses of the Issuer.

The following diagram illustrates the flow of funds under the Fair Hydro Plan.



[1] There is currently one Specified Consumer that is directly connected to the IESO and, accordingly, makes payments, including in respect of the Clean Energy Adjustment, **once applicable,** directly to the IESO.

[2] Pursuant to the Master Transfer and Servicing Agreement, the IESO may periodically Transfer specified portions of the Regulatory Asset to the Issuer for a corresponding purchase price. Upon completion of a Transfer by the IESO of a specified portion of the Regulatory Asset following payment by the Issuer of the corresponding purchase price, the Issuer will acquire an Investment Interest.

Fair Allocation Amount and Financing Plan

The FHPA was enacted to: (i) ensure that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers; (ii) recognize that Clean Energy Benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in Ontario; and (iii) align

Clean Energy Costs with Clean Energy Benefits, in order to provide fairness for Specified Consumers over time. Under the FHPA, the Minister of Energy calculates a "**Fair Allocation Amount**", which is an amount for every Reference Period that, among other things, allocates the estimated Clean Energy Costs in proportion to the relative attribution of Clean Energy Benefits among Specified Consumers. Under the FHPA, the Minister of Energy is responsible for determining the Fair Allocation Amount prior to the incurrence of the first Funding Obligation. The Fair Allocation Amount may be changed from time to time in accordance with the FHPA, provided that no change of the Fair Allocation Amount shall affect any Clean Energy Adjustment that arises as a result of a Funding Obligation that has been incurred prior to such change.

OPG, as Financial Services Manager, is required to prepare a Financing Plan to evaluate whether and when potential Funding Obligations should be incurred by a Financing Entity to acquire an Investment Interest or for the purposes of a Refinancing. The Financial Services Manager is required to prepare the Financing Plan having regard to certain prescribed principles, including that Funding Obligations should be incurred such that, along with any Funding Obligations already incurred, the estimated Finance Amount that would, subject to any Refinancing, become due and payable during a Reference Period will reasonably align with the Fair Allocation Amount determined in respect of such Reference Period as of the date the Funding Obligations were incurred. In other words, the Financing Plan should contemplate the issuance of Funding Obligations from time to time, with terms that would result in Clean Energy Adjustments being payable by Specified Consumers that align with the purposes of the FHPA. Notwithstanding the above, the FHPA provides that each Funding Obligation **that is issued** is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated Finance Amount with the Fair Allocation Amount.

The Financing Plan allows for the issuance of a variety of short and long term debt. See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Financing Plan and the Fair Allocation Amount.

Payment of Carrying Costs until July 31, 2021

Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and financing expenses of the Issuer. The IESO, which is rated A(high) by DBRS and Aa2 by Moody's, is required under the Regulations to pay and remit to the Issuer amounts charged to the IESO by the Issuer in respect of its Carrying Costs incurred in respect of the period from June 1, 2017 to July 31, 2021. Carrying Costs include all funding costs (such as interest on the Senior Notes) and other expenses of the Issuer, other than repayment of principal on any debt obligations of the Issuer (including repayment of principal on the Senior Notes). The amounts paid by the IESO **to the Issuer** to fund these Carrying Costs will be recorded by the IESO in the variance account and form part of the Regulatory Asset that the IESO is expected to Transfer to the Issuer in a subsequent period. Upon such Transfer, the Issuer will acquire a corresponding Investment Interest pursuant to the FHPA.

Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's statement, the IESO is required to deliver the amount specified in the carrying costs statement to the Issuer. See *"The Transferor and Servicer"*. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring September 30, 2022, which is permitted to be used **by the IESO** to pay the ~~Issuer's~~ Carrying Costs **to the Issuer**. Furthermore, as security for the performance of its obligations under the Regulations to pay the ~~Issuer's~~ Carrying Costs **to the Issuer**, the IESO has granted the Issuer a first-priority security interest in all accounts receivable owing to the IESO from Electricity Vendors, including amounts owing with respect to the global adjustment charge. See *"The Transferor and Servicer"*.

Other Statutory Protections

The FHPA provides certain protection and assurances in respect of the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment. Generally, no action or omission by the OEB, the Minister of Energy or the Crown, and no regulation under the FHPA, will be effective to reduce, impair, postpone or

terminate the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment or to impair or postpone the invoicing, collection or remittance of the Clean Energy Adjustment. If an Electricity Vendor, the IESO or the Financial Services Manager, has failed, or will fail, to comply with the FHPA, the Issuer may apply to an Ontario court to make an order directing such party to comply and requiring compensation to be provided to the Issuer by such non-compliant party. Additional contractual protections are provided in the Change of Law Protection Agreement described below.

CHANGE OF LAW PROTECTION AGREEMENT

The following brief summary of certain provisions of the Change of Law Protection Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Change of Law Protection Agreement are qualified in their entirety by reference to the Change of Law Protection Agreement and the detailed provisions thereof. The Change of Law Protection Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

Pursuant to the Change of Law Protection Agreement, upon a Protection Event and delivery by the Indenture Trustee of a written payment demand, the Province of Ontario is required to make payments of amounts that are due and payable in respect of all Approved Obligations when due and payable into the Protection Account. The Issuer and Indenture Trustee must ensure that amounts deposited into the Protection Account are applied to pay Specified Creditors to whom amounts are due and payable under an Approved Obligation in accordance with the provisions of the Master Trust Indenture. See *"Capital Markets Platform"*. The Province of Ontario's obligation to make such payments under the Change of Law Protection Agreement upon a Protection Event and delivery by the Indenture Trustee of a written payment demand is referred to as the "**Limited Guarantee**".

The payment obligations of the Province of Ontario under the Limited Guarantee differ depending on whether an Acceleration has occurred. If no Acceleration has occurred in respect of any Senior Notes on or before a date on which the Province of Ontario is to perform the Limited Guarantee, the Change of Law Protection Agreement provides that the Province of Ontario is to pay the amounts due and payable on such date in respect of Approved Obligations. If an Acceleration has occurred in respect of any Senior Notes on or before a date on which the Province of Ontario is to perform the Limited Guarantee, the Province of Ontario is to pay the amounts that would be available to be paid on such date in respect of the Approved Obligation on an applicable payment date in respect of the Approved Obligation under the applicable payment provisions of the Master Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Master Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period, divided by the number of months in such Reference Period. **See *"Capital Markets Platform — Acceleration and Remedies — Limitation on Available Amounts on Acceleration"* for a description of the amounts that would be available to be paid under the Master Trust Indenture in such circumstances.**

The Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include payments of amounts that are due and payable in respect of the Senior Notes).

Under the Change of Law Protection Agreement, the right to deliver a written payment demand on occurrence of a Protection Event to enforce the Limited Guarantee is the only remedy available to the Indenture Trustee (and to Specified Creditors, to the extent they are permitted to exercise any rights, interests or elections under and in accordance with the Master Trust Indenture). Specified Creditors are not permitted to exercise any rights, interests, or elections under the Change of Law Protection Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Master Trust Indenture as at December 21, 2017.

In connection with the provision of the Limited Guarantee, OPG, as Financial Services Manager, has entered into a process agreement with the Province of Ontario pursuant to which OPG is required to satisfy certain reporting and other requirements regarding the Issuer's incurrence of, and material amendments to, any Issuer Funding Obligations.

Protection Event

Each of the following constitutes a "**Protection Event**" under the Change of Law Protection Agreement:

(a)

(i) the Ontario legislature repeals, and does not replace on an equivalent basis, or amends, the ~~FHPA~~**Act** or any portion thereof, as in effect on the date hereof;

(ii) the Ontario legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals, and does not replace on an equivalent basis, the regulations made under the ~~FHPA~~**Act** or any portion thereof, in whole or in part, as in effect on the date hereof;

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof; or

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province of Ontario or an entity controlled by the Province of Ontario,

in each case, that (X) adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in any of clauses (i) to (v) above, or (Y) adversely affects the enforceability of, or adversely changes, the terms and conditions of the Change of Law Protection Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the ~~FHPA~~**Act**, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable and that has the effect of the Issuer not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in this paragraph (b).

The occurrence of a Protection Event in and of itself will not result in the acceleration of the Senior Notes.

On a Protection Event and payment by the Province of Ontario of amounts in respect of Approved Obligations that are due and payable into the Protection Account, such deposited amounts are applied by the Issuer and Indenture Trustee in the priority of payments governed by the Master Trust Indenture.

Upon the Province of Ontario's payment of amounts in respect of Approved Obligations that are due and payable into the Protection Account, the Province of Ontario will be subrogated and entitled to all of the rights of applicable Specified Creditors (including Noteholders) under and in respect of the Approved Obligations to the

extent of the amounts paid. Applicable Specified Creditors in respect of whom amounts were deposited into the Protection Account will not have continuing rights, interests or entitlements (including rights as a secured party) in respect of Approved Obligations to the extent so paid; the Province of Ontario will be the absolute assignee of such rights. The Province of Ontario will have the right to be paid from the Issuer the amounts that the Province of Ontario paid in respect of the Approved Obligations ("**Subrogation Amounts**"), such Subrogation Amounts being payable in the same order of priority and with the same entitlements accruing to the Province of Ontario as applied to the amounts in respect of the Approved Obligations previously owing to Specified Creditors that the Province of Ontario has paid. The Province of Ontario will also be entitled to the benefit of the Collateral and proceeds therefrom to the extent of the amounts paid under the Limited Guarantee.

As payee of Subrogation Amounts, the Province of Ontario will be a Specified Creditor under the Master Trust Indenture. Further, the entitlements of the Province of Ontario to Subrogation Amounts arising in respect of Approved Obligations that are interest and principal obligations on Notes will be treated for all purposes of the Master Trust Indenture as interest and principal obligations, respectively, arising under Notes, having the same priority and any applicable voting rights as under the related Approved Obligations, and accordingly the Province of Ontario will be entitled to all of the rights, entitlements, interests and privileges of a holder of such Notes in accordance with the Master Trust Indenture, as supplemented by the supplemental indenture or other indenture document under which the related Approved Obligations were issued, provided that for purposes of determining voting rights with respect to Notes, Notes in which the Province of Ontario has an interest will be deemed not to be outstanding at any time that a Specified Creditor other than the Province of Ontario has an interest in such Class of Notes.

Approved Obligations & Adherence Conditions

Under the Management Agreement, the Manager is required to ensure that all obligations of the Issuer are and remain Approved Obligations under the Change of Law Protection Agreement.

An "**Approved Obligation**" under the Change of Law Protection Agreement means: (i) a Certified Primary Obligation if the adherence conditions applicable thereto have been satisfied at the time such obligation was incurred; (ii) all other Primary Obligations that are not Certified Primary Obligations (except any Primary Obligation to which the Limited Guarantee will not apply on or after delivery of a Suspension Notice as described below); and (iii) all Certified Primary Obligations that the Province of Ontario, in its sole discretion, designates in writing is an Approved Obligation.

It will be a condition to any Offering of Senior Notes that such Senior Notes constitute Approved Obligations under the Change of Law Protection Agreement.

A "**Primary Obligation**" under the Change of Law Protection Agreements means any Obligation Secured under the Master Trust Indenture (i) that is a Funding Obligation or (ii) that otherwise is a payment obligation of the Issuer that gives rise to a Finance Amount, in each case other than (x) any amounts required to be deposited by or on behalf of the Issuer into any capital account or finance reserve account; and (y) any obligation to pay the Issuer or on the Issuer's direction any remaining amounts in the Collection Account pursuant to the Master Trust Indenture.

A "**Certified Primary Obligation**" means a Primary Obligation: (i) incurred by or on behalf of the Issuer to fund its ownership of an Investment Interest, including any Refinancing, other than a Post-Suspension Refinancing or a Pre-Approved Refinancing (each as defined below), of such a Primary Obligation (for greater certainty, including, in the case of any Certified Primary Obligation permitting funding transactions pursuant to a Funding Obligation Agreement applicable to the Certified Primary Obligation, each individual borrowing or funding utilization thereunder), (ii) incurred by or on behalf of the Issuer upon the Issuer entering into a derivative agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such derivative agreement and not any individual trade confirmation other than a trade confirmation that modifies or purports to override the express terms or conditions of the related Master Agreement, or (iii) incurred by or on behalf of the Issuer upon entering into a contract that has a term of more than three (3) years which is not terminable by the Issuer giving three (3) years' notice or less and expected (as determined by the Manager, acting reasonably) aggregate payments by the Issuer thereunder during the term of such contract are or would be in excess of $5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).

The Limited Guarantee shall apply to all Certified Primary Obligations that meet the following adherence conditions:

(a) the Certified Primary Obligation when incurred is an Obligation Secured under the Master Trust Indenture;

(b) OPG, as Financial Services Manager, delivers a certificate to the Indenture Trustee on or before the incurrence of such obligation certifying, among other things, that OPG has delivered a certificate to the Province of Ontario confirming that OPG has complied with all of its obligations to the Province of Ontario and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation (an "**Adherence Compliance Certificate**"); and

(c) the Province of Ontario has not provided a Suspension Notice to the Indenture Trustee, OPG and the Issuer.

All Senior Notes shall constitute Obligations Secured under the Master Trust Indenture and therefore condition (a) above will be satisfied for all Offerings of Senior Notes. It will be a condition to any Offering of Senior Notes that OPG deliver the adherence certificate required pursuant to (b) above or that the Province of Ontario designates in writing that the Senior Notes are Approved Obligations. The Change of Law Protection Agreement provides that delivery of an adherence certificate shall be determinative of satisfaction of this adherence condition, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such certificate may be relied upon as conclusive evidence of same.

Suspension Notice & Post-Suspension Refinancings

The Change of Law Protection Agreement will remain in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, including the Senior Notes.

However, in the following limited circumstances, the Province of Ontario may deliver a written notice (a "**Suspension Notice**") to the Indenture Trustee, the Financial Services Manager and the Issuer:

(a) an acceleration of Funding Obligations in accordance with the provisions of the Master Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement;

(b) a default in the performance, or breach, of any covenants of OPG, as Financial Services Manager, or OPG, in its corporate capacity, in each case to the Province of Ontario in connection with its obligations to the Province of Ontario pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligation and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as Financial Services Manager or in its corporate capacity, to the Province of Ontario in connection with its obligations to the Province of Ontario and its internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations, proves to be incorrect in any material respect on the date made and the expiration of any applicable cure period; or

(d) the Financial Services Manager no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the Financial Services Manager as the Manager;

If a Suspension Notice has been provided under the Change of Law Protection Agreement (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary

Obligation incurred, excluding any Post-Suspension Refinancing, or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province of Ontario, in each case, on or after the time such Suspension Notice is delivered.

Following the occurrence of a Suspension Event, the Limited Guarantee shall continue to apply in respect of any Post-Suspension Refinancing; provided that prior to the Financing Entity incurring any Primary Obligation constituting a Post-Suspension Refinancing, the Manager shall provide the Province of Ontario with at least 30 days' notice of its intention to seek a Post-Suspension Refinancing and during such 30-day period the Province of Ontario may, but is not obligated to, offer to fund such Post-Suspension Refinancing or arrange for another Person to fund such Post-Suspension Refinancing on the same terms as set out in the notice or on such other terms as may be considered by the Province of Ontario to be not more onerous on the Financing Entity and that are acceptable on that basis to the Financing Entity, acting reasonably.

A "**Post-Suspension Refinancing**" means a Funding Obligation that is an Obligation Secured and that is incurred on or after the occurrence of a Suspension Event in compliance with the requirements of the Change of Law Protection Agreement, as a Refinancing of one or more Series of Approved Obligations (including any Pre-Approved Refinancing incurred on or after the occurrence of a Suspension Event), in each case the proceeds of which, together with any other funds that may be available, are used solely for the purpose of paying in full such Series of Approved Obligations and any costs and expenses associated with such Refinancing.

A "**Pre-Approved Refinancing**" means a Refinancing of a Certified Primary Obligation in respect of which the Province of Ontario has, prior to the incurrence of such Certified Primary Obligation, agreed shall be an Approved Obligation, subject to compliance with such conditions and requirements as may be specified in such agreement.

A "**Material Effect**" means a material adverse effect on the obligations or the rights of the Province of Ontario under the Limited Guarantee that relates to, and in each case, differs in any material respect from the terms or conditions applicable to any transaction document to which the Limited Guarantee applies and which was previously provided to the Province of Ontario, the following: (i) the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization) that, in each case, is inconsistent with the Fair Allocation Amount; (ii) the appointment, obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Issuer or the Issuer Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province of Ontario as a Specified Creditor; (v) the payment provisions and associated priorities set forth in the Master Trust Indenture; (vi) compliance by the Financial Services Manager with the then applicable Financing Plan; (vii) compliance by the Financial Services Manager or the Issuer with the FHPA; or (viii) the Province of Ontario's rights of subrogation or assignment or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

Accordingly, notwithstanding delivery of a Suspension Notice, the Limited Guarantee shall continue to apply to: (i) any Approved Obligations that were incurred prior to the Suspension Event and (ii) any Funding Obligations incurred by the Issuer following a Suspension Event if the terms and conditions of the Change of Law Protection Agreement are satisfied and the proceeds of such incurrence are to be used for the purpose of repaying one or more series of Approved Obligations. Accordingly, subject to compliance with the Change of Law Protection Agreement, any Senior Notes or other Funding Obligations that may be issued following a Suspension Event to refinance Senior Notes that were issued prior to a Suspension Event will continue to have the benefit of the Limited Guarantee.

THE ISSUER

The Issuer is an unincorporated open-ended unit trust established under the laws of the Province of Ontario pursuant to the Declaration of Trust. The Issuer Trustee is the sole trustee of the Issuer, which is a Financing Entity established to incur Funding Obligations for the purpose of acquiring Investment Interests pursuant to the FHPA. The principal business address and head office of the Issuer is in Ontario, in the care of the Issuer Trustee at the following address: 100 University Avenue, 11th Floor, Toronto, Ontario M5J 2Y1.

The following brief summary of certain provisions of the Declaration of Trust does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Declaration of Trust are qualified in their entirety by reference to the Declaration of Trust and the detailed provisions thereof. The Declaration of Trust may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

The Declaration of Trust establishes the Issuer to carry on activities for the exclusive benefit of its unitholders, FHP2017 Inc., a wholly-owned subsidiary of OPG, and BNY Trust Company of Canada, the Indenture Trustee under the Master Trust Indenture (collectively, the "**Unitholders**"). The beneficial interest and rights generally of the Unitholders in the Issuer are limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Issuer. The legal ownership of the trust property and the right to conduct the activities of the Issuer are vested exclusively in the Issuer Trustee and no Unitholder has any right of ownership in any of the trust property. Except in limited circumstances provided in the Declaration of Trust, no Unitholder is entitled to interfere with or give any direction to the Issuer Trustee with respect to the affairs of the Issuer or in connection with the exercise of any powers or authorities conferred upon the Issuer Trustee under the Declaration of Trust. The Issuer Trustee will generally have, free from any power or control on the part of the Unitholders, full authority over the trust property and the activities of the Issuer to the same extent as if the Issuer Trustee were the sole and absolute owner thereof. The Unitholders will also not be subject to any liability arising out of the activities of the Issuer.

The Issuer Trustee, on behalf of the Issuer, has entered into a management agreement with OPG, as Manager, whereby all of the powers and duties of managing the Issuer have been delegated to the Manager. See *"The Manager."*

The permitted activities of the Issuer are limited to:

(a) acquiring, owning, holding, administering or entering into agreements regarding the acquisition and servicing of Investment Interests, along with certain other related assets;

(b) managing, selling, assigning, pledging and collecting amounts due on or otherwise dealing with Investment Interests and certain other related assets in accordance with the terms of the Program Agreements;

(c) negotiating, authorizing, executing, delivering, assuming the obligations under and performing its duties under the Program Agreements;

(d) filing with any applicable securities commission one or more prospectuses, offering memoranda, registration statements or documents necessary or desirable to register one or more series of Funding Obligations under the securities laws of any applicable jurisdiction;

(e) authorizing, executing, delivering, issuing and registering one or more series of Funding Obligations;

(f) making payments on Funding Obligations;

(g) pledging its interest in Investment Interests and related assets to the Indenture Trustee in order to secure Funding Obligations; and

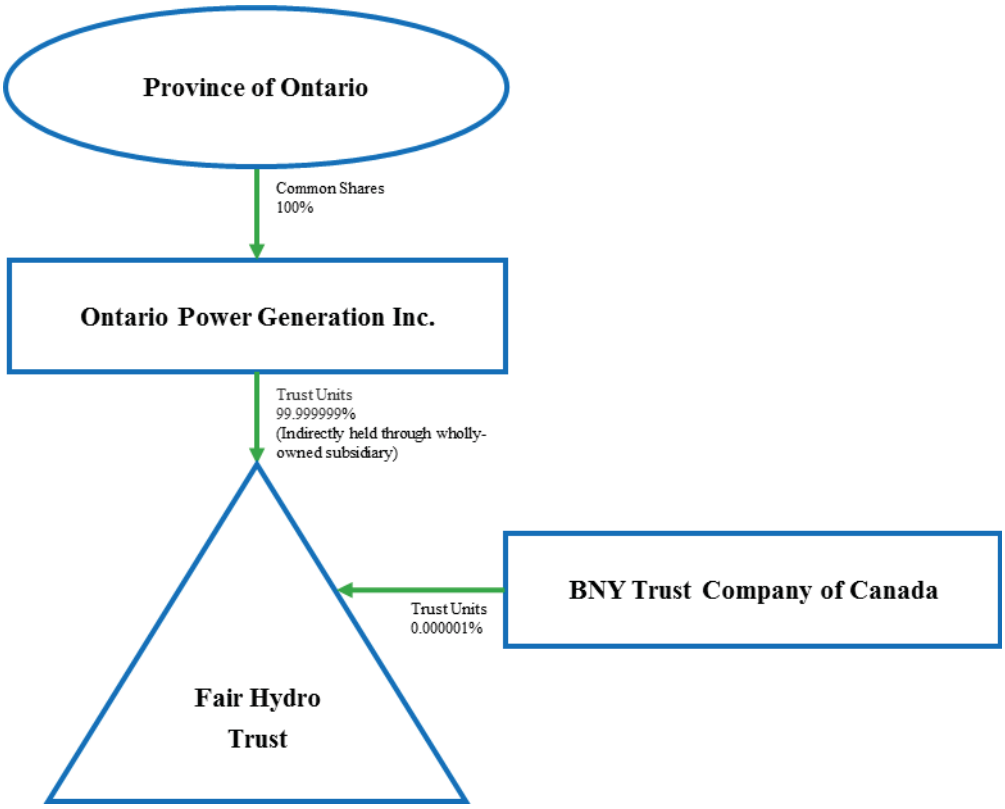
(h) engaging in any lawful act or activity that is incidental to the above-mentioned purposes.

The Issuer Trustee may amend the Declaration of Trust under specified circumstances without the consent of Unitholders provided (i) the amendment will not materially adversely affect the interest of any Unitholder, unless that Unitholder has approved of the amendment in writing, and (ii) in respect of any material amendment, the Rating Agency Condition has been satisfied. The Issuer Trustee is required to provide the Rating Agencies and the Indenture Trustee with a copy of any amendment, variation, supplement, replacement or restatement of the Declaration of Trust.

The consent of the Indenture Trustee, in addition to all other Unitholders, will be required to wind up the Issuer or voluntarily institute or consent to insolvency proceedings against the Issuer while any Funding Obligations remain outstanding. The Issuer Trustee may be removed by the Unitholders at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date such removal is to take effect. The Issuer Trustee may also be removed by the Unitholders with no prior written notice if it becomes bankrupt or insolvent or it is unable to exercise its duties under the Declaration of Trust. The Issuer Trustee may resign on 120 days' prior written notice to the Unitholders, the Indenture Trustee and the Rating Agencies. No such resignation will be effective until a replacement issuer trustee acceptable to the Unitholders and the Indenture Trustee has been appointed and the Rating Agency Condition has been satisfied.

Each of the Issuer Trustee and its directors, officers, agents, representatives and employees will be indemnified from and against all claims (including any claim arising out of the assessment of any tax on income by a taxing authority), demands, levies, penalties, suits, losses, actions, causes of action, costs, charges, fees and expenses, damages and liabilities whatsoever arising out of, among other things, any action or omission in relation to the execution of the duties of the Issuer Trustee or in relation to the trust property or the activities of the Issuer, except, in each case, for wilful misconduct, gross negligence or failure to comply with the standard of care established by the Declaration of Trust.

The following diagram illustrates the structure of the Issuer and its affiliates.



THE MANAGER

Pursuant to the Management Agreement, the Issuer has delegated to OPG, as Manager, all of the powers and duties of managing the Issuer. The following brief summary of certain provisions of the Management Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Management Agreement are qualified in their entirety by reference to the Management Agreement and the detailed provisions thereof. The Management Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

The powers and duties delegated to the Manager under the Management Agreement include, among others:

(a) negotiating and executing, on behalf of the Issuer, the Program Agreements;

(b) maintaining accounts and banking records;

(c) enforcing the rights of the Issuer under the Program Agreements and the FHPA;

(d) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to incur Funding Obligations;

(e) ensuring that all Primary Obligations of the Issuer are and remain Approved Obligations;

(f) administering all activities of the Issuer in connection with the issuance, sale, payment, repurchase and redemption of the Issuer's Funding Obligations;

(g) preparing, in accordance with applicable securities laws, any offering documents to be furnished by the Issuer to prospective purchasers of Funding Obligations, including the Senior Notes, and ensuring that all statements of the Issuer made therein are at all times true and correct in all material respects;

(h) arranging for compliance by the Issuer with any continuous disclosure obligations;

(i) arranging for the retention of legal counsel, accountants and an auditor for the Issuer;

(j) preparing financial statements and paying taxes on behalf of the Issuer;

(k) preparing a monthly portfolio report setting out information regarding incoming and outgoing cash flows; and

(l) providing such other services as are incidental to the foregoing or as may be agreed upon between the Issuer and the Manager.

The Manager is also required to work with the IESO to develop, on or before January 31, 2020, a written implementation plan identifying the actions to be taken by the IESO and the Issuer to facilitate the OEB, the Issuer, the IESO and Electricity Vendors being prepared to perform their obligations under the FHPA when setting, invoicing and collecting the Clean Energy Adjustment. The Manager will deliver written progress reports to the Issuer and the Indenture Trustee on the status of the implementation plan on or before June 30, 2020, October 31, 2020 and January 31, 2021.

Following the Moratorium Period, the Manager will review a monthly servicer report required to be delivered to the Issuer by the IESO under the Master Transfer and Servicing Agreement and make commercially reasonable efforts to resolve any Electricity Vendor failures or discrepancies identified in such report that have not been remedied or adequately explained by Electricity Vendors. The Manager is obligated to institute any proceedings necessary to compel performance by Electricity Vendors of any obligations or duties under the FHPA, including with respect to the invoicing, collection and remittance of Clean Energy Adjustment amounts. Commencing May 1, 2021 and pursuant to its rights under the Regulations, the Manager (on behalf of the Issuer) shall review, or cause to be reviewed, on an annual basis, or less frequently as may be determined by the Manager and subject to satisfaction of the Rating Agency Condition, the records maintained by Electricity Vendors with respect to the Clean Energy Adjustment and if there is evidence of material non-compliance by an Electricity Vendor, the Manager will promptly review or cause to be reviewed the records of such Electricity Vendor.

The Manager is obligated to perform its duties under the Management Agreement diligently and in conformity with the Issuer's obligations under each of the Program Agreements and with the FHPA, as applicable, and honestly, in good faith and in the best interest of the Issuer. The Manager must exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

In addition to the powers and duties delegated to OPG pursuant to the Management Agreement, OPG has also agreed to comply with its duties under the FHPA in its capacity as Financial Services Manager, including:

(a) preparing the Financing Plan to evaluate whether potential Funding Obligations should be incurred by Financing Entities for the purposes of acquiring Investment Interests;

(b) determining the amounts of the Clean Energy Adjustment, inclusive of any True-up Amount;

(c) calculating the True-up Amount;

(d) notifying the OEB of the Clean Energy Adjustment, inclusive of any True-up Amount;

(e) administering the Investment Interests on behalf of Financing Entities in accordance with the Program Agreements;

(f) ensuring that Funding Obligations are incurred in a manner that is consistent with the Financing Plan; and

(g) establishing and charging fees for the services provided under the Management Agreement.

Subject to OEB approval, OPG is entitled to charge the Issuer a fee, comprised of a base fee and a variable fee, to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer or in relation to the establishment, management and administration of the Issuer and its Investment Interest. The priority of the Manager's entitlement to fees is subject to the payment priorities set forth in the Master Trust Indenture.

The Manager is not entitled to resign from its duties or terminate the Management Agreement as long as Funding Obligations remain outstanding. The Manager may be terminated by the Issuer Trustee, with the consent of the Indenture Trustee, or by the Indenture Trustee in accordance with the Master Trust Indenture. No termination of the Manager will be effective until a replacement manager that satisfies the Rating Agency Condition has been approved and has entered into a management agreement with the Issuer whereby the replacement manager agrees to assume, in substance, the obligations of the Manager under the Management Agreement. If the Manager ceases to perform, or inadequately performs, its management duties under the Management Agreement, it might be difficult to find a replacement for the Manager or a successor manager. See "*Risk Factors — Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and as Manager.*"

The Manager shall provide to the Issuer Trustee an annual certificate confirming compliance with certain matters, including: (i) accurate maintenance of the books and records of the Issuer; (ii) all debt obligations and expenses due and payable by the Issuer have been paid to date; (iii) all required filings with tax and regulatory authorities have been completed to date; and (iv) all material statements and reports to be delivered by the Issuer under the Program Agreements have been delivered and all material statements and reports to be received by the Issuer under the Program Agreements have been received.

The Manager indemnifies the Issuer under the Management Agreement for any losses incurred by the Issuer as a result of the failure of the Manager to perform its obligations under the Management Agreement or any breach by the Manager of its representations and warranties under the Management Agreement or any other Program Agreement to which it is a party, except to the extent such losses result from the willful misconduct, bad faith or gross negligence of the Issuer. Notwithstanding the foregoing, the Manager is not obligated to indemnify the Issuer under the Management Agreement for any losses resulting from: (i) a breach or failure to perform by a third party under any Program Agreement, the FHPA (excluding any delegation by the Manager under the Management Agreement to a third party); (ii) changes in law, (iii) the validity or applicability of the Change of Law Protection Agreement; (iv) the collectability or sufficiency of the Clean Energy Adjustment or Carrying Costs to satisfy the Issuer Funding Obligations, including the Senior Notes; or (v) any liability of the Issuer incurred after termination of the Management Agreement unless attributable to the actions or omissions of the Manager prior to such termination or in respect of a representation, warranty or covenant that survives such termination.

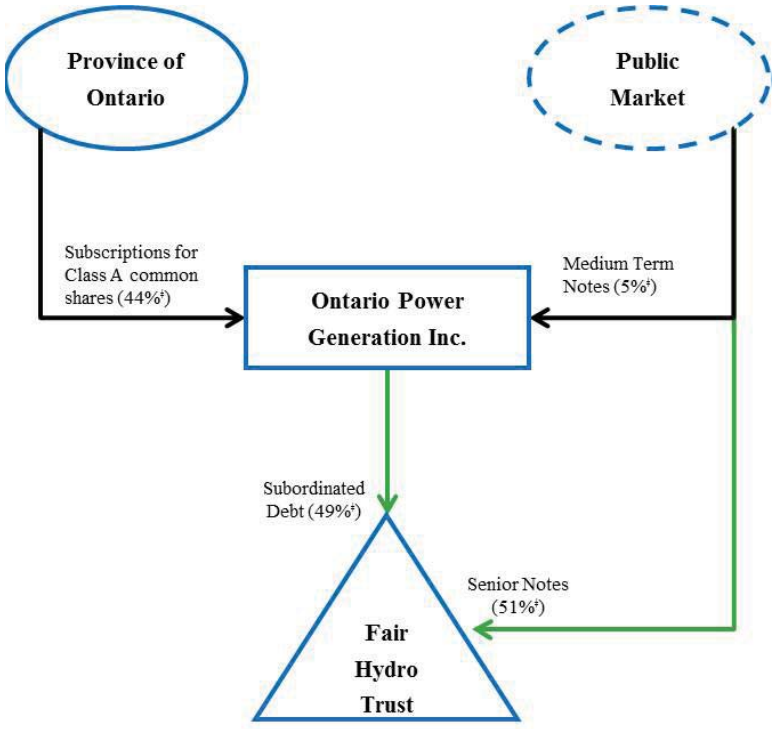
SUBORDINATED DEBT

Concurrent with every issuance of senior debt by the Issuer, including any Offering of Senior Notes, it is expected that OPG will subscribe for subordinated debt and junior subordinated debt of the Issuer in an amount of no more than 49% of all of the Issuer's Funding Obligations, approximately 44% of which is expected to be funded through equity investments in OPG by the Province of Ontario with the remaining ~~approximate~~**approximately** 5% being funded from OPG's available funds, including all or a portion of the proceeds of any offerings by OPG of medium term notes.

Under the Master Trust Indenture, the Issuer will be required at all times to ensure that: (i) the aggregate outstanding principal amount of all subordinated debt and junior subordinated debt be equal to not less than 35% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations; and (ii) the aggregate outstanding principal amount of all junior subordinated debt be equal to not less than 10% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations.

The Issuer is structured to be bankruptcy remote from OPG insofar as none of OPG, its subsidiaries or holders of its indebtedness will have any recourse whatsoever against the Issuer or its assets other than OPG's rights and remedies as a holder of subordinated debt of the Issuer in accordance with the provisions of that indebtedness. From an accounting perspective, however, the Issuer will be consolidated with OPG.

The following diagram illustrates the expected structure of OPG's investments in subordinated debt of the Issuer.



ǂ OPG is expected to acquire up to 49% of the Issuer's outstanding debt in the form of subordinated debt. Actual amounts may vary if OPG acquires less than 49% of the Issuer's outstanding debt.

SHORT TERM INDEBTEDNESS

On December 21, 2017, the Issuer entered into the following supplemental indentures under the Master Trust Indenture for the provision of an aggregate of approximately $1.56 billion in short term indebtedness (collectively, the "**Warehouse Facilities**"), of which a total of $1.179 billion is drawn as of the date hereof:

(a) a warehouse senior series 2017-1 supplemental indenture with, among others, Royal Bank of Canada, as administrative agent for certain commercial paper conduit purchasers and financial institutions named therein, for the provision of an aggregate maximum principal amount of $800,000,000 floating rate variable funding Senior Notes, Series 2017-1 ("**Senior Notes, Series 2017-1**"), of which $601,290,000 is drawn;

(b) a warehouse subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $611,764,705.88 floating rate variable funding Subordinated Notes, Series 2017-1 ("**Subordinated Notes, Series 2017-1**"), of which $459,810,000 is drawn; and

(c) a warehouse junior subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $156,862,745.10 floating rate variable funding Junior Subordinated Notes, Series 2017-1 ("**Junior Subordinated Notes, Series 2017-1**"), of which $117,900,000 is drawn.

The issuance of Senior Notes, Series 2017-1, Subordinated Notes, Series 2017-1 and Junior Subordinated Notes, Series 2017-1 under the Warehouse Facilities described above were used to acquire a $1.179 billion Investment Interest on December 21, 2017.

THE TRANSFEROR AND SERVICER

Pursuant to the Master Transfer and Servicing Agreement, the IESO may periodically Transfer specified portions of the Regulatory Asset to the Issuer. Additional information regarding the IESO, including its most recently published financial statements, is available at www.ieso.ca. Such information does not form part of this confidential shelf offering memorandum and neither the Issuer nor the Agents guarantee the accuracy of such information or has independently verified the accuracy or completeness of any such information or to determine if there has been any omission by the IESO to disclose any facts, information or events which may affect the significance or accuracy of any such financial statements or other information.

The following brief summary of certain provisions of the Master Transfer and Servicing Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Master Transfer and Servicing Agreement are qualified in their entirety by reference to the Master Transfer and Servicing Agreement and the detailed provisions thereof. The Master Transfer and Servicing Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

Under the Master Transfer and Servicing Agreement, the IESO may offer, no more frequently than monthly, to Transfer to the Issuer a specified portion of the Regulatory Asset. The Issuer has the right, but not the obligation, to accept the IESO's offer. The IESO is responsible for servicing the Issuer's Investment Interest in accordance with the Regulations and the Master Transfer and Servicing Agreement. Its responsibilities including, among others:

(a) establishing a segregated account to be used for the sole purpose of receiving the Clean Energy Adjustment in respect of the Issuer's Investment Interest and making commercially reasonable efforts to cause Electricity Vendors to do the same;

(b) making commercially reasonable efforts to cause each Electricity Vendor to establish procedures for the invoicing of amounts in respect of the Clean Energy Adjustment;

(c) responding to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(d) reviewing reports submitted to the IESO by Electricity Vendors regarding the collection of Clean Energy Adjustment amounts for material manifest discrepancies;

(e) contacting Electricity Vendors on the occurrence of certain events;

(f) holding Clean Energy Adjustment amounts received in respect of the Issuer's Investment Interest in trust for the benefit of the Issuer and remitting such amounts to the Issuer on the 18th business day of each month, subject to daily remittance being required in certain limited circumstances;

(g) together with the Issuer, settling a form of monthly servicer report to be provided to the Issuer; and

(h) providing forecast information to the OEB and the Issuer**, which forecast information will be used by the OEB to forecast electricity consumption of Specified Consumers in respect of the relevant period**.

The IESO must follow standards, policies and procedures in performing its servicing duties that are customary for an electricity market operator and administrator that regularly performs settlement functions. The Master Transfer and Servicing Agreement provides for various limitations on the duties and responsibilities of the IESO including that: (i) the IESO provides no guarantee that collections of the Clean Energy Adjustment from Electricity Vendors will equal amounts invoiced or that Clean Energy Adjustment amounts will be sufficient to

satisfy the Issuer's Funding Obligations, (ii) the IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Investment Interest, the collectability of the Clean Energy Adjustment or that Clean Energy Adjustment amounts received will be sufficient to satisfy the Issuer's Funding Obligations, (iii) the IESO shall have no liability or responsibility to any person in respect of any forecasts or other information provided, provided only that such forecasts or other information has been prepared and provided in good faith and (iv) the IESO is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from Specified Consumers or not remitted by Electricity Vendors to the IESO. **See *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"* and *"Ontario's Fair Hydro Plan — Other Statutory Protections"* with respect to the manner in which the risks associated with incorrect forecasts by the IESO, and shortfalls in Clean Energy Adjustments as a result of amounts not being collected by Electricity Vendors or remitted by Electricity Vendors, are mitigated.**

The IESO is required to work with the Manager to develop, on or before January 31, 2020, a written implementation plan identifying the actions to be taken by the IESO and the Issuer to facilitate the OEB, the Issuer, the IESO and Electricity Vendors being prepared to perform their obligations under the FHPA when setting, invoicing and collecting Clean Energy Adjustment amounts. The IESO and the Manager will deliver to the Issuer written progress reports on the status of the implementation plan on or before June 30, 2020, October 31, 2020 and January 31, 2021. The IESO is also required to work with the Issuer to settle a form of monthly servicer report, which will be provided to the Manager on or before the 20th business day after the end of each month in which Clean Energy Adjustment amounts are collected by Electricity Vendors from Specified Consumers, and which report is expected to contain available information regarding the Clean Energy Adjustment amounts billed, collected and remitted by Electricity Vendors, actual electricity consumption compared to forecast electricity consumption and such other information as may be agreed to by the IESO.

Generally, all servicing duties provided by the IESO to the Issuer are provided at no cost to the Issuer. However, the Issuer will reimburse the IESO for its direct costs relating to the performance by the IESO of its duties and obligations under the Master Transfer and Servicing Agreement that are not otherwise recovered by the IESO under the *Electricity Act, 1998* (Ontario), excluding any costs relating to the performance of the IESO's duties and obligations under the FHPA, including its obligation to pay the ~~Issuer's~~ Carrying Costs **to the Issuer**.

During the Moratorium Period and extending to July 31, 2021, the IESO, which is rated A(high) by DBRS and Aa2 by Moody's is required under the Regulations to pay and remit to the Issuer amounts charged to the IESO by the Issuer in respect of its Carrying Costs. Under the Regulations, Carrying Costs include all funding costs, such as interest on the Senior Notes, and other expenses of the Issuer, other than repayment of principal on any debt obligations of the Issuer, including repayment of principal on the Senior Notes. Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's carry costs statement, the IESO is required to deliver the amount specified therein to the Issuer. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring September 30, 2022, which is permitted to be used **by the IESO** to pay the ~~Issuer's~~ Carrying Costs **to the Issuer**.

As security for the performance of its obligation to pay the ~~Issuer's~~ Carrying Costs **to the Issuer**, the IESO has granted the Issuer a first-priority security interest in all accounts receivable owing to the IESO from Electricity Vendors, including amounts owing with respect to the global adjustment charge. The amounts paid by the IESO to fund these Carrying Costs will be recorded by the IESO in the variance account and form part of the Regulatory Asset which is expected to be offered by the IESO for Transfer to the Issuer in a subsequent period. Upon completion of such Transfer, the Issuer will acquire an Investment Interest pursuant to the FHPA.

As security for any failure of Non-Investment Grade Rated Electricity Vendors to remit Clean Energy Adjustment amounts collected under the FHPA, the IESO is required, pursuant to the Master Transfer and Servicing Agreement, to provide to the Issuer on or prior to the first day of the first billing period when the Clean Energy Adjustment is being invoiced to Specified Consumers, a letter of credit from a provider that satisfies the Rating Agency Condition or a performance guarantee or such other form of security that is acceptable to the Issuer and that satisfies the Rating Agency Condition. A "**Non-Investment Grade Rated Electricity Vendor**" means any

Electricity Vendor that does not have a rating of: (i) "Baa3" or higher by Moody's, unless otherwise agreed to by Moody's; and (ii) "BBB(low)" or higher by DBRS, unless otherwise agreed to by DBRS.

The amount of security required from the IESO will be calculated on an annual basis and will be equal to the amount determined by the following formula:

((A / B) x C x D / 365 x E)

where A, B, C, D and E are as follows:

A = for the most recently completed twelve-month period, the aggregate amount of energy consumed by Specified Consumers of all Non-Investment Grade Rated Electricity Vendors.

B = for the same twelve-month period used for A, the aggregate amount of energy consumed by all Specified Consumers.

C = for the most current twelve-month forecast period available, the Clean Energy Adjustment amounts estimated to be payable by all Specified Consumers.

D = 45, representing the estimated number of days that total Clean Energy Adjustment amounts are expected to be held by Electricity Vendors or such other number as mutually agreed to in writing by the Issuer and the IESO and that satisfies the Rating Agency Condition.

E = 0.50 or another value as mutually agreed to in writing by the Issuer and the IESO and that satisfies the Rating Agency Condition.

The Master Transfer and Servicing Agreement sets out specific servicer defaults. Upon the occurrence of a servicer default, the Issuer will be entitled to appoint a replacement servicer that will perform the IESO's duties as servicer under the Master Transfer and Servicing Agreement. Any replacement servicer must be permitted under the FHPA to perform the duties of servicer, the Rating Agency Condition must be satisfied and the replacement servicer must enter into a master transfer and servicing agreement with the Issuer having substantially the same terms as the Master Transfer and Servicing Agreement.

The IESO has agreed to indemnify the Issuer for any losses incurred by the Issuer as a result of the failure of the IESO to perform its obligations under the Master Transfer and Servicing Agreement or any other Program Agreement to which it is a party or the breach by the IESO of any of its representations or warranties under the Master Transfer and Servicing Agreement or any other Program Agreement to which the IESO is a party, except to the extent such losses result from the willful misconduct, bad faith or gross negligence of the Issuer. Notwithstanding the foregoing, the IESO is not obligated to indemnify the Issuer under the Master Transfer and Servicing Agreement for any losses resulting from: (i) a breach or failure to perform by a third party under any Program Agreement~~,~~ **or** the FHPA (excluding any delegation by the IESO under the Master Transfer and Servicing Agreement to a third party); (ii) changes in law, (iii) the collectability or sufficiency of the Clean Energy Adjustment to satisfy the Issuer's Funding Obligations, including the Senior Notes; or (iv) any liability of the Issuer incurred after termination of the Master Transfer and Servicing Agreement unless attributable to the actions or omissions of the IESO prior to such termination or in respect of a representation, warranty or covenant that survives such termination.

CREDIT RATINGS

Credit ratings are intended to provide investors with an independent measure of the credit quality of securities and are indicators of the likelihood of the payment capacity and willingness of an issuer to meet its financial commitment on an obligation in accordance with the terms of such obligation. The credit ratings accorded to the Senior Notes are not recommendations to purchase, hold or sell such securities inasmuch as such ratings are not a comment upon the market price of the securities or their suitability for a particular investor. There is no assurance that any rating will remain in effect for any given period of time or that any rating will not be revised or withdrawn entirely by a rating agency in the future if, in its judgment, circumstances so warrant.

The Term Sheet for each Offering will identify the rating of the applicable Senior Notes at the time of such Offering.

RATING AGENCY CONDITION

The Program Agreements provide that certain actions are subject to the "**Rating Agency Condition**". In each such case, satisfaction of the Rating Agency Condition requires: (a) that the Issuer has delivered written notice of the proposed action to the Rating Agencies at least ten business days prior to the effective date of such action; and (b) that the Rating Agencies shall have informed the Issuer prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating in effect with respect to the Notes immediately before the taking of such action. If the Rating Agency Condition is to be satisfied without specifying one or more specific Series or Tranches of Notes, the Rating Agency Condition must be satisfied with respect to all outstanding Series or Tranches of Notes.

CAPITAL MARKETS PLATFORM

The Financial Services Manager has developed a Financing Plan for the Issuer which encompasses an ongoing program which allows for the issuance of a variety of short and long term debt, as well as interest rate and currency swaps and other hedging instruments.

The Master Trust Indenture establishes common security and a set of common covenants given by the Issuer for the benefit of all of its creditors. Notes are issued under Supplemental Indentures and in certain cases, Terms Documents. Borrowings are incurred pursuant to liquidity agreements or loan agreements. Notes and Borrowings incurred by the Issuer are Issuer Funding Obligations. Each Issuer Funding Obligation will be part of a Class and Series of Issuer Funding Obligations, and may include one or more Tranches. A Class designation determines the relative seniority for receipt of cash flows. See *"— Subordination Provisions"*, "*— Payment Waterfalls Prior to Acceleration*" and "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*". Tranches of Issuer Funding Obligations may differ from each other as to the interest rate, maturity and the timing, sequential order and amount of payments of principal or interest, or both.

The following summary of the principal provisions contained in the Master Trust Indenture does not purport to be comprehensive or definitive. This overview summarizes certain provisions of the Master Trust Indenture and omits descriptions of many provisions which may be considered to be of a customary nature. All references in this confidential shelf offering memorandum to the Master Trust Indenture are qualified in their entirety by reference to the Master Trust Indenture and the detailed provisions thereof. The Master Trust Indenture may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Notes are outstanding.

Indenture Trustee

BNY Trust Company of Canada, a trust company governed by the laws of Canada, is the Indenture Trustee under the Master Trust Indenture.

Under the terms of the Master Trust Indenture, the Issuer has agreed to pay the Indenture Trustee reasonable compensation for the performance of its duties under the Master Trust Indenture. The Indenture Trustee has agreed to perform only those duties expressly set forth in the Master Trust Indenture. Many of the duties of the Indenture Trustee are described throughout this confidential shelf offering memorandum. Under the terms of the Master Trust Indenture, the Indenture Trustee's limited responsibilities include the following:

- to authenticate, deliver, cancel and otherwise administer the Notes;
- to serve as the registrar in respect of the Notes;
- to establish and maintain all Issuer Accounts and to maintain accurate records of activity in those accounts;

- to serve as the Paying Agent and distribute and transfer funds at the direction of the Manager in accordance with the terms of the Master Trust Indenture;

- to invest funds in the Issuer Accounts at the direction of the Manager (or its agent);

- to deliver to Specified Creditors notice of any Default, Event of Default, Acceleration Event, Protection Event or Servicer Default of which it has received notice, as required under the Master Trust Indenture; and

- to perform certain other administrative functions identified in the Master Trust Indenture.

In the exercise of its duties, the Indenture Trustee will use the same degree of care and skill as a reasonably prudent person would use in comparable circumstances. When all Issuer Funding Obligations have been satisfied and discharged (see "— *Satisfaction and Discharge*"), the Indenture Trustee will no longer act as Indenture Trustee and will have no fiduciary responsibilities to any remaining Specified Creditors and will act only as security agent for those remaining Specified Creditors. The Indenture Trustee is not liable for any errors of judgment as long as the errors are made in good faith and the Indenture Trustee was not negligent. Furthermore, the Indenture Trustee will not be liable for any action taken or not taken by it in good faith if directed to do so by Extraordinary Resolution. The Indenture Trustee is not required to expend or risk its own funds, or incur any financial liability in the exercise of its duties under the Master Trust Indenture and it will not be obliged to exercise any of its rights under the Master Trust Indenture at the request of any Controlling Class Creditor unless such Controlling Class Creditor has provided it with security or an indemnity reasonably satisfactory to it.

In addition to the Indenture Trustee's compensation and the reimbursement of the Indenture Trustee's expenses in connection with the Master Trust Indenture, the Issuer will indemnify the Indenture Trustee for any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the administration of the trusts under the Master Trust Indenture. The payment of all such amounts will be subject to the payment waterfalls set out in the Master Trust Indenture and in certain instances, such amounts will be higher in priority than payments to Noteholders. See "— *Payment Waterfalls Prior to Acceleration — Collection Account*", "— *Payment Waterfalls Prior to Acceleration — Protection Account*" and "— *Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

The Indenture Trustee may resign at any time by giving written notice to the Issuer and it may be removed for any reason by Ordinary Resolution of Controlling Class Creditors. The Indenture Trustee must resign if a material conflict of interest arises in its role as an Indenture Trustee under the Master Trust Indenture and such conflict of interest is not eliminated within 90 days after the Indenture Trustee becomes aware of such material conflict of interest. The Issuer may remove, or any Controlling Class Creditor who has been a *bona fide* Controlling Class Creditor for at least six months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the removal of the Indenture Trustee if (i) the Indenture Trustee is no longer eligible to act as trustee under the Master Trust Indenture (and any Supplemental Indenture) and fails to resign after it has received a written request to do so by the Issuer or by any Controlling Class Creditor, (ii) the Indenture Trustee becomes incapable of acting, or (iii) the Indenture Trustee becomes subject to any bankruptcy or insolvency related events. In all such circumstances, the Issuer must appoint a successor Indenture Trustee. Any resignation or removal of the Indenture Trustee and appointment of a successor Indenture Trustee will not become effective until the successor Indenture Trustee accepts the appointment. If an instrument of acceptance by a successor Indenture Trustee has not been delivered to the Indenture Trustee within 30 days of giving notice of resignation or removal, the Indenture Trustee may petition a court of competent jurisdiction to appoint a successor Indenture Trustee.

Any successor Indenture Trustee will execute and deliver to the Issuer and its predecessor Indenture Trustee an instrument accepting such appointment. The successor Indenture Trustee must be a bank, a trust company or a corporation organized and doing business under the laws of Canada or of any province or territory thereof, authorized under such laws to carry on a trust business in each of the provinces and territories of Canada. The Issuer may not, nor may any person directly or indirectly controlling, controlled by, or under common control with the Issuer, serve as Indenture Trustee.

The Indenture Trustee may become the owner or pledgee of Notes and may otherwise deal with the Issuer with the same rights it would have if it were not the Indenture Trustee (subject to its obligation to resign if there is a material conflict).

Conditions Precedent to Incurrence of Obligations Secured

There is no limit on the aggregate amount of indebtedness or other obligations which may be secured under the Master Trust Indenture. However, the Issuer will not be permitted to incur any Issuer Funding Obligations or other obligations unless the Issuer meets the conditions described below under *"— Issuer Funding Obligations"* and *"— Other Obligations Secured"*.

Issuer Funding Obligations

The Issuer may not incur any new Issuer Funding Obligations, or renew or extend any existing Issuer Funding Obligations (in each case, other than Derivative Funding Obligations), unless the conditions described below are met on or prior to the date that the Issuer enters into a definitive agreement in respect of such Issuer Funding Obligations:

(a) the Issuer delivers to the Indenture Trustee and each Rating Agency notice of such incurrence;

(b) the Issuer delivers to the Indenture Trustee and each Rating Agency a certificate to the effect that:

(i) the Issuer reasonably believes that such incurrence will not cause an Adverse Effect; an "**Adverse Effect**" means that such action will at the time of its occurrence (a) result in the occurrence of an Event of Default or any event which with the giving of notice or passage of time, or both, would become an Event of Default, (b) adversely affect the amount or timing of any payment to be made to any Debtholder or Derivative Counterparty pursuant to the Master Trust Indenture or any Program Agreement, (c) materially adversely affect the amount or timing of payments to be made to the Specified Creditors (other than Debtholders and Derivative Counterparties) pursuant to this Indenture or any Program Agreement, or (d) adversely affect the security interest and the rights and remedies of the Indenture Trustee in respect thereof;

(ii) all instruments furnished to the Indenture Trustee conform to the requirements of the Master Trust Indenture and constitute sufficient authority under the Master Trust Indenture for the Indenture Trustee to (A) in the case of an issuance of Notes only, authenticate and deliver such Notes, and (B) in the case of all other Issuer Funding Obligations, execute and deliver the applicable Funding Obligation Agreement;

(iii) in the case of an issuance of Notes only, the form and terms of the Notes have been established in conformity with the provisions of the Master Trust Indenture;

(iv) the incurrence of such Issuer Funding Obligation is consistent in all material respects with the Financing Plan; see *"Ontario Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*;

(v) the conditions set out in clauses (c), (d), (g) and (k) below are met; and

(vi) such other matters as the Indenture Trustee may reasonably request;

(c) the representations and warranties of the Issuer in the Master Trust Indenture are true and correct in all material respects;

(d) the Rating Agency Condition is satisfied with respect to all outstanding Series or Tranches of Issuer Funding Obligations;

(e) the Indenture Trustee receives either:

(i) a certified copy of the instrument whereby the Province of Ontario designated in writing that such Issuer Funding Obligation is an Approved Obligation as contemplated by the Change of Law Protection Agreement; or

(ii) both (A) an Adherence Compliance Certificate addressed to the Indenture Trustee with respect to such Issuer Funding Obligation delivered in accordance with the Change of Law Protection Agreement; and (B) a certificate signed by the Manager certifying that the Province of Ontario has not provided a Suspension Notice;

(f) the Issuer delivers to the Indenture Trustee copies of the applicable Funding Obligation Agreement, including in the case of Notes, a Supplemental Indenture relating to the applicable Series or Tranche of Notes and, if applicable, a Terms Document relating to the applicable Tranche of Notes;

(g) in the case of Senior Funding Obligations only, the Issuer has Subordinated Funding Obligations and Junior Subordinated Funding Obligations in an aggregate outstanding principal amount equal to not less than 35% of the aggregate outstanding principal amount of the aggregate Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations (after giving effect to such incurrence) and in the case of Subordinated Funding Obligations only, the Issuer has Junior Subordinated Funding Obligations in an aggregate outstanding principal amount equal to not less than 10% of the aggregate outstanding principal amount of the aggregate Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations (after giving effect to such incurrence);

(h) except in the case of Notes, the Issuer delivers to the Indenture Trustee an updated list of the Specified Creditors;

(i) each Debtholder in respect of such Issuer Funding Obligation (or an authorized agent on their behalf) has made the acknowledgements and agreements described below under "— *Acknowledgements of Specified Creditors*";

(j) the Change of Law Protection Agreement is in full force and effect against the Province of Ontario or has been replaced with a new agreement that is in form and substance satisfactory to Controlling Class Creditors pursuant to an Ordinary Resolution;

(k) the conditions precedent, if any, specified in the applicable Funding Obligation Agreement are satisfied; and

(l) in the case of an issuance of Notes only:

(i) the Indenture Trustee receives a certificate for the certification and delivery of the Notes and specifying the particulars relating to such Notes;

(ii) in the case of Notes described in section 163(f)(2)(A) of the Internal Revenue Code, if such Notes are not in registered form (including by reason of a book entry system described in section 163(f) of the United States Internal Revenue Code of 1986), then such Notes are described in section 4701(b)(1)(B) of the United States Internal Revenue Code of 1986 and such section will apply to such Notes; and

(iii) in the case of foreign currency Notes, the Issuer appoints one or more Paying Agents in the appropriate countries, if requested by the Indenture Trustee.

Periodic drawdowns under existing Funding Obligation Agreements will not constitute a new incurrence of Issuer Funding Obligations. However, an increase in the aggregate commitment under an existing Funding

Obligation Agreement or the issuance of additional Notes of an outstanding Series or Tranche of Notes will constitute a new incurrence of Issuer Funding Obligations.

The Indenture Trustee is not required to and, except as otherwise provided in a Funding Obligation Agreement, the Issuer is not required to, provide prior notice to or obtain the consent of any Debtholder or any other Specified Creditor to issue any Issuer Funding Obligations.

Other Obligations Secured

The Issuer may incur other obligations (including Derivative Funding Obligations) so long as:

(a) the Issuer delivers to the Indenture Trustee a copy of the agreement giving rise to such obligations;

(b) the Issuer delivers to the Indenture Trustee an updated list of the Specified Creditors;

(c) the counterparty to the agreement giving rise to such obligations makes the acknowledgements and agreements described below under "*— Acknowledgements of Specified Creditors*";

(d) if the obligations are Certified Primary Obligations, the Indenture Trustee receives either:

(i) a certified copy of the instrument whereby the Province of Ontario designated in writing that such obligation is an Approved Obligation as contemplated by the Change of Law Protection Agreement; or

(ii) both (A) an Adherence Compliance Certificate addressed to the Indenture Trustee with respect to such obligation delivered in accordance with the Change of Law Protection Agreement; and (B) a certificate signed by the Manager certifying that the Province of Ontario has not provided a Suspension Notice;

provided that, in respect of derivative agreements, the Issuer will provide notice to each Rating Agency of the identity of the Derivative Counterparty and the terms of any applicable master agreement and schedule.

Derivative Agreements

The Issuer may, from time to time, enter into one or more derivative agreements, which would consist of a currency swap or interest rate swap, a cap (obligating a Derivative Counterparty to make payments if a reference rate is greater than a specified rate), a floor (obligating a Derivative Counterparty to make payments if a reference rate is less than a specified rate), or a collar (obligating a Derivative Counterparty to make payments if a reference rate is greater than a specified rate and entitling the Derivative Counterparty to receive payments if the same reference rate is less than a lower specified rate), with various counterparties. In general, the Issuer will receive payments from the Derivative Counterparty in exchange for the Issuer's payments to them, to the extent required under the derivative agreements. Payments received by the Issuer will constitute Available Collections.

Acknowledgements of Specified Creditors

Each Specified Creditor must acknowledge and agree in favour of the Indenture Trustee that it is a Specified Creditor under the Master Trust Indenture and that its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Master Trust Indenture including, without limitation, those described under "*— Indenture Trustee*", "*— Payment Waterfalls Prior to Acceleration*", "*— Debtholder Approvals and Meetings — Access to Debtholder Lists*", "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*", "*— Acceleration and Remedies — Rights of Specified Creditors*", "*— Acceleration and Remedies — Limited Recourse*" and "*— Acceleration and Remedies — No Petition*".

Subordination Provisions

Under the Master Trust Indenture, the Issuer can issue the following classes of Issuer Funding Obligations: "Senior Funding Obligations", "Subordinated Funding Obligations" or "Junior Subordinated Funding Obligations" (each, a "**Class**"). The payment of interest on Subordinated Funding Obligations shall be subordinate and rank junior to the payment of interest on Senior Funding Obligations and Derivative Funding Obligations. The payment of interest on Junior Subordinated Funding Obligations shall be subordinate and rank junior to the payment of interest on Senior Funding Obligations, Derivative Funding Obligations and Subordinated Funding Obligations. The payment of principal on Subordinated Funding Obligations shall be subordinate and rank junior to the payment of principal on Senior Funding Obligations and Derivative Funding Obligations. The payment of principal on Junior Subordinated Funding Obligations shall be subordinate and rank junior to the payment of principal on Senior Funding Obligations, Derivative Funding Obligations and Subordinated Funding Obligations. In each case, the subordinations are the to the extent and in the manner set forth in the Master Trust Indenture and described under "*— Payment Waterfalls Prior to Acceleration*" and "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

Subject to the applicable payment waterfall, (i) all Senior Funding Obligations will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction on account, (ii) all Subordinated Funding Obligations will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction and (iii) all Junior Subordinated Funding Obligations of each Series or Tranche will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction, in each case, except as set out in a related Funding Obligation Agreement.

Security

To secure the payment of all Obligations Secured, including principal of and interest on the Issuer Funding Obligations, the Issuer has granted to the Indenture Trustee a security interest in all of its right, title and interest (whether now owned or hereafter acquired or arising) in and to the following property: (i) the Investment Interest acquired by the Issuer; (ii) each Issuer Account (including all sub-accounts); (iii) all Eligible Investments and all investment property, money and other property held in any Issuer Accounts (including all sub-accounts); (iv) all rights, benefits and powers of the Issuer under any Program Agreement; (v) all rights, benefits and powers of the Issuer under the FHPA; (vi) all present and future claims, demands, causes of and choses in action in respect of any of the foregoing and all interest, principal, payments and distributions of any nature or type on any of the foregoing; (vii) all accounts, general intangibles, chattel paper, instruments, documents, goods, money, investment property, deposit accounts, letters of credit and letter-of-credit rights consisting of, arising from, or relating to any of the foregoing; (viii) all debts, accounts, claims, monies and choses in action due or to become due with respect to all of the foregoing and also all securities, bills, notes, evidences of deposits of money, and other documents now held or owned or which may be hereafter taken, held or owned by the Issuer, or anyone on behalf of the Issuer, and all renewals thereof, accretions thereto, substitutions therefor and all interest, income and revenue arising therefrom or by virtue thereof; (ix) all amounts received with respect to all of the foregoing; and (x) all proceeds of the foregoing (collectively, the "**Collateral**").

Issuer Accounts

Pursuant to the Master Trust Indenture, the Issuer will establish various accounts ("**Issuer Accounts**") – Program Accounts, Series Accounts and Securities Accounts. Each Issuer Account will be under the sole dominion and exclusive control of the Indenture Trustee. Each Program Account and each Series Account will be established as a segregated trust account with an Eligible Institution (an "**Eligible Deposit Account**"). If the institution holding any Program Account or Series Account ceases to be an Eligible Institution, the Issuer will establish a new Program Account or Series Account that is an Eligible Deposit Account and transfer any funds or other property from such existing Program Account or Series Account to such new Program Account or Series Account. Each Securities Account will be established as a segregated securities trust account with an affiliate of an Eligible Institution, which affiliate is licensed to maintain securities accounts (an "**Eligible Securities Account**"). If the institution holding any Securities Account ceases to be an affiliate of an Eligible Institution, the Issuer will establish a new Securities

Account that is an Eligible Securities Account and transfer any funds or other property from such existing Securities Account to such new Securities Account. The Indenture Trustee has no obligation to reconcile any Issuer Account against another Issuer Accounts or against the Program Agreements.

Program Accounts

Collection Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Collection Account**"). The Indenture Trustee will hold the Collection Account for the benefit of the Indenture Trustee and the Specified Creditors. All Available Collections received by the Issuer will be credited to the Collection Account. "**Available Collections**" means: (i) all amounts received by the Servicer in respect of the Clean Energy Adjustment from Specified Consumers, (ii) IESO Carrying Cost payments (other than the IESO Cash Reserve Deposit Amount); and (iii) amounts received by the Issuer pursuant to derivative agreements. See *"Ontario Fair Hydro Plan"* and *"The Transferor and Servicer"*.

Interest Accumulation Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Interest Accumulation Account**"). The Indenture Trustee will hold the Interest Accumulation Account for the benefit of the Indenture Trustee and the Specified Creditors. The Interest Accumulation Account has been established for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of interest in respect of all Issuer Funding Obligations.

Principal Accumulation Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Principal Accumulation Account**"). The Indenture Trustee will hold the Principal Accumulation Account for the benefit of the Indenture Trustee and the Specified Creditors. The Principal Accumulation Account has been established for the purpose of accumulating funds to be used to make repayments in respect of all Issuer Funding Obligations.

IESO Cash Reserve Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**IESO Cash Reserve Account**"). The Indenture Trustee will hold the IESO Cash Reserve Account for the benefit of the Indenture Trustee and the Specified Creditors. The Issuer will deposit the IESO Cash Reserve Deposit Amount in the IESO Cash Reserve Account on the earlier of (x) April 30, 2021, and (y) the receipt by the Issuer of the IESO Cash Reserve Deposit Amount from the IESO. Amounts in the IESO Cash Reserve Account are not available to pay principal on the Senior Notes.

Program Cash Reserve Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Program Cash Reserve Account**"). The Indenture Trustee will hold the Program Cash Reserve Account for the benefit of the Indenture Trustee and the Specified Creditors. The Issuer will deposit the Program Cash Reserve Required Amount in the Program Cash Reserve Account during the Reference Period commencing May 1, 2021 pursuant to the application of amounts available therefor under the Collection Account Waterfall. **Amounts in the Program Cash Reserve Account will be available to pay interest and principal on the Senior Notes.**

Refinancing Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Refinancing Account**"). The Indenture Trustee will hold the Refinancing Account for

the benefit of the Indenture Trustee and the Specified Creditors. All proceeds arising from Notes and Borrowings related to Refinancings will be credited to the Refinancing Account.

Protection Account

Pursuant to the Master Trust Indenture, before the making of any demand for payment under the Change of Law Protection Agreement, the Issuer will establish an Eligible Deposit Account in the name of the Indenture Trustee (the "**Protection Account**"). The Indenture Trustee will hold the Protection Account for the benefit of the Indenture Trustee and the Specified Creditors. On the occurrence of a Protection Event and a written payment demand from the Indenture Trustee to the Province of Ontario, all payments received from the Province of Ontario under the Change of Law Protection Agreement will be credited to the Protection Account.

Series Accounts

Series Capital Reserve Account

In connection with the creation of a Series of Issuer Funding Obligations, the Issuer may establish an Eligible Deposit Account in the name of the Indenture Trustee (a "**Series Capital Reserve Account**"). The Indenture Trustee will hold each Series Capital Reserve Account for the benefit of the Indenture Trustee and the applicable Debtholders or Derivative Counterparties. A Series Capital Reserve Account may be established for the sole purpose of allowing the Issuer to accumulate funds to be used to make repayments in respect of a Series of Issuer Funding Obligations. Details of any period of accumulation and the amounts to be accumulated will be specified in the applicable Funding Obligation Agreement.

Series Finance Reserve Account

In connection with the creation of a Series of Issuer Funding Obligations, the Issuer may establish an Eligible Deposit Account in the name of the Indenture Trustee (a "**Series Finance Reserve Account**"). The Series Finance Reserve Account will be under the sole dominion and exclusive control of the Indenture Trustee. The Indenture Trustee will hold each Series Finance Reserve Account for the benefit of the applicable Debtholders or Derivative Counterparties. A Series Finance Reserve Account may be established for the sole purpose of allowing the Issuer to reserve funds to pay finance charges for a Series of Issuer Funding Obligations. Details of any reserve requirements will be specified in the applicable Funding Obligation Agreement.

Securities Accounts

In connection with the establishment of any Program Account (other than the Protection Account) or Series Account, the Issuer may establish an Eligible Securities Account in the name of the Indenture Trustee (a "**Securities Account**"). The Indenture Trustee will hold each Securities Account for the benefit of the applicable Specified Creditors. A Securities Account may be established for the purpose of allowing the Issuer to invest funds held in any Program Account or Series Account in Eligible Investments. Each Securities Account may relate to only one Program Account or Series Account. Funds in each Program Account and Series Account will be invested in Eligible Investments at the direction of the Manager using the associated Securities Account. Additionally, neither the Indenture Trustee nor the Manager will be responsible for any losses incurred in the investment of any funds in any Eligible Investments and any insufficiency in an Issuer Account resulting from any loss on Eligible Investments.

Credit Enhancement Agreements and Liquidity Agreements

A Series or Tranche of Issuer Funding Obligations may have the benefit of one or more additional forms of credit enhancement—referred to herein as credit enhancement agreements—such as a letter of credit, surety bond or loan facility. In addition, a Series or Tranche of Notes may have the benefit of one or more forms of liquidity agreements—referred to herein as liquidity agreements—such as a liquidity facility. Whether a Series or Tranche of Issuer Funding Obligations has the benefit of a credit enhancement agreement or a liquidity agreement, including how any payments made pursuant to such agreement will be applied, will be set out in the applicable Funding Obligation Agreement and the related Term Sheet (where applicable).

Payment Waterfalls Prior to Acceleration

All amounts received by the Issuer and all amounts to be paid by the Issuer from a Program Account or Series Account will be made in accordance with the payment waterfalls described below. All payments or transfers described in the sections below will be made by the Paying Agent based on payment instructions provided by the Manager. See "— *Covenants of the Issuer — Payment Instructions*".

Collection Account

Subject to the paragraph below, on each Payment Date (after giving effect to the distributions described in the first paragraph under "— *IESO Cash Reserve Account*"), all amounts on deposit in the Collection Account will be distributed in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted) (the "**Collection Account Waterfall**"):

(a) first, to the payment or remittance of taxes for which a governmental authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(b) second, to pay fees, expenses and reimbursement amounts owing to the Issuer Trustee and the Indenture Trustee up to a maximum aggregate amount equal to (i) $150,000, multiplied by (ii) the number of Series of Senior Funding Obligations outstanding on such Payment Date, divided by (iii) 12;

(c) third, *pari passu* (i) to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Senior) for such Payment Date, and (ii) to pay all Derivative Funding Obligations (other than termination payments);

(d) fourth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Subordinated) for such Payment Date;

(e) fifth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Junior Subordinated) for such Payment Date;

(f) sixth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Warehouse) for such Payment Date;

(g) seventh, *pari passu* (i) to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Senior) for such Payment Date, and (ii) to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is not the defaulting party or the sole affected party;

(h) eighth, to pay all fees and other amounts (other than principal or interest) owing in respect of Senior Funding Obligations;

(i) ninth, to pay fees, expenses and reimbursement amounts owing to the Manager;

(j) tenth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Subordinated) for such Payment Date;

(k) eleventh, to pay all fees and other amounts (other than principal or interest) owing in respect of Subordinated Funding Obligations;

(l) twelfth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Junior Subordinated) for such Payment Date;

(m) thirteenth, to transfer to the Program Cash Reserve Account, the amount, if any, by which the amount on deposit in the Program Cash Reserve Account is less than the Program Cash Reserve Required Amount;

(n) fourteenth, to transfer to any Series Account (other than any Series Account related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations), the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(o) fifteenth, to transfer to any Series Account related solely to Subordinated Funding Obligations, the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(p) sixteenth, to pay all fees and other amounts (other than principal or interest) owing in respect of Junior Subordinated Funding Obligations;

(q) seventeenth, to transfer to any Series Account related solely to Junior Subordinated Funding Obligations, the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(r) eighteenth, to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is the defaulting party or the sole affected party;

(s) nineteenth, to pay the amount required pursuant to the Declaration of Trust to the Issuer Trustee for the account of the beneficiaries of the Issuer;

(t) twentieth, to pay all indemnity amounts owing to the Manager;

(u) twenty-first, *pari passu* (i) to pay fees, expenses, reimbursement and indemnity amounts owing to the Issuer Trustee and the Indenture Trustee not previously paid pursuant to paragraph (b), (ii) to the payment or remittance of taxes not previously paid pursuant to paragraph (a), and (iii) to pay all amounts owing to Specified Creditors not specifically referred to above; in each case, including, for each referenced party, any amounts payable to their respective affiliates under the terms of any relevant indemnity; and

(v) twenty-second, any amounts remaining (i) to be held in the Collection Account for distribution in the above order of priority on the next Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full and discharged, and all other amounts have been paid in full, to pay to the Issuer.

Notwithstanding the foregoing, (i) the transfer of any amounts deposited by the IESO into the Collection Account on account of the IESO Cash Reserve Deposit Amount to the IESO Cash Reserve Account, and (ii) the transfer of any amounts deposited in the Collection Account on account of one-time transaction costs and expenses in connection with the incurrence of Issuer Funding Obligations on or within three business days of the closing date of such transaction, will, in each case, be made without reserving for or paying amounts which are senior in priority to such obligation under the Collection Account Waterfall.

Interest Accumulation Account

On each Interest Payment Date, the Paying Agent will distribute all amounts on deposit in the Interest Accumulation Account in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay all interest that is due and payable on Senior Funding Obligations on such Interest Payment Date;

(b) second, to pay all interest that is due and payable on Subordinated Funding Obligations on such Interest Payment Date, so long as after making this payment, the amount remaining on deposit in the Interest Accumulation Account at least equals the amount of accrued and unpaid interest on Senior Funding Obligations as of such Interest Payment Date; and

(c) third, to pay all interest that is due and payable on Junior Subordinated Funding Obligations on such Interest Payment Date, so long as after making this payment, the amount remaining in the Interest Accumulation Account at least equals the amount of accrued and unpaid interest on Senior Funding Obligations and Subordinated Funding Obligations as of such Interest Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Interest Accumulation Account for distribution in the above order of priority on the next Interest Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

Principal Accumulation Account

On each Interest Payment Date (after making the applications provided for in the waterfall under "—*Interest Accumulation Account*"), if any interest that is due and payable on Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations has not been paid, an amount equal to such deficiency will be withdrawn from the Principal Accumulation Account and applied to the payment of interest due and payable on such Interest Payment Date, provided that if the amount to be applied pursuant to this paragraph is insufficient to pay all such interest, the application of such amounts will be made first to Senior Funding Obligations, then to Subordinated Funding Obligations, and finally to Junior Subordinated Funding Obligations, in each case, on a *pro rata* basis.

On each Principal Payment Date (after making the applications provided for in the previous paragraph), the Paying Agent will distribute all amounts on deposit in the Principal Accumulation Account in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay all principal that is due and payable on Warehouse Obligations on such Principal Payment Date;

(b) second, to pay all principal that is due and payable on Senior Funding Obligations (other than Warehouse Obligations) on such Principal Payment Date;

(c) third, to pay all principal that is due and payable on Subordinated Funding Obligations on such Principal Payment Date, so long as after making this payment, the amount remaining in the Principal Accumulation Account at least equals the Required Principal Accumulation Amount (Senior) as of such Principal Payment Date; and

(d) fourth, to pay all principal that is due and payable on Junior Subordinated Funding Obligations on such Principal Payment Date, so long as after making this payment, the amount remaining in the Principal Accumulation Account at least equals the sum of the Required Principal Accumulation Amount (Senior) and the Required Principal Accumulation Amount (Subordinated) as of such Principal Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Principal Accumulation Account for distribution in the above order of priority on the next Interest Payment Date or Principal Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

IESO Cash Reserve Account

On each Payment Date beginning in November, 2021, an amount equal to the lesser of (i) the amounts to be paid or transferred pursuant to items (a) through (e) of the Collection Account Waterfall, and (ii) the amount, if any, by which the amount on deposit in the IESO Cash Reserve Account exceeds the IESO Cash Reserve Required

Amount will be withdrawn from the IESO Cash Reserve Account and applied to the making of such payments or transfers in the order provided for in the Collection Account Waterfall.

On each Payment Date, if the amounts available for distribution from the Collection Account and from the preceding sentence are insufficient to pay or transfer items (a) through (e) of the Collection Account Waterfall, an amount equal to such deficiency will be withdrawn from the IESO Cash Reserve Account and applied to the making of such payments or transfers in the order provided for in the Collection Account Waterfall. Amounts in the IESO Cash Reserve Account are not available to pay principal on the Senior Notes. Once all funds in the IESO Cash Reserve Account have been paid out, the IESO Cash Reserve Account will be closed.

Program Cash Reserve Account

If, on any Payment Date, the amount on deposit in the Interest Accumulation Account is less than the sum of the Interest Accrual Amount (Senior), the Interest Accrual Amount (Subordinated) and the Interest Accrual Amount (Junior Subordinated), an amount equal to such deficiency will be withdrawn from the Program Cash Reserve Account and deposited in the Interest Accumulation Account.

If, on any Principal Payment Date, the amount available in the Principal Accumulation Account (in accordance with the provisions applicable thereto) is insufficient to pay all principal that is due and payable on Warehouse Obligations, other Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as applicable (see "— *Principal Accumulation Account*"), on such Principal Payment Date (after making the applications provided for in the previous paragraph), amounts on deposit in the Program Cash Reserve Account will be used in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay the deficiency on principal that is due and payable on Warehouse Obligations on such Principal Payment Date;

(b) second, to pay the deficiency on principal that is due and payable on Senior Funding Obligations (other than Warehouse Obligations) on such Principal Payment Date;

(c) third, to pay the deficiency on principal that is due and payable on Subordinated Funding Obligations on such Principal Payment Date; and

(d) fourth, to pay the deficiency on principal that is due and payable on Junior Subordinated Funding Obligations on such Principal Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Program Cash Reserve Account for distribution in the above order of priority on the next Interest Payment Date or Principal Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

Refinancing Account

On each Principal Payment Date, the Paying Agent will transfer from the Refinancing Account to the Principal Accumulation Account the lesser of (i) the amount on deposit in the Refinancing Account, and (ii) the amount by which the sum of the Principal Accumulation Amounts for all Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations on such Principal Payment Date (without reference to any refinancing notice) exceeds the amount on deposit in the Principal Accumulation Account. After all Issuer Funding Obligations have been paid in full, any amounts remaining in the Refinancing Account will be transferred to the Collection Account.

Protection Account

On each date in respect of which the Province of Ontario makes a payment pursuant to the Change of Law Protection Agreement, the Paying Agent will, prior to making any payments under any other payment waterfall, distribute all amounts in the Protection Account solely to satisfy payments in respect of Approved Obligations as set

out in the written payment statement delivered by the Manager to the Province of Ontario under the Change of Law Protection Agreement in the order of priority the applicable Obligation Secured has under the applicable payment waterfall.

On the Province of Ontario paying any amount in respect of an Approved Obligation into the Protection Account, the Province of Ontario will be subrogated and entitled to each applicable Specified Creditor's rights and interests under and in respect of the Approved Obligation to the extent of the amounts paid to the Specified Creditor out of the Protection Account, and shall be entitled to the right to be paid the applicable Subrogation Amount, the benefits of the Collateral and all proceeds therefrom.

Series Accounts

If, after giving effect to payments made on any Payment Date, the amount in the Collection Account is insufficient to make all required payments to Specified Creditors on such date, amounts on deposit in any Series Account may be withdrawn from such Series Account and allocated to the applicable Specified Creditors in accordance with the related Funding Obligation Agreement.

Covenants of the Issuer

Payment of Principal and Interest

The Issuer will duly and punctually pay the principal of and interest due on the Issuer Funding Obligations in the manner specified in the Master Trust Indenture and any related Funding Obligation Agreement.

Use of Proceeds

The Issuer will use the proceeds of such indebtedness solely for: (i) the acquisition by the Issuer of an Investment Interest; (ii) the redemption, repayment or repurchase of any existing Issuer Funding Obligations; (iii) the funding of Issuer Accounts; and (iv) the payment of transaction fees and expenses in connection with the incurrence of Issuer Funding Obligations.

Legal Existence

The Issuer will do or cause to be done all things necessary to preserve its existence and maintain its status as a Financing Entity.

Separateness Covenants

The Issuer will take all reasonable steps to maintain its identity as a distinct entity with assets and liabilities distinct from those of the Manager and any of its affiliates. Such steps include: (i) conducting all transactions with the Manager strictly on an arm's length basis and in good faith; (ii) allocating all overhead expenses for items shared between the Issuer and the Manager on the basis of actual use to the extent practicable; (iii) conducting its affairs strictly in accordance with the Declaration of Trust; (iv) maintaining its books and records separate from those of the Manager or any affiliate thereof; (v) preparing its financial statements separately from those of the Manager and ensuring that any consolidated financial statements of the Manager that include the Issuer have notes clearly stating that the Issuer is a separate entity; (vi) only maintaining bank accounts or other depository accounts to which the Issuer alone is the account party and from which only the Issuer or its agent has the power to make withdrawals; (vii) paying its operating expenses from its own assets (including, reimbursing the Manager for any such expenses); (viii) maintaining its property in such a manner that it is not costly or difficult to segregate, ascertain or otherwise identify its individual assets from or against those of the Manager or any affiliate thereof; and (ix) not becoming liable to any person for any obligations of the Manager or any affiliate thereof.

Performance of Obligations

The Issuer agrees that it will (i) perform and observe all of its obligations and agreements contained in the Master Trust Indenture, the Declaration of Trust, the Master Transfer and Servicing Agreement, the other Program

Agreements and in the instruments and agreements relating to the Collateral; (ii) diligently pursue any and all actions to enforce its rights each instrument or agreement included in the Collateral except as expressly provided in any Program Agreement; and (iii) enforce the Servicer's material obligations under the Master Transfer and Servicing Agreement and the Manager's material obligations under the Management Agreement.

Funding Obligations

The Issuer will ensure that all indebtedness is incurred pursuant to and in accordance with the provisions of the Master Trust Indenture, as described under "*— Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations*". The Issuer will not enter into any Funding Obligation Agreement (other than a Funding Obligation Agreement relating to Warehouse Obligations) that the Manager believes, acting reasonably, would likely require the Issuer to pay principal on such Issuer Funding Obligation by means of a Refinancing (other than a Pre-Approved Refinancing).

Financial Statements; Statement as to Compliance

The Issuer will deliver, or cause to be delivered to the Indenture Trustee and the Rating Agencies: (i) within 140 days after the end of each fiscal year, audited financial statements of the Issuer; (ii) within 90 days after the end of each fiscal quarter (other than the last fiscal quarter of each fiscal year), unaudited financial statements of the Issuer; and (iii) on an annual basis on or before March 31 of each year, a written statement concerning compliance with the conditions and covenants contained in the Master Trust Indenture and confirming that no Default or Event of Default has occurred or if a material Default or Event of Default has occurred, specifying the details thereof.

Payment Instructions

The Issuer will deliver to the Indenture Trustee and the Paying Agent (if the Paying Agent is not the Indenture Trustee) on a monthly basis, a payment instruction in respect of the Collection Account, which instruction shall set out the payments to be made on the following Payment Date and setting forth, among other things, (i) the amount of the payment to Debtholders (including a breakdown of principal and interest), (ii) any other transfers and payments to be made on such Payment Date, including amounts paid to the Indenture Trustee, the Issuer Trustee and the Manager, and (iii) the amounts on deposit in the Collection Account after giving effect to the foregoing payments. Similar payment instructions will also be delivered in respect of each other Program Account and Series Account, as and when payments are to be made from those accounts.

Notice of Certain Events; Protection Event

The Issuer will give the Indenture Trustee and each Rating Agency prompt written notice of (i) each Event of Default, (ii) each breach on the part of the Issuer or the Servicer of its respective obligations under the Master Transfer and Servicing Agreement (including any Servicer Default), (iii) each breach on the part of the Manager of its obligations under the Management Agreement, (iv) any default of the Issuer or a Derivative Counterparty under a derivative agreement, and (v) any Protection Event.

No Other Business

The Issuer will not engage in any activity other than the activities set forth in the Declaration of Trust or the other Program Agreements, the material provisions of which are described in this confidential shelf offering memorandum under "The Issuer".

Amendments to Program Agreements

Unless the Rating Agency Condition is satisfied, the Issuer will not make any material amendments to any Program Agreement (other than the Master Trust Indenture and individual trade confirmations under derivative agreements), or enter into any Co-Owner Agreement. Without limiting the foregoing sentence, the Issuer will not:

(a) enter into any Co-Owner Agreement without the consent of Controlling Class Creditors by Ordinary Resolution;

(b) amend, supplement, modify, restate or replace, or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to, any of the Program Agreements (other than the Master Trust Indenture, the derivative agreements and the Declaration of Trust) if any such amendment, supplement, modification, restatement or replacement, or waiver or consent, could reasonably be considered to be materially prejudicial to the rights or interests of any Specified Creditor(s), except as expressly permitted by such Specified Creditor(s) and subject to the Province of Ontario having been given prior notice;

(c) consent, if consent is required, to the resignation of the Manager under the Management Agreement; or

(d) amend the Declaration of Trust if such amendment would have or reasonably be expected to have an Adverse Effect; provided that if such amendment would have such result, such amendment may only be made if the Issuer has obtained the consent of the Debtholders affected by such amendment by Ordinary Resolution.

Regarding amendments to the Master Trust Indenture or a Supplemental Indenture, see "— *Amendments to Master Trust Indenture*".

Consolidation; Sale of Assets

The Issuer may not consolidate with or merge into any other person, or sell, convey, exchange, transfer or otherwise dispose of any of its properties or assets included in the Collateral to any person (each, a "**transaction**"), unless:

(a) the entity formed by or surviving the consolidation or merger (if other than the Issuer) or the entity that acquires by conveyance or transfer formed by or surviving the consolidation or merger, by conveyance or transfer, as applicable: (i) is a financing entity; (ii) is organized under the laws of Canada or any province or territory thereof; (iii) is not a non-resident for purposes of the *Income Tax Act* (Canada); (iv) is not subject to regulation as an "investment company" under the Investment Company Act, (v) expressly assumes, pursuant to an assignment and/or assumption agreement or supplement, the due and punctual payment of all Obligations Secured then outstanding and the performance or observance of all of the Issuer's agreements and covenants under each of the Program Agreements to which the Issuer is a party; and (vi) in the case of a conveyance or transfer only, expressly agrees, pursuant to such assignment and/or assumption agreement or supplement, that (A) all right, title and interest conveyed or transferred is subject and subordinate to the security interest of the Indenture Trustee and (B) it will make all filings required by applicable securities laws in connection with any Notes;

(b) no Event of Default has occurred and is continuing immediately after the transaction;

(c) the Issuer has delivered to the Indenture Trustee an officer's certificate and an opinion of counsel, each stating that (i) such transaction and the agreements delivered in connection with such transaction comply with the terms and conditions in the Master Trust Indenture, (ii) all conditions precedent in the Master Trust Indenture relating to the transaction have been complied with, and (iii) each agreement delivered in connection with such transaction has been duly authorized, executed and delivered, and are valid, binding and enforceable against the surviving entity or transferee, as applicable;

(d) the Rating Agency Condition has been satisfied with respect to such transaction; and

(e) any action as is necessary to maintain the first priority perfected security interest in the Collateral has been taken.

No Borrowing; Guarantees, Loans; Restricted Payments

The Issuer will not issue, incur, assume, guarantee or otherwise become liable for any indebtedness except for Funding Obligations. Additionally, the Issuer will not, except as contemplated by the Master Trust Indenture or the Declaration of Trust, make any loan or advance or credit to, or guarantee, endorse or otherwise become contingently liable in connection with the obligations of, or own, purchase or acquire any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other person.

The Issuer is permitted to declare or make payable any amounts to the owner of units in the Issuer as permitted by and in accordance with the Declaration of Trust, and redeem, purchase, retire or otherwise acquire for value any units in the Issuer, provided that the Issuer may only satisfy the distribution declared or made payable, or the redemption or purchase price of such units to the extent that cash or property is available for such purpose, subject to the payment waterfalls provided for in the Master Trust Indenture. If the Issuer is restricted from satisfying the foregoing amounts in cash or property, then the Issuer will satisfy such amounts through the issuance of additional units and/or a promissory note to its unitholders in accordance with the Declaration of Trust.

Subordinated Funding Obligations and Junior Subordinated Funding Obligations

Notwithstanding anything in a Funding Obligation Agreement to the contrary, the Issuer may not redeem any Series or Tranche of Subordinated Funding Obligations or Junior Subordinated Funding Obligations unless the following conditions are satisfied: (i) no Default or Event of Default has occurred and is continuing; (ii) all Issuer Accounts are fully funded in accordance with the Master Trust Indenture and any applicable Funding Obligation Agreement; and (iii) the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations after giving effect to such redemption will not be less than 35% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations.

The Issuer will not permit (i) the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be less than 35% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations, or (ii) the aggregate outstanding principal amount of Junior Subordinated Funding Obligations to be less than 10% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations.

Security Matters

The Issuer will not (i) permit any lien, charge, excise, claim, security interest, mortgage or other encumbrance (other than permitted liens) to be created on or extend to the Collateral, (ii) release any security or guarantee in respect of the Collateral, (iii) sell, transfer, exchange or otherwise dispose of any of the Collateral except as expressly permitted under the Master Trust Indenture, or (vi) change its name, jurisdiction of formation or type of organization, unless it has provided the Indenture Trustee and each Rating Agency with prior written notice and it has first made all filings and taken all actions necessary to continue and maintain the Indenture Trustee's first priority security interest in the Collateral.

Other Covenants

In addition to the covenants contained in any Supplemental Indenture or any other Funding Obligation Agreement and the other covenants described in this section, the Issuer agrees that:

- upon the written request of the Indenture Trustee, it will use reasonable commercial efforts, following any (i) termination or resignation of the Servicer, the Manager or the Paying Agent, or (ii) termination, non-renewal or expiry of a liquidity agreement or a credit enhancement agreement, to appoint and enter into an agreement with a successor to such Servicer, Manager or Paying Agent, or replace or renew such liquidity agreement or credit enhancement agreement, in form and substance the same as the previously existing Program Agreement;

- it will not claim any credit on or make any deduction from the principal and interest payable on the Notes or Borrowings (other than amounts withheld or deducted in accordance with the Master Trust Indenture); or

- it will not take any action that would cause it to be treated as engaged in a "trade or business within the United States" for U.S. federal income tax purposes.

Amendments to Master Trust Indenture

Amendments not Requiring Consent of Specified Creditors

The Issuer and the Indenture Trustee may amend, supplement or otherwise modify the Master Trust Indenture or any Supplemental Indenture without the consent of any Specified Creditor upon prior notice to each Rating Agency and the Province of Ontario and delivery by the Issuer to the Indenture Trustee of an officer's certificate to the effect that the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect. Such amendments to the Master Trust Indenture or any Supplemental Indenture may:

- evidence the succession or successive successions of another Financing Entity to the Issuer, and the assumption by such successor of the covenants of the Issuer in the Master Trust Indenture and the Notes;

- add to the covenants of the Issuer, or have the Issuer surrender any of its rights or powers under the Master Trust Indenture (or any Supplemental Indenture), for the benefit of the Debtholders of any or all Classes, Series or Tranches of Issuer Funding Obligations;

- cure any ambiguity, correct or supplement any provision in the Master Trust Indenture which may be inconsistent with any other provision in the Master Trust Indenture (or any Supplemental Indenture), to correct a clear clerical or administrative error, or make any other provisions for matters or questions arising under the Master Trust Indenture;

- provide for the issuance of any Series or Tranche of Notes and to set forth the terms thereof, and/or to add to the rights of the Noteholders of any Class, Series or Tranche;

- provide for the acceptance of a successor Indenture Trustee under the Master Trust Indenture;

- add any Events of Default relating to any or all Classes, Series or Tranches of Issuer Funding Obligations;

- provide for the consolidation of any financing entity and the Issuer into a single entity or the transfer of assets in any financing entity to the Issuer;

- if the IESO is replaced under the Master Transfer and Servicing Agreement, make any necessary changes to the Master Trust Indenture;

- provide for additional forms of credit enhancement for any Class, Series or Tranche of Issuer Funding Obligations;

- facilitate the issuance of foreign currency Issuer Funding Obligations;

- comply with any regulatory, accounting or tax laws, or changes to any ratings criteria;

- enable the Issuer to file a registration statement for the offering of securities registered under the Securities Act and to comply with Regulation AB thereunder; or

- qualify for sale treatment under generally accepted accounting principles.

The Master Trust Indenture or any Supplemental Indenture may also be amended by the Issuer and the Indenture Trustee without the consent of any Specified Creditor (but with prior notice to each Rating Agency and the Province of Ontario) in the following circumstances, provided that the Issuer delivers to the Indenture Trustee an officer's certificate to the effect that (i) the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect, and (ii) such amendment is required to comply with law, or to conform or be consistent with the statements contained in this confidential shelf offering memorandum:

- to facilitate compliance with changes in laws or regulations applicable to the Issuer or the transactions governed by the Program Agreements; or

- to cause the provisions of the Master Trust Indenture to conform to or be consistent with or in furtherance of the statements made in this confidential shelf offering memorandum with respect to the Master Trust Indenture or any Supplemental Indenture.

Additionally, the Master Trust Indenture or any Supplemental Indenture may also be amended by the Issuer and the Indenture Trustee without the consent of any Specified Creditor (but with prior notice to each Rating Agency and the Province of Ontario) in the following circumstances, provided that (i) the Issuer delivers to the Indenture Trustee an officer's certificate to the effect that the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect and (ii) the Rating Agency Condition is satisfied with respect to such amendment:

- to add provisions to, or change in any manner or eliminate any of the provisions of, the Master Trust Indenture or any Supplemental Indenture;

- to modify in any manner the rights of the Specified Creditors under the Master Trust Indenture or any Supplemental Indenture; or

- to provide for those changes necessary for compliance with securities law requirements or banking laws or regulations.

The Indenture Trustee may, but is not obligated to, enter into any amendment which adversely affects its rights, duties, benefits, protections, privileges or immunities under the Master Trust Indenture (or any Supplemental Indenture).

Amendments Requiring Consent of Debtholders

The Issuer and the Indenture Trustee may amend, supplement or otherwise modify and amend the Master Trust Indenture or any Supplemental Indenture for reasons other than those stated in the prior section ("*— Amendments not Requiring Consent of Specified Creditors*"), with prior notice to each Rating Agency and the Province of Ontario, the consent of Debtholders of each Class, Series or Tranche of Issuer Funding Obligations affected by that amendment, supplement or other modification by Ordinary Resolution, and satisfaction of the Rating Agency Condition. However, if the amendment, supplement or other modification would result in any of the following events occurring, it may be made only with the consent of each Debtholder of Issuer Funding Obligations affected thereby and satisfaction of the Rating Agency Condition:

- a change in an Interest Payment Date, Principal Payment Date or Principal Payment Default Date for any Issuer Funding Obligation;

- a reduction in the principal amount of, or interest rate on, any Note, or a change in the method of computing the outstanding principal amount in a manner that is adverse to any Debtholder;

- a reduction in the amount of a discount note payable upon its acceleration;

- a reduction in the percentage in outstanding principal amount of Issuer Funding Obligations of any Class, Series or Tranche, the consent of whose holders is required for modification or amendment of the Master Trust Indenture, any Supplemental Indenture or any related agreement or for waiver of compliance with provisions of the Master Trust Indenture or for waiver of defaults and their consequences provided for in the Master Trust Indenture;

- a modification of any of the provisions governing the amendment of the Master Trust Indenture or any Supplemental Indenture, or waivers of past defaults, except to increase any percentage of Debtholders required to consent to any such amendment or waiver, or to provide that certain other provisions of the Master Trust Indenture cannot be modified or waived without the consent of each Debtholder affected by such modification;

- a change in the city or political subdivision so designated with respect to any Class, Series or Tranche of Notes where any principal of, or interest on, any Note is payable; or

- a change in the method of computing the amount of principal of, or interest on, any Note on any date.

Debtholder Approvals and Meetings

Access to Debtholder Lists

The Indenture Trustee will preserve the names and addresses of all Specified Creditors received by it in its capacity as Note registrar and those which it has received from the Issuer in accordance with the Master Trust Indenture. Three or more Debtholders of any Series or Tranche, each of whom has owned an Issuer Funding Obligation of such Series or Tranche for at least six months, may, by application to the Indenture Trustee in the prescribed form, obtain access to the current list of Debtholders held by the Indenture Trustee for purposes of communicating with other Debtholders concerning their rights under the Master Trust Indenture (or any Supplemental Indenture) or under the applicable Program Agreement.

Debtholder Meetings

The Master Trust Indenture sets out the mechanics for meetings of Debtholders. The Master Trust Indenture provides for meetings of Debtholders of any Class, Series or Tranche of Issuer Funding Obligations, of all Issuer Funding Obligations, of Controlling Class Obligations of a Series or of all Controlling Class Obligations (each of such groups of Debtholders being a "**Debtholder Group**"). The Indenture Trustee will call a meeting of a Debtholder Group upon request of the Issuer or Debtholders of at least 25% in aggregate outstanding principal amount of the applicable Issuer Funding Obligations. If the Indenture Trustee fails to convene, or cause to be convened, such a meeting after 30 days, the Issuer or those Debtholders may convene the meeting. The Indenture Trustee may call a meeting of a Debtholder Group at any time for any purpose. The quorum for any meeting is one or more persons holding (personally or as proxies) not less than 25% of the outstanding principal amount of the Issuer Funding Obligations of the Debtholder Group entitled to vote at such meeting. Each Debtholder who is present, whether in person or by proxy, will have one vote for every $1,000 of outstanding principal amount of applicable Issuer Funding Obligations of which he or she shall be the holder.

Every question submitted to a meeting, except those matters requiring an Extraordinary Resolution, shall be decided by a majority of the votes (an "**Ordinary Resolution**"). Any matter requiring an Extraordinary Resolution shall be decided by the affirmative vote of Controlling Class Creditors holding not less than 66⅔% of the outstanding principal amount of all Controlling Class Obligations (an "**Extraordinary Resolution**"). Such matters include:

- after the security has become enforceable, authorizing the Indenture Trustee to accept, in satisfaction or partial satisfaction, all or any part of the Collateral;

- after the security has become enforceable, sanctioning the selling of the Collateral or any part thereof or interest therein;

- after the security has become enforceable, authorizing the Indenture Trustee or any other person to bid or tender at any sale of the Collateral or any part thereof and take such actions in connection with such sale as it determines to be in the best interests of all Controlling Class Creditors;

- consenting to any compromise or arrangement by the Issuer with any creditor, creditors or class or classes of creditors or with the holders of any securities of the Issuer whose claims are payable from the Collateral;

- restraining any Debtholder from taking or instituting any suit, action or proceeding for the purpose of realizing on the Collateral or for the execution of any trust or power hereunder or for the appointment of a liquidator, receiver or trustee in bankruptcy or to have the Issuer liquidated or for any other remedy hereunder and to direct such Debtholder to waive any Event of Default on which any suit or proceeding is founded;

- requiring the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any other powers conferred upon it by the Master Trust Indenture of general application to all Classes of Issuer Funding Obligations, including the exercise of any rights of the Issuer under any of the Program Agreements upon the occurrence and during the continuance of an Event of Default, or cancel any declaration of acceleration made pursuant to the Master Trust Indenture upon such terms and/or conditions as may be decided;

- authorizing the Indenture Trustee, for and on behalf of all Debtholders, to file and prove a claim or debt against the Issuer or its property for an amount equivalent to the aggregate amount which may be payable in respect of all Issuer Funding Obligations, to value the Collateral, and to vote such claim or debt at meetings of creditors and generally act for and on behalf of all Debtholders in such proceedings as such Extraordinary Resolution may provide; and

- appointing a committee to exercise, on behalf of all Controlling Class Creditors, any powers of such Controlling Class Creditors as are exercisable by Extraordinary Resolution or other resolution (as specified in the Extraordinary Resolution appointing such committee).

Any resolution or instrument signed by the requisite number of Debtholders or Controlling Class Creditors, as applicable, shall have the same force and effect as a resolution duly passed at a meeting of such Debtholders or Controlling Class Creditors.

Any action or vote taken at a meeting (including by way of written instrument) of Debtholders of a Debtholder Group duly held in accordance with the Master Trust Indenture will be binding on all Debtholders of that Debtholder Group. An Extraordinary Resolution shall bind all Debtholders and all other Specified Creditors.

In determining whether Noteholders of the requisite principal amount have taken any action under the Master Trust Indenture, (i) Senior Notes owned by the Issuer, the Manager or any affiliate of either of them, and (ii) any Class of Notes (or portion thereof) in which the Province of Ontario has an interest will, in each case, be disregarded and deemed not to be outstanding at any time that a Specified Creditor other than the Province of Ontario has an interest in such Class of Notes. In determining whether the Indenture Trustee will be protected in relying upon any such action, only Senior Notes (or, in the case of the Province of Ontario, any Notes) which a responsible officer of the Indenture Trustee knows to be owned by the Issuer, OPG or any affiliate of either of them, or with respect to which the Province of Ontario has an interest pursuant to the Change of Law Protection Agreement, will be so disregarded.

Whenever an action may be taken by Debtholders of a specified percentage of outstanding principal amount of Issuer Funding Obligations and at such time there are outstanding Issuer Funding Obligations of any relevant Series denominated in a foreign currency, then the principal amount of the Issuer Funding Obligations of such Series which will be deemed to be outstanding for purposes of taking such action will be the amount of Canadian dollars which could be obtained for such principal amount at the market exchange rate on the applicable date.

Events of Default

General

Each of the following events is an "**Event of Default**":

(a) the Issuer's failure, for a period of 5 days, to pay interest on any Controlling Class Obligations when such interest becomes due and payable;

(b) the Issuer's failure to pay the principal of any Controlling Class Obligations at the Principal Payment Default Date;

(c) any representation or warranty in the Master Trust Indenture proves to be incorrect in any material respect when made and if capable of remedy, such incorrect representation or warranty is not remedied for a period of 60 days after the Indenture Trustee or Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer requesting remedy of that default and stating that as a result of such default, the interests of such Controlling Class Creditors are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(d) the Issuer's default in the performance, or breach, of any other of its covenants or warranties in the Master Trust Indenture, for a period of 60 days after the Indenture Trustee or Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer requesting remedy of that default and stating that as a result of such default, the interests of such Controlling Class Creditors are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(e) certain events of bankruptcy or insolvency of the Issuer, or the Issuer fails to maintain its existence or status as a Financing Entity;

(f) the Change of Law Protection Agreement ceases to be in full force and effect against the Province of Ontario, or the validity thereof, or the applicability thereof to the Province of Ontario or any Controlling Class Obligations is disaffirmed by the Province of Ontario;

(g) an Acceleration Event has occurred and Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer and the Indenture Trustee specifying the default;

(h) the Issuer's default in the performance of its covenant to deliver payment instructions for a period of three days after the Indenture Trustee has provided written notice thereof;

(i) at any time, the amounts withdrawn from the Program Cash Reserve Account prior to such time exceed the aggregate of (x) 0.50% of the largest outstanding principal amount of all Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations on or prior to such time, (y) the sum of all amounts deposited to the Program Cash Reserve Account, and (z) all interest and earnings (net of losses and investment expenses), if any, on funds credited to the Program Cash Reserve Account; or

(j) a Servicer Default occurs.

If Controlling Class Obligations constituting 25% or more of the outstanding principal amount of all Controlling Class Obligations have been accelerated in accordance with their Funding Obligation Agreements, the thresholds required in clauses (c), (d) or (g) will be deemed to have been met.

Waiver of Default

Subject to the summary provided for below under "*— Acceleration and Remedies — General*", Controlling Class Creditors may, by Ordinary Resolution, waive any past Default under the Master Trust Indenture so long as the Rating Agency Condition in respect of each Series or Tranche of Controlling Class Obligations has been satisfied.

Acceleration and Remedies

General

If an Event of Default (other than an Event of Default described in paragraph (e) or (f)) occurs and is continuing, either the Indenture Trustee or Controlling Class Creditors holding not less than 50% of the outstanding principal amount of all Controlling Class Obligations (treated as one class) may declare the outstanding principal amount of all Issuer Funding Obligations (other than Derivative Funding Obligations) to be immediately due and payable. If Controlling Class Obligations constituting 50% or more of the outstanding principal amount of all Controlling Class Obligations have been accelerated in accordance with their Funding Obligation Agreements, the 50% threshold required will be deemed to have been met. The occurrence of an Event of Default described in paragraph (e) or (f) results in an automatic acceleration of all Issuer Funding Obligations (other than Derivative Funding Obligations).

A declaration of acceleration or an automatic acceleration may be rescinded by Extraordinary Resolution if (i) the Issuer has paid all overdue interest, principal that has become due (other by reason of acceleration) on Controlling Class Obligations and other amounts set out in the Master Trust Indenture, and (ii) all Events of Default (other than non-payment of principal) have been cured or waived.

If Controlling Class Obligations are accelerated, the Indenture Trustee may amongst other things, (i) apply to a court for an order of sequestration and payment of amounts in respect of the Clean Energy Adjustment in accordance with the FHPA, (ii) take possession of the Collateral, (iii) appoint a receiver with respect to the Collateral, (iv) initiate proceedings in any court for the appointment of a receiver or for sale or foreclosure, (v) exercise rights, remedies, powers, privileges and claims under any Program Agreement, including the right to terminate and replace the Manager or the Servicer, or (vi) take any other action, suit, remedy or proceeding authorized or permitted by the Master Trust Indenture or by applicable law. The Indenture Trustee is not obligated to exercise any of its rights or powers under the Master Trust Indenture at the request or direction of any Controlling Class Creditors unless Controlling Class Creditors offer the Indenture Trustee a reasonable indemnity.

See *"Risk Factors — Risks Associated with the Unusual Nature of the Investment Asset" and "Risk Factors — Insolvency-Related Risks Relating to the Issuer"*.

Limitation on Available Amounts on Acceleration

If all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable after the Moratorium Period and before its scheduled payment date, maturity date or redemption date, ~~then~~ the estimated Finance Amount used by the Financial Services Manager to determine the Clean Energy Adjustment for a period will be determined ~~without regard to the fact that such amount has become due and payable, unless and only to the extent that~~**based on the extent, if any, to which** the amount of the Clean Energy Adjustment is capable of being increased based on the Fair Allocation Amount for such period. See *"Ontario's Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*. However, upon such acceleration, all accelerated Senior Notes will be repaid in full before any further payments of principal are made to holders of subordinated indebtedness, including the subordinated debt held by OPG; therefore, collections of the Clean Energy Adjustment that would otherwise have been available to repay the principal amount of subordinated indebtedness in the absence of acceleration of the Senior Notes will instead be applied to repay accelerated Senior Notes. See *"Capital Markets Platform"*.

Payment Waterfall Upon Acceleration

After acceleration of the Issuer Funding Obligations (other than derivative agreements), any money or other property standing to the credit of an Issuer Account (except as set out below) or otherwise collected by the Indenture Trustee will be applied in the following priority:

(a) first, to the payment or remittance of taxes for which a governmental authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(b) second, to pay fees, expenses and reimbursement amounts owing to the Issuer Trustee and the Indenture Trustee;

(c) third, *pari passu* (i) to pay interest, fees and other amounts (other than principal) owing in respect of Senior Funding Obligations and (ii) to pay all Derivative Funding Obligations (other than termination payments);

(d) fourth, to pay interest, fees and other amounts (other than principal) owing in respect of Subordinated Funding Obligations;

(e) fifth, to pay interest, fees and other amounts (other than principal) owing in respect of Junior Subordinated Funding Obligations;

(f) sixth, to pay principal owing in respect of Warehouse Obligations;

(g) seventh, *pari passu* (A) to pay principal owing in respect of Senior Funding Obligations (other than Warehouse Obligations) and (B) to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is not the defaulting party or the sole affected party;

(h) eighth, to pay fees, expenses and reimbursement amounts owing to the Manager;

(i) ninth, to pay principal owing in respect of Subordinated Funding Obligations;

(j) tenth, to pay principal owing in respect of Junior Subordinated Funding Obligations;

(k) eleventh, to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is the defaulting party or the sole affected party;

(l) twelfth, to pay all indemnity amounts owing to the Manager;

(m) thirteenth, *pari passu* (i) to the payment or remittance of taxes not previously paid pursuant to paragraph (a), and (ii) to pay all amounts owing to Specified Creditors not specifically referred to above; in each case, including, for each referenced party, any amounts payable to their respective affiliates under the terms of any relevant indemnity; and

(n) fourteenth, to pay any remaining amounts to the Issuer.

However, amounts on deposit in a Series Account will first be used to satisfy all obligations owing to the Debtholders or Derivative Counterparties for whom such Series Account was established. Thereafter, such amounts will be applied in accordance with the priorities set out above. In addition, amounts on deposit in the Protection Account will only be used to satisfy the obligations for which those amounts were deposited.

Rights of Specified Creditors

No Specified Creditor will have the right to institute any proceeding, judicial or otherwise, with respect to the Master Trust Indenture, or for the appointment of a receiver or trustee or similar official, or for any other remedy under the Master Trust Indenture. A Controlling Class Creditor may exercise such rights if:

(a) the Issuer or a Controlling Class Creditor has previously given to the Indenture Trustee written notice of a continuing Event of Default;

(b) Controlling Class Creditors, by Ordinary Resolution, have made written request of the Indenture Trustee to institute the proceeding in its own name as Indenture Trustee;

(c) Controlling Class Creditors have offered the Indenture Trustee a satisfactory indemnity; and

(d) the Indenture Trustee has, for 60 days, failed to institute the proceeding.

Subject to certain powers which may only be exercised by Extraordinary Resolution, Controlling Class Creditors, by Ordinary Resolution, will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to all Issuer Funding Obligations. However, the Indenture Trustee may decline to follow such direction if it determines (based on advice from counsel) that such direction (i) conflicts with applicable law or the Master Trust Indenture, (ii) has a substantial likelihood of involving the Indenture Trustee in personal liability or (iii) is unjustly prejudicial to Controlling Class Creditors not taking part such direction. See "*— Debtholder Approvals and Meetings — Debtholder Meetings*" for a description of certain powers which may only be exercised by Extraordinary Resolution. Specified Creditors (other than Debtholders) do not have any right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee. Specified Creditors (other than Debtholders) will only have the right to receive proceeds following an Event of Default.

Limited Recourse

The obligation of the Issuer to pay principal of and interest on the Issuer Funding Obligations or any other amount payable to any Specified Creditor is subject to the allocation and payment provisions in the Master Trust Indenture and the applicable Funding Obligation Agreement and limited to amounts available from the Collateral. Neither the Indenture Trustee, the Manager nor the Issuer Trustee in its individual capacity, nor any holder of any unit in the Issuer, nor any of their respective owners, beneficiaries, agents, officers, directors, employees, successors or assigns will, in the absence of an express agreement to the contrary, be personally liable for the payment of the principal of or interest on the Notes or any other Issuer Funding Obligation, or for the Issuer's covenants and agreements contained in the Master Trust Indenture.

No Petition

Each Specified Creditor, by accepting its rights as a beneficiary under the Master Trust Indenture, agrees that until one year and one day following repayment in full of all Issuer Funding Obligations, it will not commence (or join in commencing) a bankruptcy, insolvency or similar proceeding under the laws of any jurisdiction against the Issuer.

Force Majeure

The Indenture Trustee and the Issuer Trustee will not be responsible or liable for any failure or delay in the performance of their obligations under the Master Trust Indenture arising out of or caused by, directly or indirectly, forces beyond their control, including loss or malfunctions of utilities, communications or computer services.

Satisfaction and Discharge

The Master Trust Indenture will cease to be of further effect with respect to any Class, Series or Tranche of Issuer Funding Obligations when:

(a) (x) in the case of Notes, all Notes of that Class, Series or Tranche which had been outstanding, with certain exceptions set forth in the Master Trust Indenture, have been delivered to the Indenture Trustee for cancellation or been cancelled, or (y) in the case of all other Issuer Funding Obligations, all Issuer Funding Obligations of that Class, Series or Tranche have been paid in full, as certified by the Issuer;

(b) the Issuer has paid all other sums payable by it under the Master Trust Indenture with respect to that Class, Series or Tranche of Issuer Funding Obligations; and

(c) the Issuer has delivered to the Indenture Trustee an officer's certificate and an opinion of external counsel each stating that the conditions precedent in the Master Trust Indenture relating to the satisfaction and discharge with respect to that Class, Series or Tranche of Issuer Funding Obligations have been complied with.

The Master Trust Indenture will cease to be of further effect when all Issuer Funding Obligations have been satisfied and discharged in accordance with the previous paragraph and all other Obligations Secured have been paid in full, as certified by the Issuer.

DESCRIPTION OF SENIOR NOTES

The following description of the Senior Notes is a summary of certain of their material attributes and characteristics, and does not purport to be complete. The terms and conditions set forth in this *"Description of Senior Notes"* section will apply to each Senior Note unless otherwise specified in the Term Sheet applicable to such Offering. For further particulars, reference should be made to the Master Trust Indenture and the Supplemental Indenture and Terms Document, if any, relating to the particular Series or Tranche of Senior Notes.

General

The Senior Notes will be issued under the Master Trust Indenture and will be Funding Obligations issued in connection with the financing program described under the heading "*Capital Markets Platform*". The specific terms and conditions of each Series of Senior Notes will be set forth in the Supplemental Indenture authorizing that Series and the specific terms and conditions of any Tranche of Senior Notes will be set forth in the Supplemental Indenture or the Terms Document authorizing that Tranche.

Under the Master Trust Indenture, the Issuer may issue an unlimited principal amount of Senior Notes. See "*Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations*". The Senior Notes will be direct obligations of the Issuer and secured in the manner provided for under the Master Trust Indenture. See "*Capital Markets Platform — Security*".

The Supplemental Indenture or Terms Document will describe the following terms of the Senior Notes:

- the Series designation;
- stated principal amount of the Senior Notes;
- whether such Senior Notes are of a particular Tranche of Senior Notes;
- the currency or currencies in which such Senior Notes will be denominated and in which payments of principal of, and interest on, such Senior Notes will or may be payable;

- the price at which such Series or Tranche of Senior Notes will be issued;
- the times at which such Series or Tranche of Senior Notes may, pursuant to any optional redemption provisions, be redeemed, and the other terms and provisions of any such redemption;
- the rate per annum at which such Series or Tranche of Senior Notes will bear interest, if any, or the formula or index on which such rate will be determined;
- each Interest Payment Date, each Principal Payment Date and the Principal Payment Default Date for such Series or Tranche of Senior Notes;
- the Principal Accumulation Date(s), if any, and Principal Accumulation Amount(s) for such Series of Senior Notes;
- the initial principal amount of such Senior Notes, and the means for calculating the outstanding principal amount of such Series or Tranche of Senior Notes;
- whether or not application will be made to list such Series or Tranche of Notes on any securities exchange;
- any events of default with respect to such Series or Tranche of Senior Notes;
- if such Series or Tranche of Senior Notes will be issued in whole or in part in the form of a global note, the terms and conditions, if any, upon which such global note may be exchanged for other individual Senior Notes, and the depository for such global note;
- if such Class, Series or Tranche of Senior Notes will be issued in whole or in part in registered form, bearer form or both, and if such Senior Notes will be issued with or without coupons;
- if such Class, Series or Tranche will have the benefit of a credit enhancement agreement or liquidity agreement, and the terms and provisions of the applicable agreement;
- the record date for any Interest Payment Date or Principal Payment Date of such Series or Tranche of Senior Notes, if different from the last of the month before the related Interest Payment Date or Principal Payment Date; and
- whether and under what conditions, additional amounts will be payable to Noteholders of such Series or Tranche of Notes.

Limitations

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer) **or of the IESO**. The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not **be** insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*.

Payments of Principal and Interest

Interest will accrue on the principal balance of each Series or Tranche of Senior Note at the interest rate specified in the related Term Sheet and will be payable on the Interest Payment Date(s) specified in the related Term Sheet. Principal of each Series or Tranche of Senior Notes will be payable in the amounts and on the Principal Payment Date(s) specified in the related Term Sheet. The Term Sheet applicable to a Series or Tranche of Senior

Notes will also set out the Principal Payment Default Date for such Senior Notes, which is the date on which failure to pay the principal amount of such Senior Notes will result in an Event of Default.

On each Payment Date, the Issuer will, to the extent funds are available therefor from the Collection Account (see "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account*"), transfer to the Interest Accumulation Account the aggregate amount of interest that has accrued on each Series of Senior Notes (together with all other amounts to be accrued for other Issuer Funding Obligations). On each Interest Payment Date for a Series or Tranche of Senior Notes, the Paying Agent will pay to the holders of such Senior Notes interest then due on such Senior Notes using amounts available therefor from the Interest Accumulation Account, the Principal Accumulation Account, the IESO Cash Reserve Account, the Program Cash Reserve Account and the Protection Account. See "*Change of Law Protection Agreement*" and "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration*".

On each Payment Date, the Issuer will, to the extent funds are available therefor from the Collection Account (see "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account*"), transfer to the Principal Accumulation Account the aggregate of the amounts the Issuer is required to accumulate for each Series of Senior Notes (together with all other amounts to be accumulated for other Issuer Funding Obligations). The Term Sheet applicable to a Series or Tranche of Senior Notes will set out the Principal Accumulation Amount(s) and the Payment Dates on which such ~~amount~~**amounts** are to be accumulated for such Senior Notes. On each Principal Payment Date for a Series or Tranche of Senior Notes, the Paying Agent will pay to the holders of such Senior Notes the principal then due on such Senior Notes using amounts available therefor from the Principal Accumulation Account, the Program Cash Reserve Account and the Protection Account. See "*Change of Law Protection Agreement*" and "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration*". Holders of Senior Notes may receive principal payments earlier than an expected Principal Payment Date if an optional redemption occurs and may receive principal payments later than an expected Principal Payment Date if there are insufficient Available Collections. See "*Risk Factors*" for a discussion of factors that may affect the timing of principal payments on a Series or Tranche of Senior Notes. It is not an Event of Default if the stated principal amount of a Series or Tranche of Senior Notes is not paid in full on an expected Principal Payment Date. If the stated principal amount of a Senior Note is not paid in full by its Principal Payment Default Date, an Event of Default will occur. See "*Capital Markets Platform — Events of Default*".

Unless otherwise specified in a Term Sheet, the Issuer has designated the Indenture Trustee as its Paying Agent for all Senior Notes having a place of payment in Toronto, Ontario.

Optional Redemption of Senior Notes

If a Supplemental Indenture for any Series or Tranche of Senior Notes states that such Senior Notes will be redeemable, in whole at any time or in part from time to time, such Senior Notes will be redeemable at the option of the Issuer at the redemption price specified in the Supplemental Indenture. If less than all the Senior Notes of any Series or Tranche are to be redeemed at one time, the Senior Notes of such Series or Tranche to be redeemed will be selected by the Indenture Trustee on a pro rata basis according to the principal amount of such Senior Notes registered in the name of each holder thereof, or in such other manner as the Indenture Trustee may consider equitable.

Notice of any redemption will be delivered to each holder of the Senior Notes to be redeemed, electronically or by mail (postage prepaid) at the address of such holder appearing in the Note register (or published in an authorized newspaper in the case of Senior Notes held in bearer form) or otherwise in accordance with the procedures of the depository, at least 15 days but not more than 30 days before the redemption date, except that redemption notices may be delivered more than 30 days prior to the redemption date if the notice is issued in connection with a satisfaction and discharge of the Master Trust Indenture with respect to such Series or Tranche of Senior Notes. The notice of redemption will state (i) the portion of the principal amount thereof to be redeemed (provided that no Senior Notes in an aggregate principal amount of 1,000 units of the applicable currency or less will be redeemed in part), (ii) the redemption date and (iii) the redemption price. Unless the Issuer defaults in payment of the redemption price, on and after the redemption date, interest will cease to accrue on the Senior Notes or portions of the Senior Notes called for redemption. A replacement note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original note; provided, however,

that, in the case of a global note, an appropriate notation may instead be made on such note to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof.

The Term Sheet for each Offering will identify the redemption provisions of the applicable Notes at the time of such Offering.

Purchase for Cancellation

The Issuer may purchase or otherwise acquire, at any time or from time to time, all or any of the outstanding Senior Notes of any Series or Tranche in the market or by invitation for tenders or by private contract at such prices as it may determine in its sole discretion. All such Senior Notes purchased by the Issuer will be cancelled. If, upon a tender, more Senior Notes of a Series or Tranche are tendered at the same lowest price than the Issuer is prepared to accept, the Senior Notes of such Series or Tranche to be purchased will be selected by the Indenture Trustee on a pro rata basis according to the principal amount of such Senior Notes registered in the name of each holder thereof, or in such other manner as the Indenture Trustee may consider equitable.

DEPOSITORY SERVICES

Except as otherwise provided below, the Senior Notes will be issued in "book-entry only" form and must be purchased, transferred, redeemed or exchanged through participants ("**Participants**") in the depository service of a depository chosen by the Issuer (the "**depository**") or its nominee, which include securities brokers and dealers, banks and trust companies. On the closing date of an Offering, the Issuer will cause a global certificate representing the Senior Notes to be delivered to, and registered in the name of, the depository or its nominee. Except as described below, no purchaser of Senior Notes will be entitled to a certificate or other instrument from the Issuer or the depository evidencing that purchaser's ownership thereof, and no purchaser will be shown on the records maintained by the depository except through a book-entry account of a Participant acting on behalf of such purchaser. Each purchaser of Senior Notes will typically receive a customer confirmation of purchase from the registered dealer from which the Senior Notes are purchased in accordance with the practices and procedures of that registered dealer. The practices of registered dealers may vary, but generally, customer confirmations are issued promptly after execution of a customer order. The depository will be responsible for establishing and maintaining book-entry accounts for its Participants having interests in the Senior Notes.

Neither the Issuer, the Indenture Trustee nor the Agents will assume any liability for: (i) any aspect of the records relating to the beneficial ownership of the Senior Notes held by the depository or the payments relating thereto; (ii) maintaining, supervising or reviewing any records relating to the Senior Notes; or (iii) any advice or representation made by or with respect to the depository or those contained in this confidential shelf offering memorandum and relating to the rules governing the depository or any action to be taken by the depository or at the direction of its Participants. The rules governing the depository provide that it acts as the agent and depository for the Participants. As a result, Participants must look solely to the depository and persons, other than Participants, having an interest in the Senior Notes must look solely to Participants for payments made by or on behalf of the Issuer to the depository in respect of the Senior Notes.

If: (i) required by applicable law; (ii) the depository notifies the Issuer in writing that the depository is no longer willing or able to discharge properly the responsibilities of a depository with respect to the Senior Notes and the Issuer is unable to locate a qualified successor; (iii) the Issuer determines the Senior Notes in book-entry only form should be exchanged for definitive certificates and the Issuer delivers a written notice to such effect to the Indenture Trustee; (iv) an Event of Default has occurred and Noteholders holding more than 50% of the Controlling Class Obligations of any Series of Senior Notes determine such book-entry system is no longer in the best interests of the holders of that Series; or (v) the book-entry system is terminated, then certificates representing the Senior Notes will be issued to the beneficial owners of Senior Notes.

Interest on the Senior Notes will be paid directly to CDS while the book-entry only system is in effect. If definitive certificates are issued, interest will be paid by wire transfer of immediately available funds to the accounts specified by the holders thereof or, if no such account is specified, by mailing a cheque to each such holder's registered address. Payment of principal, and the interest due, at maturity, will be paid directly to CDS while the

book-entry only system is in effect. If definitive certificates are issued, payment of principal, and interest due, at maturity, will be paid upon surrender thereof at any office of the Trustee or as otherwise specified in the Indenture.

Manner of Effecting Transfer or Redemption

A transfer or redemption of Senior Notes held in "book-entry form" only will be effected through records maintained by the depository or its nominee with respect to interests of Participants, and on the records of Participants with respect to interests of persons other than Participants. Purchasers of such Senior Notes who are not Participants, but who desire to purchase, sell or otherwise transfer ownership of or other interests in the Senior Notes, may do so only through Participants.

DTC, Euroclear and Clearstream, Luxembourg

Where CDS acts as depository for a series of Senior Notes, to the extent the Issuer makes such series of Senior Notes eligible with The Depositary Trust Company ("**DTC**"), Euroclear Bank S.A./N.V., as operator of the Euroclear System ("**Euroclear**") and Clearstream Banking, société anonyme ("**Clearstream, Luxembourg**"), and the Issuer specifies as such in the Term Sheet with respect to the particular series of Senior Notes, holders may hold such series of Senior Notes through the accounts maintained by DTC, Euroclear or Clearstream, Luxembourg, as applicable, as participants in CDS only if they are participants of those systems, or indirectly through organizations which are participants of those systems.

In such case, DTC, Euroclear and Clearstream, Luxembourg will hold omnibus book-entry positions on behalf of their participants through customers' securities accounts in their respective depositaries which in turn will hold such positions in customers' securities accounts in the names of the nominees of the depositaries on the books of CDS. All securities in DTC, Euroclear and Clearstream, Luxembourg are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts.

Transfers of such Senior Notes by persons holding through Euroclear or Clearstream, Luxembourg participants, as applicable, will be effected through CDS, in accordance with CDS rules, on behalf of the relevant European international clearing system by its depositaries; however, such transactions will require delivery of transfer instructions to the relevant European international clearing system by the participant in such system in accordance with its rules and procedures and within its established deadlines (European time). The relevant European international clearing system will, if the transfer meets its requirements, deliver instructions to its depositaries to take action to effect the transfer of the Senior Notes on its behalf by delivering Senior Notes through CDS and receiving payment in accordance with its normal procedures for next-day funds settlement. Payments with respect to the Senior Notes held through Euroclear or Clearstream, Luxembourg will be credited to the cash accounts of Euroclear participants or Clearstream, Luxembourg participants in accordance with the relevant system's rules and procedures, to the extent received by its depositaries.

All information in this confidential shelf offering memorandum concerning CDS, DTC, Euroclear and Clearstream, Luxembourg, reflects the Issuer's understanding of the policies of such organizations which may change at any time without notice.

PLAN OF DISTRIBUTION

The Senior Notes may be sold by the Issuer directly pursuant to applicable statutory exemptions or through agents designated by the Issuer from time to time. Each Term Sheet will identify the Agents engaged in connection with the applicable Offering of Senior Notes and will also set forth the terms of the Offering of Senior Notes, including the net proceeds to the Issuer and, to the extent applicable, any fees payable to the Agents. The Agents will conditionally offer the Senior Notes for sale on a "best efforts" basis, if, as and when issued and delivered by the Issuer in accordance with the conditions contained in an agency agreement (the "**Agency Agreement**") between the Issuer, OPG and the Agents to be entered into on or about the date of each Term Sheet. The Agents will be paid a fee by the Issuer for their services rendered to the Issuer in connection with the offering, issue and sale of the Senior Notes. The obligations of the Agents under the Agency Agreement may be terminated upon the occurrence of certain stated events. The Agents may over-allot or effect transactions which stabilize or maintain the market price of the

Senior Notes at a level different than that which might otherwise prevail in the open market. Such transactions, if commenced, may be discontinued at any time.

The Senior Notes may not be offered or sold, directly or indirectly, in Canada or to or for the account of any Canadian resident except, in the case of sales made in any province of Canada, pursuant to an exemption from the prospectus requirements in Section 2.3 of NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(2) of the *Securities Act* (Ontario), also known as the "accredited investor" exemption. In addition, Senior Notes will not be offered or sold, directly or indirectly, to individuals unless those individuals are also "permitted clients" within the meaning of NI 31-103.

Resale of the Senior Notes will be subject to restrictions under applicable securities legislation which vary depending on the relevant jurisdictions. **The Senior Notes may only be sold on a basis that is exempt from the prospectus requirements of applicable securities legislation through an appropriately registered dealer or pursuant to an exemption from the registration requirements of applicable securities legislation**. See *"Restrictions on Resale"*.

This confidential shelf offering memorandum does not constitute an offer to sell or a solicitation of an offer to buy any of the Senior Notes in the United States. The Senior Notes have not been and will not be registered under the U.S. Securities Act or any state securities laws and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as such term is defined in Regulation S under the U.S. Securities Act) unless the Senior Notes are registered under the U.S. Securities Act and applicable state securities laws or an exemption therefrom is available. In addition, until 40 days after the commencement of an Offering, any offer or sale of the Senior Notes within the United States by any dealer (whether or not participating in an Offering) may violate the registration requirements of the U.S. Securities Act if such offer or sale is made otherwise than in accordance with an exemption from the registration requirements of the U.S. Securities Act. Each Agent has agreed that, except as permitted by an Agency Agreement, it will not offer or sell the Senior Notes as part of the distribution of the Senior Notes at any time within the United States or to, or for the account or benefit of, U.S. persons.

RISK FACTORS

An investment in Senior Notes involves certain risks. Prospective investors in the Senior Notes should carefully consider all the information included in this confidential shelf offering memorandum, including the risks described below, before deciding to invest in the Senior Notes. This section does not describe all risks applicable to the Issuer and is intended only as a summary of certain material risks. In addition, prospective investors should consult their own financial and other legal and tax advisors, and should carefully consider, among other matters, the following discussion of risks before deciding whether to purchase Senior Notes.

Judicial, Legislative or Regulatory Risks

Future legal action might challenge or invalidate the FHPA and materially adversely affect a holder's investment in the Senior Notes.

The Investment Asset is a creation of the FHPA, which became effective on June 1, 2017. The Issuer will be the first Financing Entity under the FHPA to issue Funding Obligations as contemplated under the FHPA. The FHPA or any provisions thereof might be directly contested in courts or otherwise become the subject of litigation. The FHPA is novel legislation in Canada and therefore there are no precedents to rely on to support the validity of the FHPA.

As of the date of this confidential shelf offering memorandum, no such litigation has arisen; however, there can be no assurance that a lawsuit challenging the validity of some portion or all of the FHPA will not be filed in the future or that, if filed, such lawsuit will not be successful. If such a lawsuit were successful, and an invalidation of any relevant underlying legislative or regulatory provision were to result that did not constitute a Protection Event under the Change of Law Protection Agreement, a holder of Senior Notes may lose some or all of their investment in the Senior Notes or experience significant delays in recovering their investment in the Senior Notes. Even if the successful lawsuit constitutes a Protection Event, under the terms of the Change of Law Protection Agreement, the Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does

not include any amount in respect of an amount due and payable to a Specified Creditor under the Limited Guarantee).

Future legislative action to change the FHPA, the Change of Law Protection Agreement or the electricity market might materially adversely affect a holder's investment in the Senior Notes.

The FHPA provides that no act or omission of the Crown shall be effective to reduce, impair, postpone or terminate the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment or to impair or postpone the invoicing, collection or remittance of the Clean Energy Adjustment. Ontario does not have a referendum or initiative process by which the FHPA may be amended or repealed. Therefore, the only way for such provisions of the FHPA to be amended or repealed would be through a subsequent legislative action by the Province of Ontario. A determination by the Province of Ontario that, for political or other reasons, the FHPA should no longer be law in Ontario or that the FHPA should be amended to limit or delay the recovery of Clean Energy Adjustments, could result in a decision to make such an amendment, repeal or revocation. Any such action that adversely affects the ability of the Issuer to receive amounts in respect of the Investment Interest so that it can pay Approved Obligations when due and payable (determined after taking into account certain factors described above in the definition of "Protection Event") would be subject to the Change of Law Protection Agreement. Under the Change of Law Protection Agreement, the Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include any amount in respect of an amount due and payable to a Specified Creditor under the Limited Guarantee). See *"Change of Law Protection Agreement"*. However, future legislative action by the Province of Ontario could also be taken that would have the effect of voiding or otherwise rendering invalid the Change of Law Protection Agreement.

Canada does not have any constitutional protection of property rights. While an adverse impact of statutory measures on private property has, in some circumstances, been judicially held to entitle property owners to compensation, such entitlements themselves can also be extinguished by legislation. Accordingly, if the provisions of the FHPA referenced in the previous paragraph were amended or repealed through subsequent legislative action of the Province of Ontario and future legislative action was also taken by the Province of Ontario that had the effect of voiding or otherwise rendering invalid the Change of Law Protection Agreement, a holder of Senior Notes may lose some or all of their investment in the Senior Notes or experience significant delays in recovering their investment in the Senior Notes.

Future judicial action could reduce the value of a holder's investment in the Senior Notes.

The Investment Asset is the creation of the FHPA. There is uncertainty associated with investing in Senior Notes payable from an interest in an asset that depends on legislation for its existence because there is no juridical or regulatory experience implementing and interpreting the legislation or similar legislation in Canada. Because the Investment Asset is a creation of the FHPA, any judicial determination interpreting the FHPA or the Investment Asset might have an adverse effect on a holder of Senior Notes' investment in the Senior Notes.

Potential difficulties in enforcing civil liabilities against the Province of Ontario may arise.

Under the *Proceedings Against the Crown Act* (Ontario), the remedies of injunction and specific performance are not available against the Crown, nor may an order for execution or attachment be made against the Crown, although the remedy of damages is available. Nothing in the Change of Law Protection Agreement or the Program Agreements affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario). As a result, if the Province of Ontario fails to comply with the Change of Law Protection Agreement, the Indenture Trustee's ability to obtain an effective remedy against the Province of Ontario is limited and holders of Senior Notes may lose some or all of their investments in the Senior Notes or experience significant delays in recovering their investments.

Risks Associated with the Unusual Nature of the Investment Asset

Clean Energy Adjustments will not be payable until May 1, 2021 and until such time the IESO will be the sole source of funds for payment on the Senior Notes. Amounts paid by the IESO are not available to pay principal on the Senior Notes.

During the Moratorium Period, no Clean Energy Adjustments are permitted to be collected from Specified Consumers. During the Moratorium Period, a holder of Senior Notes must rely for payment by the Issuer of interest on the Senior Notes, and the Issuer must rely for payment of all of its Carrying Costs, upon the IESO who is obligated under the Regulations to pay these Carrying Costs **to the Issuer**. The amounts paid by the IESO **with respect to Carrying Costs** cannot be applied on account of principal on the Senior Notes. The IESO has granted the Issuer a first-priority security interest in all its accounts receivable from Electricity Vendors, which includes the amounts receivable by the IESO from Electricity Vendors with respect to the global adjustment charge, as security for the performance of its regulatory obligation to pay the ~~Issuer's~~ Carrying Costs **to the Issuer**. The IESO also has a $2 billion unsecured credit facility agreement with the Ontario Financing Authority, expiring September 30, 2022, which can be used to pay the ~~Issuer's~~ Carrying Costs **to the Issuer**. There can be no assurance that the IESO will continue to have sufficient funds available to pay the ~~Issuer's~~ Carrying Costs **to the Issuer** during the Moratorium Period. If the Issuer enforces the security granted to the Issuer by the IESO during this period, there can be no assurance that the IESO's accounts receivable from Electricity Vendors will be sufficient to pay the ~~Issuer's~~ Carrying Costs **to the Issuer** and a holder of Senior Notes may suffer material payment delay on the Senior Notes during the Moratorium Period.

The Issuer's ability to enforce security granted by the IESO may be significantly impaired or delayed.

Under various Canadian bankruptcy, insolvency and restructuring statutes or Canadian federal or provincial receivership laws, including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Canada Business Corporations Act*, the *Winding-up and Restructuring Act*, and various provincial corporate statutes (collectively, "**Canadian Insolvency and Restructuring Laws**"), the Issuer's ability to enforce security granted by the IESO may be significantly impaired or delayed. In view of the broad discretionary powers of courts under Canadian Insolvency and Restructuring Laws, it is not possible to predict how long payments of Carrying Costs by the IESO or enforcement of any letter of credit or performance guarantee provided by the IESO could be delayed following commencement of a proceeding under Canadian Insolvency and Restructuring Laws by the IESO or whether or when the Issuer would be able to repossess or dispose of the assets over which it holds a security interest. Canadian Insolvency and Restructuring Laws also contemplate the granting of super priority security interests or charges (which could be in priority to the security of existing secured creditors) on the assets of the debtor company to secure the repayment of any amounts to be borrowed to facilitate the insolvency proceeding, any amounts owing for the fees and costs of professionals involved in the insolvency proceeding, obligations of directors of the company with respect to their statutory liabilities and sometimes other amounts.

Canadian Insolvency and Restructuring Laws also contain provisions enabling an obligor to prepare and file a proposal or a plan of arrangement or reorganization for consideration by all or some of its creditors, to be voted on by the various classes of creditors affected thereby. Such a restructuring proposal or plan of arrangement or reorganization, if accepted by the requisite majority of each class of affected creditors and if approved by the relevant Canadian court, would be binding on all creditors of the applicable obligor within the affected classes, including the Issuer, whether or not the Issuer votes in favour of the restructuring proposal or plan of arrangement or reorganization. Such a proposal or plan of arrangement or reorganization may have the effect of compromising certain rights available to the Issuer with respect to the payment of Carrying Costs or enforcement of any security provided by the IESO.

A holder of Senior Notes may experience material payment delays because the source of funds for payment after the Moratorium Period is limited.

A holder of Senior Notes may suffer material payment delays on the Senior Notes if the collateral securing the Senior Notes is insufficient to pay the accrued interest on and the principal amount of those Senior Notes in full. During the Moratorium Period, a holder of Senior Notes must rely for payment by the Issuer of interest on the Senior Notes, and the Issuer must rely ~~for payment of~~**on the IESO for the funds necessary to pay** its Carrying Costs, upon

the IESO who is obligated under the Regulations to pay these Carrying Costs **to the Issuer**. Amounts paid by the IESO are not available to pay principal on the Senior Notes. After the Moratorium Period, the only source of funds for payments of interest on and principal of the Senior Notes will be the collateral. The collateral for the Senior Notes will include:

- the Investment Interest, including the right to impose, bill, collect and receive Clean Energy Adjustment amounts, inclusive of the True-up Amount;
- the cash and investments on deposit in the accounts held by the Indenture Trustee; and
- the Issuer's rights under various contracts described in this confidential shelf offering memorandum and under the FHPA.

The Senior Notes will not be insured or guaranteed by the Province of Ontario, the IESO, OPG or any of their respective affiliates, the Indenture Trustee or any other person or entity, except pursuant to the Limited Guarantee provided by the Province of Ontario upon the occurrence of a Protection Event. See *"Change of Law Protection Agreement"*. The Senior Notes will be nonrecourse obligations, secured only by the collateral. Delays in payment on the Senior Notes might result in a reduction in the market value of the Senior Notes and, therefore, the value of a holder's investment in the Senior Notes.

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt or general obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. However, insofar as the Province of Ontario or any such political subdivision, agency or instrumentality is a Specified Consumer, such governmental entity will be obligated, in its capacity as a Specified Consumer, to pay Clean Energy Adjustment amounts that will be collected and remitted to the Issuer in respect of its Investment Interest securing the Senior Notes.

A holder of Senior Notes must rely for payment of principal of and interest on the Senior Notes solely upon the FHPA, rights to enforcement of the FHPA and of various agreements described in this confidential shelf offering memorandum, collections of Clean Energy Adjustment amounts and cash and investments on deposit in the related accounts held pursuant to the Master Trust Indenture.

The Clean Energy Adjustment may not be billed after April 30, 2047, unless further regulations to extend that date are passed.

The Clean Energy Adjustment may not be billed to Specified Consumers after April 30, 2047, unless further regulations to extend that date are passed. If Clean Energy Adjustment amounts billed through this period are not sufficient to repay the Senior Notes in full and further regulations to extend this date are not passed, apart from amounts in the capital accounts, if any, no other funds will be available to pay the unpaid balance due on the Senior Notes.

Foreclosure of the Indenture Trustee's lien on the Investment Interest securing the Senior Notes might not be practical and acceleration of the Senior Notes before maturity might have little practical effect.

Under the Master Trust Indenture, the Indenture Trustee on behalf of the holders of Senior Notes and other creditors has the right to foreclose or otherwise enforce the lien granted to the Indenture Trustee by the Issuer on the collateral securing the Senior Notes. However, in the event of foreclosure, there is likely to be a limited market, if any, for the collateral. Therefore, foreclosure might not be a realistic or practical remedy. Moreover, although principal of the Senior Notes will be due and payable upon acceleration of the Senior Notes before maturity, under the Regulations, the amount of the Clean Energy Adjustment may not be increased to take into account such acceleration (subject to limited exceptions depending on the Fair Allocation Amount at the time). As a result, this limitation on increases to the Clean Energy Adjustment at the time of any acceleration of the Senior Notes prior to maturity will result in principal of the Senior Notes being paid on acceleration as funds become available. However, upon such acceleration, the priority of principal payments to creditors of the Issuer will result in all accelerated Senior Notes being repaid in full before any further payments of principal are made to holders of subordinated indebtedness of the

Issuer. **In the event of an acceleration, holders of Senior Notes may be paid sooner or later than originally expected.**

The Issuer may issue multiple Series of Senior Notes secured by the Investment Interest and some decisions affecting holders of Senior Notes may require the approval of all Series.

The Issuer may issue multiple Series of Senior Notes all of which will be secured by the collateral securing the Senior Notes. The Issuer may not issue additional Series of Senior Notes if the issuance would not satisfy the Rating Agency Condition and certain other conditions precedent in the Master Trust Indenture. See *"Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations"*. If additional Series of Senior Notes are issued, Clean Energy Adjustment amounts collected by or for the benefit of the Issuer will be prorated among the Series of Senior Notes based on the respective amounts of interest and principal due and payable or required to be accumulated in respect of each Series of Senior Notes. Any issuance of additional Series of Senior Notes by the Issuer could cause reductions or delays in payment on the Senior Notes. In addition, some matters relating to the Senior Notes issued by the Issuer may require the vote of the holders of all Series of Senior Notes. The interests of holders of a particular Series of Senior Notes in these votes might conflict with the interests of the holders of another Series of Senior Notes. Thus, these votes could result in an outcome that is materially unfavorable to holders of a particular Series of Senior Notes.

The Master Trust Indenture contains Events of Default (other than those pertaining to the insolvency of the Issuer or invalidity of the Change of Law Protection Agreement) that can only be declared by Debtholders who hold at least 25% of the outstanding Controlling Class Obligations. If any such Event of Default has occurred and is continuing, Debtholders who hold at least 50% of the outstanding Controlling Class Obligations may accelerate all Issuer Funding Obligations (other than Derivative Funding Obligations). However, it is possible for individual Series of Senior Notes to have their own acceleration events such that those individual Series of Senior Notes may be accelerated while other Series of Issuer Funding Obligations would not be accelerated. In such a case, (i) the allocation of Available Collections to the holders of accelerated Series of Issuer Funding Obligations in a Class would be higher relative to the non-accelerated Series of Issuer Funding Obligations of that Class than it would otherwise be, and (ii) after payment in full of accelerated Senior Notes and other Senior Funding Obligations and once all amounts due and payable on non-accelerated Senior Notes and other Senior Funding Obligations have been satisfied on any principal payment date, amounts remaining for payment of principal would be allocated to the repayment of principal on both accelerated and non-accelerated subordinated debt, as applicable. In certain cases, a declaration of acceleration or an automatic acceleration may also be rescinded by Extraordinary Resolution if (i) the Issuer has paid all overdue interest, principal that has become due (other than by reason of acceleration) on Controlling Class Obligations and other amounts set out in the Master Trust Indenture, and (ii) all Events of Default (other than non-payment of principal) have been cured or waived. See *"Capital Markets Platform — Acceleration and Remedies — General"*.

If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected.

Under certain circumstances it is possible that all outstanding Senior Notes will be accelerated as a Class or that certain Series of Senior Notes will be accelerated while other Series of Senior Notes will not be accelerated. See *"Capital Markets Platform – Acceleration and Remedies"*. The possibility of certain Series of Senior Notes accelerating while other Series of Senior Notes do not accelerate would arise if (i) an Event of Default occurs but Noteholders holding at least 50% of all outstanding Senior Notes do not approve the acceleration of all outstanding Senior Notes, and (ii) holders of Senior Notes of a particular Series approve the acceleration of the Senior Notes of that Series by the requisite majority of holders of that Series as set out in the applicable supplemental indenture for that Series.

If all Senior Notes are accelerated the application of available funds will be as described under *"Capital Markets Platform -- Acceleration and Remedies"* for all Senior Notes. It is possible that holders of 50% or more of the outstanding principal balance of all Senior Notes will approve the acceleration of all Senior Notes even if holders of a particular Series of Senior Notes do not vote in favour of the acceleration of the Senior Notes of that Series.

If only certain Series of Senior Notes are accelerated, then the outstanding principal balance of those Series of Senior Notes will become immediately due and payable but the payment due dates of those Series of Senior Notes that have not been accelerated will not change. In this case, the application of available funds will continue as described under *"Capital Markets Platform -- Payment Waterfalls Prior to Acceleration"*.

Where all Series of Senior Notes or only certain Series of Senior Notes are accelerated, available funds that would otherwise be used to pay the principal amount of subordinated indebtedness will be applied to repay principal of the accelerated Senior Notes. This could result in a holder of Senior Notes that have been accelerated receiving payment of principal sooner than expected. If a Series of Senior Notes has not been accelerated, the payment of principal on such Senior Notes should not occur earlier than expected as the payment due dates for such Senior Notes will not have been accelerated.

Where all Series of Senior Notes or only certain Series of Senior Notes are accelerated, available funds that would otherwise be used to pay the principal amount of the Senior Notes in accordance with the original repayment schedules of such Senior Notes may be applied to repay principal of the accelerated Senior Notes *pari passu* with the principal due on all outstanding Senior Notes (subject to the payment priority given to Warehouse Obligations). If accelerated Senior Notes were not expected to be repaid before a particular Series of Senior Notes at the time the accelerated Senior Notes were issued, the acceleration of such Senior Notes could result in the holder of a particular Series of Senior Notes receiving payment of principal later than expected.

The Issuer may have a co-ownership interest in the Investment Asset with other Financing Entities.

The FHPA authorizes the establishment of one or more Financing Entities that may incur Funding Obligations for the purpose of acquiring Investment Interests. The Master Trust Indenture does not contain any restrictions on the establishment of other Financing Entities or any restrictions on the Transfer by the IESO of specified portions of the Regulatory Asset to other Financing Entities. If additional Funding Obligations are incurred by other Financing Entities to acquire an Investment Interest, the Investment Asset will be co-owned by all Financing Entities (including the Issuer) and consequently Clean Energy Adjustment amounts collected by or for the benefit of the Financing Entities will be prorated among all Investment Interest owners based on the respective amounts of Clean Energy Adjustment amounts invoiced and not yet paid. Any issuance of Funding Obligations by other Financing Entities could cause reductions or delays in payment on the Senior Notes.

If the Clean Energy Adjustment amounts and other funds held in the Issuer Accounts results in investment losses or the investments become illiquid, a holder of Senior Notes might receive payment of principal of and interest on the Senior Notes later than expected.

Funds held in the Issuer Accounts will be invested in Eligible Investments. Eligible Investments include, among other categories, money market funds having a rating in the highest investment category from each applicable Rating Agency. Although investments in these money market funds have traditionally been viewed as highly liquid with a low probability of principal loss, illiquidity and principal losses have been experienced by investors in certain of these funds as a result of disruptions in the financial markets in recent years. If investment losses or illiquidity are experienced, a holder of Senior Notes might experience a delay in payments of principal and interest and a decrease in the value of their investment in the Senior Notes.

Servicing, Operating and Consumer Risks

Payments on the Senior Notes depend on the performance of Electricity Vendors and the IESO.

The Issuer's receipt of Clean Energy Adjustment amounts, which will be used to make payments on the Senior Notes, will depend in part on the skill and diligence of Electricity Vendors and the IESO and their respective successors in performing their respective duties under the FHPA and, with respect to the IESO, the Master Transfer and Servicing Agreement.

The FHPA and the Master Transfer and Servicing Agreement impose new duties and obligations ~~of~~on the IESO and Electricity Vendors. There can be no assurances that the new duties and obligations of the IESO and the Electricity Vendors will be assumed and implemented without difficulty and in accordance with the provisions of the FHPA and

the Master Transfer and Servicing Agreement. If the IESO ceases to perform, or inadequately performs, its collection, remittance, forecasting and other functions under the terms of the FHPA and the Master Transfer and Servicing Agreement, it might be difficult to enforce these obligations against the IESO. While the Indenture Trustee has the right to replace the IESO, as servicer, on an Event of Default upon receipt of an Ordinary Resolution, it might be difficult to find a replacement for the IESO or a successor servicer. Also, any successor servicer might have less experience and ability than the IESO and might experience difficulties in collecting Clean Energy Adjustment amounts or providing forecast information, resulting in delays or disruptions to the setting and collection of the Clean Energy Adjustment. Any successor servicer would likely charge fees for the provision of such services and such fees could be material.

If an Electricity Vendor **or the IESO** fails to collect or remit sufficient Clean Energy Adjustment amounts for any reason, then the IESO's payments to the Issuer in respect of the Clean Energy Adjustments might be delayed or reduced. In that event, payments on the Senior Notes might be delayed or reduced. In addition, any person into which the IESO may be merged, converted or amalgamated or that may succeed to the properties and assets of the IESO substantially as a whole will assume the role of servicer under the Master Transfer and Servicing Agreement, subject only to the satisfaction of the conditions set forth therein. These conditions do not include either the consent of holders of Senior Notes or satisfaction of the Rating Agency Condition.

Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and as Manager.

The FHPA imposes new duties and obligations ~~of~~**on** OPG, as Financial Services Manager, and the Program Agreements impose new duties and obligations ~~of~~**on** OPG, as Manager. There can be no assurances that the new duties and obligations of OPG will be assumed and implemented without difficulty and in accordance with the provisions of the FHPA and the Program Agreements. If OPG, as Financial Services Manager, ceases to perform, or inadequately performs, its statutory duties under the FHPA, including determining the Clean Energy Adjustment (inclusive of the True-up Amount), the Indenture Trustee will have no right to replace OPG as Financial Services Manager. If OPG ceases to perform, or inadequately performs, its management duties under the Management Agreement, the Indenture Trustee has the right to replace the Manager on an Event of Default upon receipt of an Ordinary Resolution but it might be difficult to find a replacement for OPG or a successor manager. Also, any successor manager might have less experience and ability than OPG, resulting in delays or disruptions to the setting and collection of the Clean Energy Adjustment. Any successor manager would likely charge fees for the provision of such services and such fees could be materially higher than the fees charged by OPG.

Inaccurate consumption forecasting or unanticipated delinquencies or write-offs might reduce or delay scheduled payments on the Senior Notes.

Clean Energy Adjustment amounts will be calculated based upon a forecast of Specified Consumer usage to be newly developed based on forecast information provided by the IESO. Under the Regulations, the IESO is required to provide ~~a forecast of~~ **forecast information to the OEB and the Issuer, which forecast information will be used by the OEB to forecast** electricity consumption of Specified Consumers **in respect of the relevant period**. The amount of the Clean Energy Adjustment collected in any period will depend in part on actual electricity usage by Specified Consumers and the amount of collections and write-offs for Specified Consumers. If the IESO or a successor inaccurately forecasts electricity consumption or if OPG uses inaccurate consumer delinquency or write-off data when setting or adjusting the Clean Energy Adjustment, there could be a shortfall or material delay in collections, which might result in missed or delayed payments of principal and interest on the Senior Notes.

Inaccurate forecasting of electricity consumption by the IESO might result from, among other things unanticipated weather, resulting in less electricity consumption than forecast; general economic conditions being worse than expected, causing Specified Consumers to reduce their electricity consumption; the occurrence of a natural disaster, wind storm or an act of terrorism, cyber-attack or other catastrophic event unexpectedly disrupting electrical service and reducing electricity consumption; unanticipated changes in the market structure of the electric industry; Specified Consumers unexpectedly ceasing business or departing from the Province of Ontario; dramatic and unexpected changes in energy prices resulting in decreased electricity consumption; Specified Consumers consuming less electricity than anticipated because of increased energy prices, unanticipated increases in conservation efforts or unanticipated increases in electricity consumption efficiency; differences or changes in forecasting methodology; or Specified Consumers switching to alternative sources of energy, including self-generation or co-generation of

electric power in some cases without using Ontario's transmission or distribution system. Self-generators that receive no transmission or distribution service from the Province of Ontario are not liable for the Clean Energy Adjustment. The FHPA does not require exit fees to be charged to any Specified Consumers that might leave the grid to self-generate.

Inaccurate forecasting of delinquencies or write-offs by OPG could result from, among other things unexpected deterioration of the economy, the occurrence of a natural disaster, an act of war or terrorism or other catastrophic events causing greater write-offs than expected or forcing Electricity Vendors to grant additional payment relief to Specified Consumers; the failure of Electricity Vendors to submit accurate and timely information regarding their collections and write-offs; an unexpected change in law that makes it more difficult for Electricity Vendors to terminate service to nonpaying Specified Consumers, or that requires Electricity Vendors to apply more lenient credit standards for Specified Consumers.

Changes to billing and collection practices may reduce the amount of funds available for payments on the Senior Notes.

The methodology for determining the amount of the Clean Energy Adjustment invoiced to each Specified Consumer is specified in FHPA. None of OPG, the IESO or any Electricity Vendor, as it performs its billing and collection functions on the Issuer's behalf, may change this methodology. However, subject to applicable law, tariff and regulatory requirements, billing and collection arrangements with each Specified Consumer may be changed in a manner that delays or reduces the payments to the Issuer in respect of the Clean Energy Adjustment**, which might result in missed or delayed payments of principal and interest on the Senior Notes**.

Limits on rights to terminate service to Specified Consumers might make it more difficult to collect the Clean Energy Adjustment.

To the extent that Specified Consumers do not pay for their electricity service, Electricity Vendors will not be able to collect the Clean Energy Adjustment from these Specified Consumers. Electricity Vendors have the ability to terminate service for non-payment subject to the terms of their conditions of service, which conditions must be consistent with the OEB's rules regarding disconnection. Under OEB rules, Electricity Vendors are prohibited from disconnecting or threatening to disconnect homes for non-payment during the winter from November 15 to April 30 every year. Historical rates of non-payment are included in the calculations of the Clean Energy Adjustment, but increases in the rates of non-payment would reduce the Clean Energy Adjustment until it is adjusted through the True-up Amount in a subsequent Reference Period.

It might be difficult for the Issuer to collect the Clean Energy Adjustment from Specified Consumers

Under the FHPA, the Issuer may bring an action against a Specified Consumer for non-payment of the Clean Energy Adjustment, but only an Electricity Vendor may terminate service for failure to pay the Clean Energy Adjustment. The FHPA provides that partial payment of electricity invoices shall be allocated pro rata among the Clean Energy Adjustment and other charges on the invoice. Since the Issuer does not have the threat of termination of service available to enforce payment of the Clean Energy Adjustment, it would need to rely on the Electricity Vendor to threaten to terminate service for nonpayment of other portions of the electricity invoice. This inability might reduce the value of a holder's investment in the Senior Notes.

Delinquent or partial payments of electricity bills may make payments on the Senior Notes occur later than expected.

The amount and the rate of collection of the Clean Energy Adjustment, including the True-up Amount, will impact whether there is a delay in the scheduled payments on the Senior Notes. If the Clean Energy Adjustment amounts are collected at a slower rate than expected, OPG might have to make adjustments to the Clean Energy Adjustment for a subsequent Reference Period through the True-up Amount. ~~If~~**Until such adjustments are made or, if** those adjustments are not timely and accurate, there may be a delay in payments of principal and interest and a decrease in the value of the Senior Notes.

Indemnification obligations of OPG and the IESO are limited and might not be sufficient to protect the investments in the Senior Notes.

OPG will be obligated under the Management Agreement to indemnify the Issuer and the Indenture Trustee only in specified circumstances. Likewise, the IESO will be obligated under the Master Transfer and Servicing Agreement and the Acknowledgement and Indemnity Agreement to indemnify the Issuer and the Indenture Trustee only in specified circumstances.

Furthermore, neither OPG nor the IESO may have sufficient funds available to satisfy its indemnification obligations, and the amount of any indemnification paid by OPG or the IESO, as applicable, might not be sufficient for holders of Senior Notes to recover all of their investment in the Senior Notes. In addition, if OPG or the IESO becomes obligated to provide indemnification, the ratings on the Senior Notes might be downgraded as a result of the circumstances causing the breach.

Power outages could impair payment of the Senior Notes.

Ontario experiences seasonal conditions typical of southeastern Canada. Summers are usually hot with high temperatures in excess of 20°~~C~~ **Celsius**. Winters include snow and ~~icing~~**icy** conditions that can be damaging to overhead power lines. Transmission and/or distribution and generation facilities could be damaged depending on weather conditions and usage of electricity could be interrupted temporarily or for long periods of time, reducing the Clean Energy Adjustment amounts collected in one or more Reference Periods.

Technological changes that make alternative energy sources more attractive in the future or significant population fluctuations may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment.

Technological developments and/or tax or other economic incentives might result in the introduction of economically attractive, more fuel-efficient, more environmentally-friendly and/or more cost-effective alternatives to purchasing electricity through Electricity Vendors for increasing numbers of Specified Consumers. Manufacturers of self-generation facilities may develop smaller-scale, more fuel-efficient on-site generating and/or storage units that can be cost-effective options for a greater number of Specified Consumers. Moreover, an increase in self-service power may result if extreme weather conditions result in regular shortages of grid-supplied energy or if other factors cause grid-supplied energy to be less reliable. Specified Consumers who self-generate their electricity may use it to offset, or eliminate, their consumption from the grid thereby reducing, or eliminating, the Clean Energy Adjustment amounts payable by such Specified Consumers. Technological developments might allow greater numbers of Specified Consumers to reduce or even altogether avoid the payment of Clean Energy Adjustment amounts under such provisions through on-site generation, including where coupled with on-site storage capacity. This might reduce the kilowatt-hours of electric energy delivered to Specified Consumers by means of an Electricity Vendor's system, thereby causing Clean Energy Adjustment charges to the remaining Specified Consumers to increase. Such increases may reduce the collectability of the Clean Energy Adjustment.

Unexpected significant population decreases in the Province of Ontario or Specified Consumers unexpectedly ceasing business or departing from the Province of Ontario may adversely affect the amount of the Clean Energy Adjustment to be invoiced, collected and recovered from Specified Consumers. The decrease in the population of the Province of Ontario may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment. The increased impact on the remaining Specified Consumers could lead to increased potential consumer defaults and delays, billing lags and write-offs or variations in billing due to variations in electricity consumption.

Insolvency-Related Risks

If the Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed.

Trusts such as the Issuer ordinarily cannot seek protection under the principal Canadian Insolvency and Restructuring Laws (other than a receivership). However, in view of the broad discretionary powers of courts under Canadian Insolvency and Restructuring Laws, the courts' inherent jurisdiction and otherwise, it is not possible to state with certainty that the Issuer could not become subject to Canadian Insolvency and Restructuring Laws. If the

Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed. It is not possible to predict how long payments under the Senior Notes could be delayed following commencement of a proceeding under Canadian Insolvency and Restructuring Laws by the Issuer or whether or when the Indenture Trustee would be able to enforce upon or dispose of the assets over which it holds a security interest. Canadian Insolvency and Restructuring Laws also contemplate the granting of super priority security interests or charges (which could be in priority to the security of existing secured creditors) on the assets of the debtor company to secure the repayment of any amounts to be borrowed to facilitate the insolvency proceeding, any amounts owing for the fees and costs of professionals involved in the insolvency proceeding, obligations of directors of the company with respect to their statutory liabilities and sometimes other amounts.

Canadian Insolvency and Restructuring Laws also contain provisions enabling an obligor to prepare and file a proposal or a plan of arrangement or reorganization for consideration by all or some of its creditors, to be voted on by the various classes of creditors affected thereby. Such a restructuring proposal or plan of arrangement or reorganization, if accepted by the requisite majority of each class of affected creditors and if approved by the relevant Canadian court, would be binding on all creditors of the applicable obligor within the affected classes, including the Indenture Trustee and the Noteholders, whether or not the Indenture Trustee or any holders of Senior Notes votes in favour of the restructuring proposal or plan of arrangement or reorganization. Such a proposal or plan of arrangement or reorganization may have the effect of compromising certain rights available to the Indenture Trustee and the holders of Senior Notes under the Master Trust Indenture or in respect of the collateral.

If the IESO were to become subject to Canadian Insolvency and Restructuring Laws, the Transfers of specified portions of the Regulatory Asset by the IESO may not be respected as true sales of the Regulatory Asset.

Ordinarily, the interests of the Issuer as acquirer of an Investment Interest may be subordinate to statutory deemed trusts and other non-consensual liens, trusts and claims created or imposed by statute or rule of law on the property of the IESO arising prior to the time the corresponding Regulatory Asset was Transferred to the Issuer. This could reduce the amounts that may be available to the Issuer in respect of the Investment Interest and, consequently, the holders of Senior Notes. Section 27(3) of the ~~FHPA~~**Act** provides that at the time of the Transfer of the Regulatory Asset to a Financing Entity, such Transfer shall be deemed to have been perfected, vested, valid and binding against the IESO and all other persons who have claims of any kind against the IESO. Section 27(4) of the ~~FHPA~~**Act** provides that section 27(3) applies regardless of whether the persons who have claims have received notice of the Transfer and the property rights and interests acquired by the Transferee shall have priority over any liens in favour of those persons. However, in the event that the IESO becomes insolvent, its insolvency would be subject to federal bankruptcy and insolvency legislation and the effect of these provisions of the ~~FHPA~~**Act** in such circumstances is untested. The Transfers of the Regulatory Asset to the Issuer will be made in accordance with section 26 of the ~~FHPA~~**Act**. Section 27(1) of the ~~FHPA~~**Act** provides that a Transfer of a specified portion of the Regulatory Asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the Transferee. Therefore, the Investment Interest would not form part of the assets of the IESO and would not be available to the creditors of the IESO. However, with respect to certain insolvency events relating to the IESO, it is possible that an insolvency administrator or a creditor of the IESO may attempt to argue that the transactions between the IESO and the Issuer are not true sales of the Regulatory Asset. This position, if accepted by a court applying federal bankruptcy and insolvency laws, could prevent timely or ultimate payment of amounts due to the Issuer and, consequently, due from the Issuer to holders of Senior Notes.

These risks are in addition to the insolvency risks of the IESO noted above under *"Risks Associated with the Unusual Nature of the Investment Asset"*.

If the IESO or any Electricity Vendor were to become subject to Canadian Insolvency and Restructuring Laws, collections that have been commingled may be unrecoverable and the Issuer's ability to enforce its rights against the IESO or such Electricity Vendor may be significantly impaired or delayed.

Under the Master Transfer and Servicing Agreement, collections received by the IESO are to be held by the IESO in a segregated account. Until Clean Energy Adjustments are remitted to the IESO by Electricity Vendors, amounts collected by the Electricity Vendors are to be held by Electricity Vendors in segregated accounts. If the IESO or any Electricity Vendor fails to hold collections in a segregated account, then to the extent that funds are commingled and

used for the benefit of the IESO or such Electricity Vendor prior to making required deposits, in the event of the liquidation, insolvency, receivership or administration or other proceeding under Canadian Insolvency and Restructuring Laws of the IESO or the Electricity Vendor, the ability of the Issuer to enforce its rights to the collections in a timely manner may be adversely affected and collections that have been commingled may be unrecoverable. In the event of the insolvency of the IESO, the right of the Issuer under the Master Transfer and Servicing Agreement to appoint a replacement servicer may be stayed or prevented.

These risks are in addition to the insolvency risks of the IESO noted above under *"Risks Associated with the Unusual Nature of the Investment Asset"*.

If OPG were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to enforce its rights against the Manager may be significantly impaired or delayed and the Issuer's assets and liabilities may be substantively consolidated with those of OPG.

Section 53.1 of the *Electricity Act, 1998* (Ontario), as amended by the *Fair Hydro Act, 2017* (Ontario), provides that, regardless of whether a Financing Entity is or is not a subsidiary of OPG: (a) the assets and liabilities of the Financing Entity shall not form part of the assets and liabilities of OPG or any of its subsidiaries (excluding the Financing Entity if it is a subsidiary); and (b) the assets and liabilities of OPG or any of its subsidiaries (excluding the Financing Entity if it is a subsidiary) shall not form part of the assets and liabilities of the Financing Entity. However, in the event that OPG becomes insolvent, its insolvency would be subject to federal bankruptcy and insolvency legislation and the effect of these provisions of the *Electricity Act, 1998* (Ontario), as amended by the *Fair Hydro Act, 2017* (Ontario), in such circumstances is untested. In particular, in the event of the liquidation, insolvency, receivership or administration or other proceeding under Canadian Insolvency and Restructuring Laws of OPG, the ability of the Issuer to enforce certain of its rights in and to the Investment Interest in a timely manner may be adversely affected. Such affected rights may include the right to appoint a replacement Manager. It is possible that the creditors of OPG may attempt to substantively consolidate the assets and liabilities of OPG and the Issuer. The Issuer and OPG have taken steps to minimize this risk. However, no assurance can be given that, in the case of the insolvency of OPG, a court would not order that the Issuer's assets and liabilities be substantively consolidated with those of OPG. Such substantive consolidation would result in all creditors of OPG and the Issuer being paid out of a common pool of assets, with no distinction as to which assets are property of OPG and which assets are property of the Issuer, and could cause payment of the claims of the beneficial owners of the Senior Notes to be subject to substantial delay and to adjustment in timing and amount.

If the Issuer Trustee were to become subject to Canadian Insolvency and Restructuring Laws, the assets and liabilities of the Issuer may be substantively consolidated with the Issuer Trustee.

In the case of the insolvency of the Issuer Trustee, it is possible that the creditors of the Issuer Trustee may attempt to argue that the assets of the Issuer are held by the Issuer Trustee in its personal capacity (and not as trustee of the Issuer) and are to be available to the creditors of the Issuer Trustee. Assuming that the Issuer Trustee deals with the assets of the Issuer in accordance with the provisions of the Declaration of Trust, the assets of the Issuer would not constitute property of the Issuer Trustee available for distribution to the creditors of the Issuer Trustee. An insolvency administrator appointed with respect to the Issuer Trustee may be able to recover from the property of the Issuer a portion of its costs that are incurred until a replacement for the Issuer Trustee, as trustee of the Issuer, is appointed or pending any proceeding in respect of the property of the Issuer. Such costs may exceed the compensation provided for in the Declaration of Trust.

If a Specified Consumer were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to collect Clean Energy Adjustment amounts from such Specified Consumer may be adversely affected.

The application to a Specified Consumer of Canadian Insolvency and Restructuring Laws and related provincial laws could also affect the ability to collect the Clean Energy Adjustments due for the period prior to the insolvency. Federal bankruptcy laws generally discharge bankrupt Specified Consumers who are individuals of their obligation to pay Clean Energy Adjustment amounts due for the period prior to the individual being discharged from bankruptcy.

If amounts in the Issuer Accounts for any Series are invested with entities that become subject to insolvency proceedings, the Issuer's ability to make payments to holders of Senior Notes may be adversely affected.

Amounts that are on deposit from time to time in the Issuer Accounts for any Series may be invested in Eligible Investments. If insolvency proceedings were to be commenced by or against any entity with which an Eligible Investment is made or which is an issuer, obligor or guarantor of any Eligible Investment, the ability of the Indenture Trustee to enforce its rights in respect of any such Eligible Investment and the ability of the Issuer to make payments to holders of Senior Notes in a timely manner may be adversely affected. In order to reduce this risk, the Eligible Investments must satisfy certain ratings criteria. See *"Rating Agency Condition"*.

Other Risks

The credit ratings are not an indication of the expected rate of payment of principal on the Senior Notes.

The Senior Notes will be rated by one or more established rating agencies. A rating is not a recommendation to buy, sell or hold the Senior Notes. The ratings merely analyze the probability that the Issuer will repay the total principal amount of each series of Senior Notes at its final principal payment date (which is later than the Principal Payment Date(s)) and will make timely interest payments. The ratings are not an indication that the rating agencies believe that principal payments are likely to be paid on time according to any expected sinking fund schedule. Thus, the Issuer might repay the principal of a holder of Senior Notes later than expected, which might materially reduce the value of a holder's investment in the Senior Notes.

If the ratings on the Senior Notes are withdrawn or revised downward, the value of a holder's investment in the Senior Notes may be adversely affected.

There is no assurance that any credit rating will remain in effect for any given period of time. The ratings on the Senior Notes may be withdrawn or revised downward at any time without notice, which may have an adverse effect on the market price of the Senior Notes. A rating is not a recommendation to buy, sell or hold the Senior Notes. The ratings merely analyze the probability that the Issuer will repay the total principal amount of each series of Senior Notes at its final principal payment date (which is later than the Principal Payment Date(s)) and will make timely interest payments. The ratings are not an indication that the rating agencies believe that principal payments are likely to be paid on time according to any expected sinking fund schedule. Ratings on the Senior Notes may be lowered, qualified or withdrawn at any time without notice.

The credit ratings of the IESO, OPG and the Province of Ontario might affect the market value of the Senior Notes.

The Senior Notes will not be insured or guaranteed by the Province of Ontario, IESO, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*. Although neither the IESO nor OPG are obligors in respect of the Senior Notes, a downgrading of the current credit ratings of the IESO, OPG or the Province of Ontario might have an adverse effect on the market value of the Senior Notes, particularly, with respect to the IESO, during the Moratorium Period when no Clean Energy Adjustments are permitted to be collected from Specified Consumers. Credit ratings might change at any time. A rating agency has the authority to revise or withdraw its rating based solely upon its own judgment.

The absence of an established market for the Senior Notes might limit the ability to resell or refinance the Senior Notes.

There is no public market for the Senior Notes, and the Issuer does not intend to apply for a listing of the Senior Notes on any stock exchange. There can be no assurance as to the liquidity of the trading market for the Senior Notes or that a trading market for the Senior Notes will develop.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of such Senior Notes with liquidity for their investment or that it will continue for the term of such Senior Notes. Accordingly, purchasers of the Senior

Notes may be required to bear the financial risk of investing in the Senior Notes until the maturity date of the Senior Notes.

If an active market does develop for the Senior Notes, the market price on the Senior Notes will depend on many factors including, but not limited to, (i) the Issuer's credit rating and the credit rating of the Senior Notes; (ii) the prevailing interest rates being paid on similar securities; (iii) the Issuer's financial condition and future prospects; and (iv) the overall condition of the economy and the financial markets. The condition of the financial markets and prevailing interest rates have fluctuated in the past and are likely to fluctuate in the future. Fluctuations could have an adverse effect on the market price of the Senior Notes.

The Financial Services Manager has the ability to determine whether to refinance Senior Notes maturing after May 2024 through the issuance of another Series of Senior Notes. However, there can be no assurance that Senior Notes can be refinanced on or before their applicable Principal Payment Default Date.

Restrictions on resale might limit the ability to resell the Senior Notes.

The Senior Notes may not be offered or sold, directly or indirectly, in Canada or to or for the account of any Canadian resident except, in the case of sales made in any province of Canada, pursuant to an exemption from the prospectus requirements under applicable securities laws. The Issuer currently does not intend to file a prospectus or similar document with any securities regulatory authority in Canada qualifying the resale of the Senior Notes to the public in any province of Canada in connection with any Offering of Senior Notes. As a result, the Senior Notes purchased pursuant to this confidential shelf offering memorandum will be subject to restrictions on resale, and may only be resold if a further statutory exemption may be relied upon by the investor or if an appropriate discretionary order or consent is obtained pursuant to applicable securities laws. See "Restrictions on Resale".

REPRESENTATIONS AND AGREEMENTS OF PURCHASERS

The distribution of the Senior Notes in Canada is being made on a private placement basis. By purchasing Senior Notes and accepting a purchase confirmation in respect thereof, a purchaser in Canada will be deemed to have represented to the Issuer and the Agents that, as at the date of such purchaser's purchase of Senior Notes:

(a) none of the Issuer, the Agents or any person representing the Issuer or the Agents has made any representations to it (written or oral) with respect to the Issuer, any Offering or sale of the Senior Notes, other than the information contained in this confidential shelf offering memorandum which has been delivered to it;

(b) it is resident in a province of Canada (each an "**Offering Jurisdiction**") and is entitled under applicable securities laws of such Offering Jurisdiction to purchase the Senior Notes without the benefit of a prospectus qualified under those securities laws and any act, solicitation, conduct or negotiation directly or indirectly in furtherance of such purchase and sale has occurred only in one of the provinces of Canada;

(c) the purchaser has been provided the opportunity to receive a copy of the Master Trust Indenture and each of the Supplemental Indentures;

(d) the purchaser has reviewed and acknowledges the terms referred to below under the section entitled "Restrictions on Resale";

(e) it is basing its investment decision solely on this confidential shelf offering memorandum and not on any other information or statement concerning the Issuer or any Offering and it has not become aware of any advertisement in printed media of general and regular paid circulation (or other printed public media), radio, television or telecommunications or other form of advertisement (including electronic display) with respect to the distribution of the Senior Notes;

(f) it has been independently advised as to restrictions with respect to trading in the Senior Notes imposed by applicable securities laws in the jurisdiction in which it resides, confirms that no

representation (written or oral) has been made to it by or on behalf of the Issuer or an Agent with respect thereto, acknowledges that it is aware of the characteristics of the Senior Notes, the risks relating to an investment in the Senior Notes and of the fact that it may not be able to resell the Senior Notes except in accordance with limited exemptions under applicable securities legislation and regulatory policy and compliance with the other requirements of applicable law; and it agrees that any certificates representing the Senior Notes will bear a legend indicating that the resale of such Senior Notes is restricted; the purchaser further acknowledges that it has been advised to consult its own legal counsel in its jurisdiction of residence for full particulars of the resale restrictions applicable to it and has reviewed and acknowledges the terms referred to under the heading "Restrictions on Resale"; and the purchaser further acknowledges that if it resells the Senior Notes in compliance with applicable law it will give notice to the subsequent transferee during the restricted period noted under the heading "Restrictions on Resale" of such restrictions;

(g) it acknowledges the risks relating to an investment in the Senior Notes and it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its prospective investment in the Senior Notes, it and any accounts for which it is acting have the ability to bear the economic risks of the prospective investment and can afford the complete loss of such investment and it acknowledges that it and any accounts for which it is acting may be required to bear the financial risks of this investment for an indefinite period of time;

(h) it acknowledges that: (i) no securities commission or similar regulatory authority has reviewed or passed on the merits of the Senior Notes; and (ii) there is no government or other insurance covering the Senior Notes;

(i) it acknowledges that no person has made any oral or written representation to it that any person will re-sell or re-purchase the Senior Notes, or refund any part or all of the purchase price of the Senior Notes, or that the Senior Notes will be listed on any exchange or quoted on any quotation and trade reporting system, or that any application has been or will be made to list the Senior Notes on any exchange or quote the notes on any quotation and trade reporting system, and no person has given any undertaking to such purchaser relating to the future value or price of the Senior Notes;

(j) none of the funds being used to purchase the Senior Notes are, to the best of the purchaser's knowledge, (i) proceeds obtained by or derived, directly or indirectly, as a result of illegal activities, or (ii) being tendered on behalf of a person or entity who has not been identified to the purchaser;

(k) the funds being used to purchase the Senior Notes and advanced by or on behalf of the purchaser to the Agents do not represent proceeds of crime for the purposes of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada);

(l) the purchaser is responsible to obtain independent investment, legal and tax advice with respect to its purchase of the Senior Notes and accordingly has had the opportunity to acquire an understanding of the transaction described in this confidential shelf offering memorandum and the meanings of all the terms contained herein relevant to such purchase for the purpose of giving acknowledgements, representations and agreements under this confidential shelf offering memorandum;

(m) it (i) is an "accredited investor" (as such term is defined in NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) that is not an individual, unless such individual is also a "permitted client" (as such term is defined in NI 31-103); (ii) is either (A) purchasing the Senior Notes as principal, (B) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation of a jurisdiction of Canada (other than a trust company or trust corporation registered solely under the laws of the Province of Prince Edward Island) or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be, or (C) a person acting on behalf of a fully managed account

managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or foreign jurisdiction; and (iii) was not created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in NI 45-106;

(n) the purchaser has provided applicable certifications and/or other information or documentation to the Agents and the Issuer to evidence its status and criteria for compliance with the relevant category of "accredited investor," understands that the Agents and the Issuer may be required to verify that the purchaser satisfies such criteria, and that the purchaser may be required to provide additional information or documentation to the Agents and the Issuer to evidence such compliance;

(o) the purchaser, if resident in the Province of Québec, has agreed that all documents relating to such purchase be in English only, as more particularly described under the heading "Language of Documents". *L'acquéreur, s'il réside dans la Province de Québec, accepte que tous les documents liés à son acquisition soient en langue anglaise uniquement, tel qu'il est plus amplement décrit sous la rubrique «Langue des documents»*;

(p) it will execute, deliver and file such reports, undertakings and other documents relating to his, her or its purchase of the Senior Notes as may be required by applicable securities laws, regulations and rules, or assist the Issuer and the Agents, as applicable, in obtaining and filing such reports, undertakings and other documents;

(q) it is not a U.S. person (as such term is defined in Regulation S under the U.S. Securities Act), none of the Senior Notes are being or will be acquired, directly or indirectly, for the account or benefit of a U.S. person, the purchaser was not offered any of the Senior Notes in the United States, the purchaser did not execute or deliver any agreement in connection herewith in the United States, and the purchaser is aware that the Senior Notes have not been and will not be registered under the U.S. Securities Act or the securities laws of any State of the United States and that the Senior Notes may not be offered or sold in the United States without registration under the U.S. Securities Act or except in compliance with the requirements of an exemption from registration;

(r) if the purchaser is acquiring any Senior Notes as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such account and that it has full power to make the acknowledgements, representations and agreements contained herein on behalf of each such account;

(s) the offer and sale of the Senior Notes is conditional upon the offer and sale being exempt from the prospectus filing requirements of applicable securities law;

(t) the purchaser acknowledges that the Issuer may be required to disclose to applicable securities regulatory authorities the identity of the purchaser and any person with a beneficial interest in the Senior Notes;

(u) except for any rating reports that may have been issued by the applicable Rating Agencies, no agency, governmental authority, regulatory body, stock exchange or other entity has made any finding or determination as to the merit for investment of, nor have any such agencies or governmental authorities, regulatory bodies, stock exchanges or other entities made any recommendation or endorsement with respect to the Senior Notes;

(v) if the purchaser is:

(i) a corporation, it is duly incorporated and is validly subsisting under the laws of its jurisdiction of incorporation and has all requisite legal and corporate power and authority to purchase the Senior Notes and to make such representations and agreements as contemplated herein and has obtained all necessary approvals in respect thereof;

(ii) a partnership, syndicate or other form of unincorporated organization, it has the necessary legal capacity and authority to purchase the Senior Notes and to make such representations and agreements as contemplated herein and has obtained all necessary approvals in respect thereof; or

(iii) an individual, he or she is of the full age of majority, is a "permitted client" as such term is defined in NI 31-103 and is legally competent to purchase the Senior Notes and to make such representations and agreements as contemplated herein;

(w) the purchaser is not an "insider" of the Issuer (within the meaning of Canadian securities laws) and is not registered or required to be registered as a dealer, adviser or otherwise under the securities laws of any province of Canada (unless in either case it has specifically provided written advice to the contrary to the Issuer and to the Agents);

(x) it will, if requested by the Issuer or the Agent from whom the purchase confirmation is received, provide evidence of the basis of its above representations; and

(y) the Issuer, the Agents and others will rely upon the truth and accuracy of the foregoing acknowledgements, representations and agreements and it agrees that if any of the acknowledgements, representations or agreements deemed to have been made by its purchase of the Senior Notes are no longer accurate, it shall promptly notify the Issuer and the Agents for the applicable Offering of Senior Notes.

In addition, each purchaser of Senior Notes, by purchasing Senior Notes and accepting a purchase confirmation in respect thereof, represents to the Issuer and the Agents for the applicable Offering of Senior Notes that the purchaser:

(a) has been notified by the Issuer:

(i) that the Issuer is required to provide information pertaining to the purchaser of Senior Notes required to be disclosed in Schedule 1 of Form 45-106F1 under NI 45-l06 (including its name, address, telephone number and the number and value of securities purchased), which Form 45-106F1 the Issuer is required to file under NI 45-106;

(ii) that such personal information will be delivered to the applicable Canadian securities regulatory authorities (the "**Commissions**") in accordance with NI 45-106;

(iii) that such personal information is being collected indirectly by the applicable Commission under the authority granted to it in securities legislation;

(iv) that such personal information is being collected for the purposes of the administration and enforcement of securities legislation; and

(v) that the public official in the provinces of Canada who can answer questions about the indirect collection of such personal information is set out in Schedule A of this confidential shelf offering memorandum, and

(b) has authorized the indirect collection of the personal information by the applicable Commission.

By purchasing Senior Notes, the purchaser also acknowledges that its name and other specified information, including the number of Senior Notes it has purchased, may be disclosed to other Canadian securities regulatory authorities and become available to the public in accordance with the requirements of applicable laws and consents to the disclosure of that information. Furthermore, by purchasing the Senior Notes, the purchaser acknowledges that certain information as to its status as an "accredited investor" that the purchaser may have provided to any Agent involved in the trade may be required to be delivered by such Agent to the Issuer under the terms of an Agency

Agreement between the Issuer, OPG and the Agents referred to under "Plan of Distribution". By purchasing the Senior Notes, the purchaser consents to the disclosure of such information.

LANGUAGE OF DOCUMENTS

Upon receipt of this confidential shelf offering memorandum, each purchaser hereby confirms that it has expressly requested that all documents evidencing or relating in any way to the sale of the Senior Notes described herein (including for greater certainty any purchase confirmation or any notice) be drawn up in the English language only. *En recevant le présent document, chaque acquéreur confirme par les présentes qu'il a expressément demandé que tous les documents qui attestent la vente des débentures décrites dans les présentes ou qui s'y rapportent de quelque manière que ce soit (y compris, plus particulièrement, une confirmation d'achat ou un avis) soient rédigés en langue anglais seulement.*

RESTRICTIONS ON RESALE

The distribution of the Senior Notes in the provinces of Canada is being made on a private placement basis and is therefore exempt from the requirement that the Issuer prepare and file a prospectus with the relevant Canadian securities regulatory authorities. Accordingly, any resale of the Senior Notes must be made: (a) through an appropriately registered dealer or pursuant to an exemption from the dealer registration requirements of applicable provincial securities laws; and (b) in accordance with, or pursuant to an exemption from, the prospectus requirements of applicable provincial securities laws. These resale restrictions may in some circumstances apply to resales made outside of Canada. Purchasers are advised to seek legal advice prior to any resale of the Senior Notes.

Purchasers are advised that the Issuer does not intend to file a prospectus or similar document with any securities regulatory authority in Canada qualifying the resale of the Senior Notes to the public in any province of Canada in connection with any Offering.

Furthermore, each purchaser of Senior Notes, by its purchase thereof, will be deemed to have represented, acknowledged or confirmed, as the case may be, to the Issuer and any dealer who is involved in the sale of the Senior Notes to such purchaser that such purchaser understands that the Senior Notes are subject to transfer and resale restrictions in Canada and that the certificates representing the Senior Notes (or the relevant ownership statement under a direct registration system or other book-entry system) or other applicable document or notice (including this document) will bear or will notify the purchaser of the following legend:

> "EXCEPT IN THE PROVINCE OF MANITOBA, IN ACCORDANCE WITH NATIONAL INSTRUMENT 45-102 — RESALE OF SECURITIES, UNLESS OTHERWISE PERMITTED UNDER CANADIAN SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS FOUR MONTHS AND A DAY AFTER THE LATER OF (I) THE DATE ON WHICH THE SECURITY IS ISSUED; AND (II) THE DATE THE ISSUER BECOMES A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY OF CANADA.
>
> IN THE PROVINCE OF MANITOBA, UNLESS OTHERWISE PERMITTED UNDER APPLICABLE CANADIAN SECURITIES LAWS OR WITH THE PRIOR WRITTEN CONSENT OF THE APPLICABLE REGULATORS, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS TWELVE MONTHS AND A DAY AFTER THE DATE THE PURCHASER ACQUIRED THE SECURITY."

The Issuer is not and does not intend to become a reporting issuer.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of such Series of Senior Notes with liquidity for their investment or that it will continue for the life of such Senior Notes. Accordingly,

purchasers of the Senior Notes may be required to bear the financial risk of investing in the Senior Notes until the maturity date.

REPORTING REQUIREMENTS

The Issuer is not a reporting issuer or the equivalent thereof under the securities legislation in any jurisdiction. Accordingly, the Issuer is not subject to the continuous reporting and disclosure requirements prescribed by such securities legislation. Therefore, there is no requirement that the Issuer comply with such requirements, including, without limitation, the requirements to provide prompt notification of material changes by way of press releases, to formally file disclosure documents with applicable securities regulatory authorities or to prepare and file annual audited financial statements or quarterly unaudited financial statements. However, the Issuer will provide audited annual financial statements and unaudited quarterly financial statements in accordance with the terms of the Master Trust Indenture. See *"Capital Markets Platform — Covenants of the Issuer — Financial Statements; Statement as to Compliance"*.

STATUTORY RIGHTS OF ACTION

Securities legislation in certain of the provinces of Canada provides purchasers, in addition to any other rights they may have at law, with a remedy for rescission or damages where an offering memorandum or any amendment to it, and in some cases, advertising and sales literature used in connection therewith, contains a misrepresentation. These remedies, or notice with respect thereto, must be exercised or delivered, as the case may be, by the purchaser within the time limit prescribed, and are subject to the defences contained, in the applicable securities legislation. Purchasers should refer to the applicable provisions of the securities legislation of their province for the particulars of these rights or consult with a legal advisor. The following is a summary of the rights of rescission or rights to damages available to purchasers of the Senior Notes.

Rights for Purchasers in Ontario

Section 5.2 of Ontario Securities Commission Rule 45-501 — *Ontario Prospectus and Registration Exemptions* provides that when an offering memorandum, such as this confidential shelf offering memorandum, is delivered to an investor to whom securities are distributed in reliance upon the "accredited investor" prospectus exemption in section 73.3 of the *Securities Act* (Ontario) or a predecessor exemption to section 73.3 of the *Securities Act* (Ontario) the right of action referred to in section 130.1 of the *Securities Act* (Ontario) ("**Section 130.1**") is applicable, unless the prospective purchaser is:

(a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act;

(b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

(c) a Schedule III bank, meaning an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

(d) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada); or

(e) a subsidiary of any person referred to in paragraphs (a), (b), (c) or (d), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by the directors of the subsidiary.

Section 130.1(1) provides such investors who purchase securities offered by an offering memorandum with a statutory right of action against the Issuer of securities for rescission or damages in the event that the offering memorandum and any amendment to it contains a "misrepresentation". The term "misrepresentation" is defined to

mean an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make any statement not misleading in the light of the circumstances in which it was made. These remedies, or notice with respect to these remedies, must be exercised or delivered, as the case may be, by the purchaser within the time limits prescribed by applicable securities laws.

Where this confidential shelf offering memorandum is delivered to a prospective purchaser of Senior Notes in connection with a trade made in reliance on section 73.3 of the *Securities Act* (Ontario), and this document contains a misrepresentation, the purchaser will have, without regard to whether the purchaser relied on the misrepresentation, a statutory right of action against the Issuer for damages or, while still the owner of Senior Notes, for rescission, in which case, if the purchaser elects to exercise the right of rescission, the purchaser will have no right of action for damages, provided that the right of action for rescission will be exercisable by the purchaser only if the purchaser commences the action not more than 180 days after the date of the transaction that gave rise to the cause of action; or, in the case of any action other than an action for rescission, the earlier of: (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or (ii) three years after the date of the transaction that gave rise to the cause of action.

The Issuer will not be liable for a misrepresentation if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation.

In an action for damages, the Issuer will not be liable for all or any portion of the damages that the Issuer proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

In no case will the amount recoverable for the misrepresentation exceed the price at which the Senior Notes were offered.

The liability of all persons and companies referred to above is joint and several. The Issuer, however, shall not be liable where it is not receiving any proceeds from the distribution of the securities being distributed and the misrepresentation was not based on information provided by the Issuer, unless the misrepresentation, (a) was based on information that was previously publicly disclosed by the Issuer, (b) was a misrepresentation at the time of its previous public disclosure and (c) was not subsequently publicly corrected or superseded by the Issuer prior to the completion of the distribution of the securities being distributed.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express provisions of the *Securities Act* (Ontario) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Saskatchewan

Section 138 of *The Securities Act, 1988* (Saskatchewan), as amended (the "**Saskatchewan Act**") provides that where an offering memorandum (such as this confidential shelf offering memorandum) or any amendment to it is sent or delivered to a purchaser and it contains a misrepresentation (as defined in the Saskatchewan Act), a purchaser who purchases a security covered by the offering memorandum or any amendment to it has, without regard to whether the purchaser relied on the misrepresentation, a right of action for rescission against the Issuer or a selling security holder on whose behalf the distribution is made or has a right of action for damages against:

(a) the Issuer or a selling security holder on whose behalf the distribution is made;

(b) every promoter and trustee of the Issuer or the selling security holder, as the case may be, at the time the offering memorandum or any amendment to it was sent or delivered;

(c) every person or company whose consent has been filed respecting the offering, but only with respect to reports, opinions or statements that have been made by them;

(d) every person who or company that, in addition to the persons or companies mentioned in (a) to (c) above, signed the offering memorandum or the amendment to the offering memorandum; and

(e) every person who or company that sells securities on behalf of the Issuer or selling security holder under the offering memorandum or amendment to the offering memorandum.

Such rights of rescission and damages are subject to certain limitations including the following:

(a) if the purchaser elects to exercise its right of rescission against the Issuer or selling security holder, it will have no right of action for damages against that party;

(b) in an action for damages, a defendant will not be liable for all or any portion of the damages that he, she or it proves do not represent the depreciation in value of the securities resulting from the misrepresentation relied on;

(c) no person or company, other than the Issuer or a selling security holder, will be liable for any part of the offering memorandum or any amendment to it not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, unless the person or company failed to conduct a reasonable investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation or believed that there had been a misrepresentation;

(d) in no case will the amount recoverable exceed the price at which the securities were offered; and

(e) no person or company is liable in an action for rescission or damages if that person or company proves that the purchaser purchased the securities with knowledge of the misrepresentation.

In addition, no person or company, other than the Issuer or selling security holder, will be liable if the person or company proves that:

(a) the offering memorandum or any amendment to it was sent or delivered without the person's or company's knowledge or consent and that, on becoming aware of it being sent or delivered, that person or company immediately gave reasonable general notice that it was so sent or delivered; or

(b) with respect to any part of the offering memorandum or any amendment to it purporting to be made on the authority of an expert, or purporting to be a copy of, or an extract from, a report, an opinion or a statement of an expert, that person or company had no reasonable grounds to believe and did not believe that: (i) there had been a misrepresentation, or (ii) the part of the offering memorandum or any amendment to it did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or an extract from, the report, opinion or statement of the expert.

Not all defences upon which the Issuer or others may rely are described herein. Please refer to the full text of the Saskatchewan Act for a complete listing.

The liability of all persons and companies referred to above is joint and several.

Similar rights of action for damages and rescission are provided in section 138.1 of the Saskatchewan Act in respect of a misrepresentation in advertising and sales literature disseminated in connection with an offering of securities.

Section 138.2 of the Saskatchewan Act also provides that, subject to certain limitations and defences, where an individual makes a verbal statement to a purchaser that contains a misrepresentation relating to the security purchased and the verbal statement is made either before or contemporaneously with the purchase of the security, the purchaser has, without regard to whether the purchaser relied on the misrepresentation, a right of action for damages against the individual who made the verbal statement.

Section 141(1) of the Saskatchewan Act provides a purchaser with the right to void the purchase agreement and to recover all money and other consideration paid by the purchaser for the securities if the securities are sold in contravention of the Saskatchewan Act, the regulations to the Saskatchewan Act or a decision of the **Financial and Consumer Affairs Authority of** Saskatchewan ~~Financial Services Commission~~.

Section 141(2) of the Saskatchewan Act also provides a right of action for rescission or damages to a purchaser of securities to whom an offering memorandum or any amendment to it was not sent or delivered prior to or at the same time as the purchaser enters into an agreement to purchase the securities, as required by Section 80.1 of the Saskatchewan Act.

The rights of action for damages or rescission under the Saskatchewan Act are in addition to and do not derogate from any other right which a purchaser may have at law.

Section 147 of the Saskatchewan Act provides that no action will be commenced to enforce any of the foregoing rights more than:

(a) in the case of an action for rescission or cancellation, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of any other action, other than an action for rescission or cancellation, the earlier of:

(i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action; or

(ii) six years after the date of the transaction that gave rise to the cause of action.

The Saskatchewan Act also provides that a purchaser who has received an amended offering memorandum delivered in accordance with subsection 80.1(3) of the Saskatchewan Act has a right to withdraw from the agreement to purchase the securities by delivering a notice to the person who or company that is selling the securities, indicating the purchaser's intention not to be bound by the purchase agreement, provided such notice is delivered by the purchaser within two business days of receiving the amended offering memorandum.

This summary is subject to the express provisions of the Saskatchewan Act and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Nova Scotia

The right of action for rescission or damages described herein is conferred by section 138 of the *Securities Act* (Nova Scotia). Section 138 provides, in the relevant part, that in the event that this confidential shelf offering memorandum **(which shall for the purposes hereof be considered to include any document or record incorporated or deemed to be incorporated by reference herein)**, together with any amendments hereto **(which shall for the purposes hereof be considered to include any document or record incorporated or deemed to be incorporated by reference therein)**, or any advertising or sales literature (as defined in the *Securities Act* (Nova Scotia)) contains an untrue statement of material fact or omits to state a material fact that is required to be stated or that is necessary in order to make any statements contained herein or therein not misleading in light of the circumstances in which it was made (a "misrepresentation"), a purchaser of Senior Notes is deemed to have relied upon such misrepresentation if it was a misrepresentation at the time of purchase and has, subject to certain limitations and defences, a statutory right of action for damages against the Issuer, its trustees, any person who signed this confidential shelf offering memorandum, any selling security holder and the directors of any such selling security holder at the date of this confidential shelf offering memorandum or, alternatively, while still the owner of the Senior Notes, may elect instead to exercise a statutory right of rescission against the Issuer, in which case the purchaser will have no right of action for damages against any person listed above, including the Issuer, provided that, among other limitations:

(a) no action ~~will~~**may** be commenced to enforce the right of action for rescission or damages by a purchaser resident in Nova Scotia under Section 138 later than 120 days after the date payment

was made for the Senior Notes (or after the date on which initial payment was made for the Senior Notes where payments subsequent to the initial payment are made pursuant to a contractual commitment assumed prior to, or concurrently with, the initial payment);

(b) no person will be liable if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation;

(c) no person or company, other than the Issuer, is liable under Section 138 if the person or company proves that:

(i) this confidential shelf offering memorandum, or any amendment hereto, was sent or delivered to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its delivery, the person or company gave reasonable general notice that it was delivered without the person's or company's knowledge or consent;

(ii) after delivery of this confidential shelf offering memorandum, or the amendment hereto, and before the purchase of the Senior Notes by the purchaser, on becoming aware of any misrepresentation in this confidential shelf offering memorandum, or the amendment hereto, or any record incorporated or deemed incorporated by reference ~~therein~~**herein**, the person or company withdrew the person's or company's consent to this confidential shelf offering memorandum, or amendment hereto, or such record, and gave reasonable general notice of the withdrawal and the reason for it; or

(iii) with respect to any part of this confidential shelf offering memorandum, or amendment hereto, or any record incorporated or deemed to be incorporated by reference ~~therein~~**herein**, purporting to be made on the authority of an expert, or to be a copy of, or an extract from a report, an opinion or a statement of an expert, the person or company had no reasonable grounds to believe and did not believe that there had been a misrepresentation, or that the relevant part of this confidential shelf offering memorandum, or amendment hereto, or such record, did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or extract from, the report, opinion or statement of the expert;

(d) no person or company, other than the Issuer, is liable under Section 138 with respect to any part of this confidential shelf offering memorandum, or amendment hereto, or any record incorporated or deemed incorporated by reference ~~therein~~**herein**, not purporting to be made on the authority of an expert, or to be a copy of**,** or an extract from, a report, opinion or statement of an expert, unless the person or company failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation, or believed that there had been a misrepresentation;

(e) in the case of an action for damages, no person will be liable for all or any portion of the damages that it proves do not represent the depreciation in value of the Senior Notes resulting from the misrepresentation; and

(f) in no case will the amount recoverable under Section 138 in any action exceed the price at which the Senior Notes were offered to the purchaser.

The liability of all persons or companies referred to above is joint and several with respect to the same cause of action. A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person or company who is jointly and severally liable to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.

The foregoing statutory right of action for rescission or damages conferred by Section 138 of the *Securities Act* (Nova Scotia) is in addition to and without derogation from any other right or remedy available at law or otherwise to the purchaser. This summary is subject to the express provisions of the *Securities Act* (Nova Scotia) and

the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions may have at law.

Rights for Purchasers in New Brunswick

Section 2.1 of New Brunswick Securities Commission Rule 45-802 provides that the statutory rights of action in rescission or damages referred to in Section 150 of the *Securities Act* (New Brunswick) ("**Section 150**") apply to information relating to an offering memorandum, such as this confidential shelf offering memorandum, that is provided to a purchaser of securities in connection with a distribution made in reliance on the "accredited investor" prospectus exemption in Section 2.3 of NI 45-106. Section 150 provides investors who purchase securities offered for sale in reliance on an exemption from the prospectus requirements of the *Securities Act* (New Brunswick) with a statutory right of action for damages against (i) the Issuer; (ii) the selling security holder on whose behalf the distribution was made; (iii) every person who was a director of the Issuer as at the date of the offering memorandum; and (iv) every person who signed the offering memorandum in the event that an offering memorandum provided to such investor contains a "misrepresentation". Alternatively, if the investor purchased the securities from a person referred to in (i) or (ii) above, an investor may elect a right of rescission, in which case the investor shall have no right of action for damages. "Misrepresentation" means an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

Where this confidential shelf offering memorandum is delivered to a prospective purchaser of Senior Notes in connection with a trade made in reliance on Section 2.3 of NI 45-106, and this document (including any documentation incorporated or deemed to be incorporated by reference) contains a misrepresentation, a purchaser who purchases the securities will be deemed to have relied on the misrepresentation and will have, subject to certain limitations and defences, a statutory right of action against the Issuer for damages or, while still the owner of Senior Notes, for rescission. If the purchaser elects to exercise the right of rescission, the purchaser will have no right of action for damages. The right of action for rescission will be exercisable by the purchaser only if the purchaser commences the action against the defendant, not more than 180 days after the date of the transaction that gave rise to the cause of action; or, in the case of any action other than an action for rescission, the earlier of: (i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action, or (ii) six years after the date of the transaction that gave rise to the cause of action.

No person other than the Issuer or the selling security holder is liable under Section 150 if the person proves that:

(a) the offering memorandum was delivered to the purchaser without the person's knowledge or consent and that, on becoming aware of its delivery, the person gave written notice to the Issuer that it was delivered without the person's knowledge or consent;

(b) upon becoming aware of a misrepresentation in the offering memorandum the person withdrew the person's consent to the offering memorandum and gave written notice to the Issuer of the withdrawal and the reason for the withdrawal; or

(c) with respect to any part of the offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, the person had no reasonable grounds to believe and did not believe there had been a misrepresentation or that the relevant part of the offering memorandum did not fairly represent the report, opinion or statement of the expert or was not a fair copy of, or extract from, the report, opinion or statement of the expert.

In addition, no person other than the Issuer or the selling security holder is liable under Section 150 with respect to any part of an offering memorandum not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert unless (i) the person failed to conduct such reasonable investigations as to provide reasonable grounds for a belief that there had been no misrepresentation or (ii) the person believed that there had been misrepresentation.

The defendant will not be liable for a misrepresentation if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation.

In an action for damages, the defendant will not be liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

In no case will the amount recoverable for the misrepresentation exceed the price at which the Senior Notes were offered.

The liability of all persons referred to above is joint and several.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express provisions of the Securities Act (New Brunswick) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Prince Edward Island

The right of action for rescission or damages described herein is conferred by Section 112 of the *Securities Act* (Prince Edward Island). Section 112 provides, that in the event that this confidential shelf offering memorandum contains a "misrepresentation", a purchaser who purchased the Senior Notes during the period of distribution, without regard to whether the purchaser relied upon such misrepresentation, has a statutory right of action for damages against the Issuer, the selling security holder on whose behalf the distribution was made, every trustee of the Issuer as at the date of the confidential shelf offering memorandum, and every person who signed the confidential shelf offering memorandum. Alternatively, the purchaser while still the owner of the Senior Notes may elect to exercise a statutory right of action for rescission against the Issuer **or the selling security holder on whose behalf the distribution is made**. "Misrepresentation" means an untrue statement of **a** material fact, or an omission to state a material fact that is required to be stated by the *Securities Act* (Prince Edward Island), or an omission to state a material fact that needs to be stated so that a statement is not false or misleading in light of the circumstances in which it is made. Statutory rights of action for rescission or damages by a purchaser are subject to the following limitations:

(a) no action will be commenced to enforce the right of action for rescission by a purchaser, resident in Prince Edward Island, later than 180 days after the date of the transaction that gave rise to the cause of action;

(b) in the case of any action other than an action for rescission, the earlier of;

  (i) 180 days after the purchaser first had knowledge of the facts given rise to the cause of action; or

  (ii) three years after the date of the transaction giving rise to the cause of action;

(c) no person will be liable if the person proves that the purchaser purchased the security with knowledge of the misrepresentation;

(d) no person other than the Issuer **and selling security holder** will be liable if the person proves that**:**

  (i) the confidential shelf offering memorandum was sent to the purchaser without the person's knowledge or consent and that, on becoming aware of it being sent, the person had promptly given reasonable notice to the Issuer that it had been sent without the knowledge and consent of the person;

(ii) the person, on becoming aware of the misrepresentation in the confidential shelf offering memorandum, had withdrawn the person's consent to the confidential shelf offering memorandum and had given reasonable notice to the Issuer of the withdrawal and the reason for it; or

(iii) with respect to any part of the confidential shelf offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, statement or opinion of an expert, the person had no reasonable grounds to believe, and did not believe that~~,~~:

(A) there had been a misrepresentation; or

(B) the relevant part of the confidential shelf offering memorandum:

a. did not fairly represent the report, statement or opinion of the expert, or

b. was not a fair copy of, or an extract from, the report, statement, or opinion of the expert.

Not all defences upon which the Issuer or others may rely are described herein. Please refer to the full text of the *Securities Act* (Prince Edward Island) for a complete listing.

If the purchaser elects to exercise a right of action for rescission, the purchaser will have no right of action for damages.

In no case will the amount recoverable in any action exceed the price at which the Senior Notes were offered to the purchaser.

In an action for damages, the defendant will not be liable for any damages that the defendant proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express conditions of the *Securities Act* (Prince Edward Island) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Manitoba

Pursuant to section 141.1(1) of *The Securities Act* (Manitoba) (the "**Manitoba Act**"), where this confidential shelf offering memorandum, or any amendment to this confidential shelf offering memorandum, is sent or delivered to a purchaser in the Province of Manitoba and such document contains a misrepresentation, a purchaser who purchases Senior Notes offered by this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum is deemed to have relied on that misrepresentation, if it was a misrepresentation at the time of purchase and, subject to the defenses described in the Manitoba Act, has:

(a) a right of action for damages against:

(i) the Issuer;

(ii) each of its trustees at the date of this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum; and

(iii) every person or company who signed this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum; and

(b) **while still an owner of the Senior Notes,** a right of rescission against the Issuer;

provided that:

(c) no person or company is liable if the person or company proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation;

(d) in an action for damages, the defendant is not liable for all or any portion of the damages that he, she or it proves do not represent the depreciation in value of the Senior Notes resulting from the misrepresentation relied on; and

(e) in no case will the amount recovered exceed the price at which the Senior Notes were offered to the public.

Where a purchaser elects to exercise a right of rescission against the Issuer, the purchaser will have no right of action for damages against the Issuer or against a person or company referred to in (a)(ii) or (iii) above.

No person or company other than the Issuer is liable:

(a) if the person or company proves that this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum was sent without the person's or company's knowledge or consent and that, after becoming aware of its being sent, the person or company promptly gave reasonable notice to the Issuer that it was so sent;

(b) if the person or company proves that after becoming aware of any misrepresentation in this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum, the person or company withdrew the person's or company's consent to it and gave reasonable notice to the Issuer of the person's or company's withdrawal and the reason for it;

(c) if the person or company proves that with respect to any part of this confidential shelf offering memorandum or of any amendment to this confidential shelf offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, the person or company had no reasonable grounds to believe and did not believe that:

(i) there had been a misrepresentation; or

(ii) the relevant part of this confidential shelf offering memorandum or of the amendment to this confidential shelf offering memorandum:

(A) did not fairly represent the report, opinion or statement of the expert; or

(B) was not a fair copy of or extract from the report, opinion or statement of the expert; or

(d) with respect to any part of this confidential shelf offering memorandum or of the amendment to this confidential shelf offering memorandum not purporting to be made on an expert's authority and not purporting to be a copy of, or an extract from, the expert's report, opinion or statement, unless the person or company:

(i) did not conduct an investigation, sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; or

(ii) believed that there had been a misrepresentation.

Pursuant to section 141.4 of the Manitoba Act, but subject to the other provisions thereof, no action shall be commenced to enforce any of the foregoing rights more than:

(a) in the case of an action for rescission, 180 days from the date of the transaction that gave rise to the cause of action, or

(b) in the case of an action for damages, the earlier of:

(i) 180 days after the date that the plaintiff first had knowledge of the facts giving rise to the cause of action, or

(ii) two years after the date of the transaction that gave rise to the cause of action.

In an action for damages, the Issuer will not be liable for all or any part of the damages that the Issuer proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

The rights of action for rescission or damages under the Manitoba Act are in addition to and do not derogate from any other right that the purchaser may have at law.

This summary is subject to the express provisions of the Manitoba Act and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for purchasers in Newfoundland and Labrador

In accordance with section 130.1 of the *Securities Act* (Newfoundland and Labrador, hereinafter the "**NL Act**"), in the event this confidential shelf offering memorandum contains a misrepresentation, a purchaser who purchases Senior Notes shall be deemed to have relied upon such misrepresentation if it was a misrepresentation at the time of purchase, in which event the purchaser has, subject to the defences and limitations set out in the NL Act: (a) a right of action for damages against the Issuer and, every trustee of the Issuer at the date of this confidential shelf offering memorandum and every person or company who has signed this confidential shelf offering memorandum; and (b) a right of rescission against the Issuer. Where a right of rescission is exercised, a purchaser shall have no right of action for damages against any other person or company.

For the purposes of the NL Act "misrepresentation" means: (a) an untrue statement of material fact, or (b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

A person or company is not liable under section 130.1 of the NL Act: (a) if the person or company proves the purchaser had knowledge of the misrepresentation; or (b) in an action for damages, for all or any portion of the damages that the person or company proves do not represent the depreciation in value of the security as a result of the misrepresentation. Additionally, in an action for damages, the amount recoverable under the right of action shall not exceed the purchase price at which the security was offered.

In addition no person or company, other than the Issuer, is liable under section 130.1 of the NL Act if:

(a) the person or company proves that this confidential shelf offering memorandum was sent to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its being sent, the person or company promptly gave reasonable notice to the Issuer that it was sent without the person's or company's knowledge or consent;

(b) the person or company proves that on becoming aware of any misrepresentation in this confidential shelf offering memorandum, the person or company withdrew the person's or company's consent to this confidential shelf offering memorandum, and gave reasonable notice to the Issuer of the withdrawal and the reason for it;

(c) with respect to any part of this confidential shelf offering memorandum purporting to be made on the authority of an expert (or purporting to be a copy of or an extract from a report, opinion or statement of an expert), the person or company proves they had no reasonable grounds to believe and did not believe that: (i) there had been a misrepresentation; or (ii) the relevant part of this confidential shelf offering memorandum did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or an extract from, the report, opinion or statement of the expert; or

(d) with respect to any part of this confidential shelf offering memorandum not purporting to be made on the authority of an expert (and not purporting to be a copy of or an extract from a report, opinion or statement of an expert), unless the person or company: (i) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; (ii) or believed there had been a misrepresentation.

If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into this confidential shelf offering memorandum, the misrepresentation is deemed to be contained in this confidential shelf offering memorandum.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law. The liability of all persons and companies referred to above is joint and several.

Pursuant to section 138 of the NL Act, no action shall be commenced to enforce the rights conferred by section 130.1 thereof unless commenced:

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of an action, other than an action for rescission, the earlier of:

(i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action; or

(ii) three years after the date of the transaction that gave rise to the cause of action.

Rights for Purchasers in Alberta, British Columbia, Newfoundland and Labrador and Québec

By purchasing Senior Notes hereunder, purchasers in Alberta, British Columbia, Newfoundland and Labrador and Québec not entitled to the statutory rights described above, in consideration of their purchase of Senior Notes and upon accepting a purchase confirmation in respect thereof, are hereby granted a contractual right of action for damages or rescission that is the same as the statutory right of action, if any, provided to residents of Ontario who purchase Senior Notes.

General

The foregoing summaries are subject to the express provisions of the applicable securities law of each jurisdiction, and the regulations, rules and policy statements thereunder and reference is made thereto for the complete text of such provisions.

The rights of action described in this confidential shelf offering memorandum are in addition to and without derogation from any other right or remedy that the purchaser may have at law.

INDENTURE TRUSTEE

The Indenture Trustee, BNY Trust Company of Canada, will be the registrar for the Senior Notes, and the register for the transfer of Senior Notes will be kept at its principal office in Toronto, Ontario.

LEGAL MATTERS

Certain Canadian legal matters in connection with the offering of Senior Notes will be passed upon by Torys LLP on behalf of the Issuer and by Osler, Hoskin & Harcourt LLP on behalf of the Agents.

GLOSSARY

The following glossary contains definitions of certain terms that are used throughout this confidential shelf offering memorandum.

"**Acceleration**" means, **with respect to a Funding Obligation,** (a) a portion of the principal amount owing in respect of the Funding Obligation has become due and payable by a Financing Entity before the scheduled payment date, maturity date or redemption date, or (b) a party to a derivative agreement in respect of the Funding Obligation has elected to close-out or terminate the agreement, resulting in an obligation on a Financing Entity to pay a termination amount, close-out amount or similar amount.

"**Acceleration Event**" means the acceleration of any Series of Controlling Class Obligations pursuant to and in accordance with its Funding Obligation Agreement.

"Act" means the *Ontario Fair Hydro Plan Act, 2017.*

"**Adherence Compliance Certificate**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Adverse Effect**" has the meaning set out under *"Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations"*.

"**Agency Agreement**" has the meaning set out under *"Plan of Distribution"*.

"**Agents**" has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**Approved Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Available Collections**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Collection Account"*.

"**Borrowing**" means a borrowing or drawing by the Issuer pursuant to a liquidity agreement, a loan agreement or a credit enhancement agreement.

"**Canadian Insolvency and Restructuring Laws**" has the meaning set out under *"Risk Factors — Risks Associated with the Unusual Nature of the Investment Asset"*.

"**Carrying Costs**" has the meaning ascribed to the term "carrying costs" in the Regulations.

"**CDS**" ~~means~~ has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**Certified Primary Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Change of Law Protection Agreement**" means the change of law protection agreement dated as of December 21, 2017 among the Province, the Issuer and the Indenture Trustee, as amended, supplemented, restated or otherwise modified from time to time.

"**Class**" has the meaning set out under *"Capital Markets Platform — Subordination Provisions"*.

"**Clean Energy Adjustment**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Clean Energy Benefits**" means the value of the benefits determined to be derived by or accruing to Specified Consumers as a result of the Clean Energy Initiative, including as a result of Clean Energy Costs.

"**Clean Energy Costs**" means the value of the costs allocated to Specified Consumers as a result of the Clean Energy Initiative, including as a result of past, present and expected costs incurred in respect of

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* (Ontario) or any provision that is the successor to that provision, which relate to contracts or amounts for

(b)

(i) renewable energy generation or capacity;

(ii)

(iii) conservation and demand management;

(iv)

(v) energy storage;

(vi)

(vii) energy efficiency; and

(viii)

(ix) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed;

(x)

(c) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(d)

(e) such other costs or estimated costs as may be prescribed by the Regulations.

(f)

"**Clean Energy Initiative**" means the policies of the Ontario government related to

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies;

(b)

(c) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies;

(d)

(e) promoting conservation, demand management and energy efficiency; and

(f)

(g) investing in energy infrastructure to ensure a clean, modern and reliable system.

(h)

"**Clearstream, Luxembourg**" has the meaning set out under *"Depository Services . — DTC, Euroclear and Clearstream, Luxembourg"*.

"**Collateral**" has the meaning set out under *"Capital Markets Platform — Security"*.

"**Collection Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Collection Account"*.

"**Collection Account Waterfall**" has the meaning set out under *"Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account"*.

"**Commission**" has the meaning set out under *"Representations and Agreements of Purchasers"*.

"**Confidential Information**" has the meaning set out under *"Confidentiality"*.

"**Controlling Class Creditors**" means the Debtholders holding Controlling Class Obligations.

"**Controlling Class Obligations**" means: (a) Senior Funding Obligations until such time as all Senior Funding Obligations have been paid in full; then (b) if all Senior Funding Obligations have been paid in full, Subordinated Funding Obligations until such time as all Subordinated Funding Obligations have been paid in full; and finally (c) if all Senior Funding Obligations and Subordinated Funding Obligations have been paid in full, Junior Subordinated Funding Obligations until such time as all Junior Subordinated Funding Obligations have been paid in full.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by the FHPA.

"Crown" means Her Majesty the Queen in Right of Ontario.

"**DBRS**" means DBRS Limited and its successors.

"**Debtholder**" means a Noteholder or a Lender.

"**Debtholder Group**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Declaration of Trust**" means the declaration of trust made as of December 20, 2017 under which the Issuer was established, as amended, supplemented, restated or otherwise modified from time to time.

"**Default**" means the occurrence of any event which, after the passage of time, the required notification to the Indenture Trustee and, if required, approval by the required Controlling Class Creditors, would become an Event of Default.

"**depository**" has the meaning set out under *"Depository Services"*.

"**Derivative Counterparty**" means any party to any derivative agreement other than the Issuer or the Indenture Trustee.

"**Derivative Funding Obligations**" means Funding Obligations arising under, or in connection with, derivative agreements.

"**DTC**" has the meaning set out under *"Depository Services . — DTC, Euroclear and Clearstream, Luxembourg"*.

"**Electricity Vendor**" means

(a) a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a "distribution system" within the meaning of that Act;

(b)

(c) a person licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity;

(d)

(e) the IESO in circumstances where it directly invoices a Specified Consumer for electricity used in Ontario; or

(f)

(g) such other person as may be prescribed by the Regulations.

(h)

"**Eligible Deposit Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Eligible Institution**" means (a) a trust company or Schedule I chartered bank (or an affiliate thereof) incorporated under the laws of Canada or any province thereof (i) which has either (x) a long-term unsecured debt rating of "A" or better by DBRS, or (y) a short-term deposit rating of "R-1 (low)" or better by DBRS, and (ii) which has either (x) a long-term unsecured debt rating of "A2" or better by Moody's, or (y) a short-term deposit rating of "P-1" or better by Moody's, or (b) any institution that otherwise satisfies the Rating Agency Condition.

"**Eligible Investments**" means instruments or investment property that evidence:

(a) direct obligations of, or obligations fully and unconditionally guaranteed as to timely payment by, Canada or the United States of America;

(b) demand or time deposits of, unsecured certificates of deposit of, money market deposit accounts of, bank deposit products of or bankers' acceptances issued by, any depository institution (including, but not limited to, bank deposit products of the Indenture Trustee, acting in its commercial capacity) incorporated or organized under the laws of the United States of America, Canada or any state or province thereof and subject to supervision and examination by applicable banking authorities, so long as the commercial paper or other short-term debt obligations of such depository institution are, at the time of deposit, rated at least "R-1 (low)" and "P 1" by each of DBRS and Moody's, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(c) commercial paper (including commercial paper of the Indenture Trustee, acting in its commercial capacity), which at the time of purchase is rated at least "R-1 (low)" and "P-1" by each of DBRS and Moody's, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(d) investments in money market funds having a rating in the highest investment category granted thereby (including funds for which the Indenture Trustee or any of its affiliates is investment manager or advisor)

from DBRS and Moody's;

(e) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States of America, Canada or their respective agencies or instrumentalities, entered into with Eligible Institutions;

(f) repurchase obligations with respect to any security or whole loan entered into with an Eligible Institution or with a registered broker/dealer acting as principal and that meets the ratings criteria set forth below:

(i) a broker/dealer (acting as principal) registered as a broker or dealer under the *Securities Act* (Ontario) (any such broker/dealer being referred to in this definition as a "**broker/dealer**"), the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's and "R-1" by DBRS at the time of entering into such repurchase obligation; or

(ii) an unrated broker/dealer, acting as principal, that is a wholly-owned subsidiary of a non-bank or bank holding company the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's and "R-1" by DBRS at the time of purchase so long as the obligations of such unrated broker/dealer are unconditionally guaranteed by such non-bank or bank holding company; and

(g) any other investment permitted by each of the Rating Agencies;

in each case maturing not later than the business day preceding the next Payment Date, Interest Payment Date or Principal Payment Date, as applicable (for the avoidance of doubt, investments in money market funds or similar instruments that are redeemable on demand shall be deemed to satisfy the foregoing requirement). Notwithstanding the foregoing, no securities or investments that mature in 30 days or more shall be "Eligible Investments" unless the issuer thereof has (x) either a short-term unsecured debt rating of at least "P-1" from Moody's or a long-term unsecured debt rating of at least "A2" from Moody's and also has (y) either a short-term unsecured debt rating of at least "R-1 (low)" from DBRS or a long-term unsecured debt rating of at least "A" from DBRS.

"**Eligible Securities Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Euroclear**" has the meaning set out under *"Depository Services . — DTC, Euroclear and Clearstream, Luxembourg"*.

"**Event of Default**" has the meaning set out under *"Capital Markets Platform — Event of Default"*.

"**Extraordinary Resolution**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Fair Adjustment**" has the meaning set out under *"Ontario's Fair Hydro Plan — Background"*.

"**Fair Allocation Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*.

"**FHPA**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Finance Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Financial Services Manager**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Financing Entity**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Financing Plan**" means the written plan entitled "Financing Plan" prepared by the Financial Services Manager as

required under the FHPA to be used by the Financial Services Manager to evaluate whether potential Funding Obligations should be incurred for the purposes of a Financing Entity acquiring and financing an Investment Interest in accordance with the FHPA or for the purposes of a Refinancing, and includes any amendments thereto.

"**Funding Obligations**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Funding Obligation Agreement**" means any Note, any Supplemental Indenture (including any Terms Document), any liquidity agreement, any liquidity agreement, any credit enhancement agreement or any derivative agreement.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**HOEP**" has the meaning set out under *"The Electricity Industry in Ontario — Electricity Prices"*.

"**IESO**" means the Independent Electricity System Operator.

"**IESO Cash Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — IESO Cash Reserve Account"*.

"**IESO Cash Reserve Deposit Amount**" means an amount equal to the aggregate of:

(a) 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations determined as of the Payment Date occurring in April, 2021; and

(b) an amount estimated by the Manager, acting reasonably, as the amount of Carrying Costs payable by the Issuer during May, June and July, 2021 on outstanding Issuer Funding Obligations and any Issuer Funding Obligations to be issued in accordance with the Financing Plan, provided that such estimate satisfies the Rating Agency Condition.

"**IESO Cash Reserve Required Amount**" means, on any Payment Date on or after the Payment Date in November, 2021, the amount, if any, by which (a) an amount equal to 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations, exceeds (b) the amount on deposit in the Program Cash Reserve Account, determined after giving effect to all settlements on such Payment Date.

"**IESO Security Agreement**" means the security agreement made by the IESO in favour of the Issuer to secure its obligations to pay the Issuer's Carrying Costs pursuant to the Master Transfer and Servicing Agreement.

"**Indemnity Agreement**" means the Indemnity Agreement dated December 21, 2017 by OPG in favour of the Indenture Trustee.

"**Indenture**" means the Master Trust Indenture, as supplemented by any Supplemental Indenture.

"**Indenture Trustee**" means BNY Trust Company of Canada and its successors.

"**Interest Accrual Amount (Junior Subordinated)**" means, in respect of any Payment Date and all Junior Subordinated Funding Obligations, the amount of interest that accrued on such Junior Subordinated Funding Obligations during the period from and including the issuance date of such Junior Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Junior Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accrual Amount (Senior)**" means, in respect of any Payment Date and all Senior Funding Obligations, the amount of interest that accrued on such Senior Funding Obligations during the period from and including the issuance date of such Senior Funding Obligations or the last date to which interest has been paid in respect of such Senior Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accrual Amount (Subordinated)**" means, in respect of any Payment Date and all Subordinated Funding Obligations, the amount of interest that accrued on such Subordinated Funding Obligations during the period from and including the issuance date of such Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accumulation Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Interest Accumulation Account"*.

"**Interest Payment Date**" means each business day on which interest is due and payable in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as set out in the related Funding Obligation Agreement.

"**Investment Asset**" has the meaning set out under *"Ontario's Fair Hydro Plan — Investment Interest"*.

"**Investment Interest**" has the meaning set out under *"Ontario's Fair Hydro Plan — Investment Interest"*.

"**Investor Presentation**" has the meaning set out on page (iii) of this confidential shelf offering memorandum.

"**Issuer**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Issuer Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Issuer Funding Obligation**" means Funding Obligations of the Issuer.

"**Issuer Trustee**" means Computershare Trust Company of Canada.

"**Junior Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Junior Subordinated" in the related Funding Obligation Agreement.

"**Junior Subordinated Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**LDCs**" has the meaning set out under *"The Electricity Industry in Ontario"*.

"**Lender**" means any Person providing credit facilities, note purchase facilities or advances under a liquidity agreement, liquidity agreement or credit enhancement agreement, as applicable.

"**Limited Guarantee**" has the meaning set out under *"Change of Law Protection Agreement"*.

"**Management Agreement**" means the management agreement dated as of December 20, 2017 between the Manager and the Issuer, and acknowledged by the Indenture Trustee, as amended, supplemented, restated or otherwise modified from time to time.

"**Manager**" means OPG, as manager of the Issuer appointed under the Management Agreement.

"**Manitoba Act**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in Manitoba"*.

"**Master Agreement**" means an agreement in the form of a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated as of December 21, 2017 between the Issuer and the IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Master Trust Indenture**" means the trust indenture dated as of December 21, 2017 between the Issuer, as issuer, and the Indenture Trustee, as amended, supplemented, restated or otherwise modified from time to time.

"**Material Effect**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Moody's**" means Moody's Investors Service, Inc. and its successors.

"**Moratorium Period**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**MTSA Acknowledgement**" means the acknowledgement and indemnity agreement dated December 21, 2017 by the IESO in favour of the Indenture Trustee.

"**NI 31-103**" has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**NI 45-106**" has the meaning set out on page (ii) of this confidential shelf offering memorandum.

~~"**NL Act**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in Newfoundland and Labrador"*.~~

"**Non-Investment Grade Rated Electricity Vendor**" has the meaning set out under *"The Transferor and Servicer"*.

"**Note**" means any note of any Class, Series or Tranche created pursuant to a Supplemental Indenture and authenticated and delivered from time to time under the Master Trust Indenture.

"**Noteholders**" means a Person in whose name a Note is registered in the Note register or the bearer of any Note held in bearer form (including a global note in bearer form), as the case may be.

"**Obligations Secured**" means all present and future debts, expenses and liabilities, direct or indirect, absolute or contingent, due, owing or accruing due or owing from time to time by the Issuer to the Specified Creditors in their capacity as such. For greater certainty, amounts owing to any Specified Creditors by the Issuer at any time shall include (a) the unpaid face amount of any Notes issued on a discount basis; (b) the principal amount owing at such time, together with the accrued and unpaid interest on interest bearing Notes or Borrowings; (c) accrued fees, whether or not then due and payable; and (d) any evidence of indebtedness issued pursuant to or in respect of an amount owing under a Program Agreement (other than amounts payable by the Issuer to its beneficiaries pursuant to the Declaration of Trust or a promissory note issued by the Issuer to a beneficiary as contemplated in the Declaration of Trust).

"**OEB**" means the Ontario Energy Board.

"**Offering**" has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**Offering Jurisdiction**" has the meaning set out under *"Representations and Agreements of Purchasers"*.

"**OPA**" has the meaning set out under *"The Electricity Industry in Ontario — Key Industry Participants — The*

IESO.

"**OPG**" means Ontario Power Generation Inc.

"**Ordinary Resolution**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Participants**" has the meaning set out under *"Depository Services"*.

"**Paying Agent**" means any Person authorized by the Issuer to pay any Obligations Secured on behalf of the Issuer.

"**Payment Date**" means the 15th day of each calendar month **or, if such day is not a business day, the next business day**.

"**Person**" means any individual, corporation, limited liability company, unlimited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Post-Suspension Refinancing**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Pre-Approved Refinancing**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Predecessor IESO**" has the meaning set out under *"The Electricity Industry in Ontario — Key Industry Participants — The IESO"*.

"**Primary Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Principal Accumulation Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Principal Accumulation Account"*.

"**Principal Accumulation Amount**" means, in respect of any Series of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations and a Payment Date, the amount specified for such Payment Date in the related Funding Obligation Agreement plus any amounts specified in the related Funding Obligation Agreement in respect of prior Payment Dates which were not deposited to the Principal Accumulation Account; provided that if the Issuer has delivered a refinancing notice in respect of such Series, the Principal Accumulation Amounts in respect of such Series shall be adjusted as provided for in such refinancing notice.

"**Principal Accumulation Date**" means, in respect of any Series of Issuer Funding Obligations, other than Derivative Funding Obligations, the date, if any, specified in the related Funding Obligation Agreement.

"**Principal Payment Date**" means each business day on which principal is due and payable in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as set out in the related Funding Obligation Agreement.

"**Principal Payment Default Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the related Funding Obligation Agreement.

"**Program Account**" means each of the Collection Account, the Principal Accumulation Account, the Interest Accumulation Account, the Program Cash Reserve Account, the IESO Cash Reserve Account, the Refinancing Account and the Protection Account.

"**Program Agreements**" means the Master Trust Indenture, each Supplemental Indenture, the Declaration of Trust,

the Management Agreement, the Master Transfer and Servicing Agreement, the MTSA Acknowledgement, the Indemnity Agreement, each transfer notice delivered under the Master Transfer and Servicing Agreement, any Co-Owner Agreements, the IESO Security Agreement, the Change of Law Protection Agreement, the Notes, any derivative agreements, credit enhancement agreements, liquidity agreements, loan agreements, underwriting agreements, agency agreements or note purchase agreements and all other documents and certificates delivered in connection therewith.

"**Program Cash Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Program Cash Reserve Account"*.

"**Program Cash Reserve Required Amount**" means (a) on each Payment Date prior to the Payment Date in May, 2021, nil, and (b) on each Payment Date thereafter, an amount equal to 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations after giving effect to all settlements on such Payment Date, or such lesser amount proposed by the Manager that satisfies the Rating Agency Condition.

"**Protection Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Protection Account"*.

"**Protection Event**" has the meaning set out under *"Change of Law Protection Agreement — Protection Event"*.

"**Rating Agency**" means, with respect to any Issuer Funding Obligation, each nationally recognized statistical rating organization or designated rating organization, as specified in the related Funding Obligation Agreement, selected by the Manager to rate such Issuer Funding Obligation.

"**Rating Agency Condition**" has the meaning set out under *"Rating Agency Condition"*.

"**Reference Period**" means:

(a) the period beginning on July 1, 2017 and ending on October 31, 2017; and

(b)

(c) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed by the Regulations

(d)

(i) every six-month period following the period mentioned in (a);

(ii)

(iii) any period shorter than six months, as may be prescribed by the Regulations.

(iv)

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the FHPA.

"**Refinancing Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Refinancing Account"*.

"**Regulated Price Plan**" or "**RPP**" has the meaning set out under *"The Electricity Industry in Ontario — Electricity Prices*.

"**Regulations**" means the regulations promulgated under the FHPA.

"**Regulatory Asset**" has the meaning set out under *"Ontario's Fair Hydro Plan — Regulatory Asset"*.

"**Required Principal Accumulation Amount (Senior)**" means, in respect of any Principal Payment Date, the aggregate of the Principal Accumulation Amounts in respect of all Senior Funding Obligations for all Payment Dates up to and including such Principal Payment Date, less all amounts that have been applied to principal repayments of Senior Funding Obligations on or prior to such Principal Payment Date.

"**Required Principal Accumulation Amount (Subordinated)**" means, in respect of any Principal Payment Date, the aggregate of the Principal Accumulation Amounts in respect of all Subordinated Funding Obligations for all Payment Dates up to and including such Principal Payment Date, less all amounts that have been applied to principal repayments of Subordinated Funding Obligations on or prior to such Principal Payment Date.

"**Saskatchewan Act**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in Saskatchewan"*.

"**Section 130.1**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in Ontario"*.

"**Section 150**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in New Brunswick"*.

"**Securities Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Securities Account"*.

"**Senior Funding Obligation**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Senior" in the related Funding Obligation Agreement.

"**Senior Notes**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Senior Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**Series**" means, with respect to any Class of Issuer Funding Obligations, the Series of the Class specified in the related Funding Obligation Agreement.

"**Series Account**" means each Series Finance Reserve Account and each Series Capital Reserve Account.

"**Series Capital Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Series Accounts — Series Capital Reserve Account"*.

"**Series Finance Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Series Accounts — Series Finance Reserve Account"*.

"**Servicer**" means the IESO, as servicer under the Master Transfer and Servicing Agreement.

"**Servicer Default**" means:

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of three business days after written notice of such failure is received by the Servicer from the Issuer or after discovery of such failure by a responsible officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, to duly observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in the Master Transfer and Servicing Agreement or in any other Program Agreement to which it is a party (other than as provided in (a) above), which failure

shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or (B) such failure is discovered by a responsible officer of the Servicer;

(c) any representation or warranty made by the Servicer in the Master Transfer and Servicing Agreement, any other Program Agreement to which it is a party, any transfer notice or any monthly servicer report shall prove to have been incorrect when made, which has a material adverse effect on the Issuer and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer by the Issuer or (ii) such failure is discovered by a responsible officer of the Servicer;

(d) an insolvency event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs.

"**Specified Claims**" has the meaning set out under *"Change of Law Protection Agreement"*.

"**Specified Consumer**" has the meaning set out under *"Ontario's Fair Hydro Plan — Background"*.

"**Specified Creditors**" means, collectively, Noteholders, Lenders, the Paying Agent, the Indenture Trustee, the Issuer Trustee, the Manager, the Servicer, the Province of Ontario, Derivative Counterparties, credit enhancers, Rating Agencies and counterparties to underwriting agreements, agency agreements or note purchase agreements, in each case, to the extent of their claims related to Program Agreements, and any other Person that is owed a payment obligation by the Issuer that gives rise to a Finance Amount in respect of the Issuer.

"**Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Subordinated" in the related Funding Obligation Agreement.

"**Subordinated Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**Supplemental Indenture**" means a supplemental indenture to the Master Trust Indenture between the Issuer and the Indenture Trustee.

"**Suspension Event**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Suspension Notice**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Term Sheet**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Terms Document**" means, with respect to any Tranche of Notes, a supplement to the related Supplemental Indenture.

"**Tranche**" means, with respect to any Series of Notes, Notes of such Series which have identical terms, conditions and Tranche designation. Notes of a single Tranche may be issued on different dates.

"**Transfer**" has the meaning specified in the *Ontario Fair Hydro Plan Act, 2017*, and "**Transferred**" and "**Transferee**" shall have corresponding meanings.

"**True-up Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Unitholders**" has the meaning set out under *"The Issuer"*.

"**U.S. Securities Act**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Warehouse Facilities**" has the meaning set out under *"Short Term Indebtedness"*.

"**Warehouse Obligations**" means Senior Funding Obligations incurred pursuant to a Funding Obligation Agreement that provide the Issuer with a revolving facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period and does not provide any other type of credit facility.

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SCHEDULE A – CANADIAN PROVINCIAL SECURITIES REGULATORY AUTHORITIES

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: (403) 297-2082
Public official contact regarding indirect collection of information: FOIP Coordinator

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Inquiries: (604) 899-6854
Toll free in Canada: 1-800-373-6393
Facsimile: (604) 899-6581
Email: FOI-privacy@bcsc.bc.ca
Public official contact regarding indirect collection of information: FOI Inquiries

The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: (204) 945-2561
Toll free in Manitoba 1-800-655-5244
Facsimile: (204) 945-0330
Public official contact regarding indirect collection of information: Director

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll free in Canada: 1-866-933-2222
Facsimile: (506) 658-3059
Email: info@fcnb.ca
Public official contact regarding indirect collection of information: Chief Executive Officer and Privacy Officer

Government of Newfoundland and Labrador Financial Services Regulation Division
P.O. Box 8700
Confederation Building
2nd Floor, West Block
Prince Philip Drive
St. John's, Newfoundland and Labrador A1B 4J6
Attention: Director of Securities
Telephone: (709) 729-4189
Facsimile: (709) 729-6187
Public official contact regarding indirect collection of information: Superintendent of Securities

Nova Scotia Securities Commission
Suite 400, 5251 Duke Street
Duke Tower
P.O. Box 458
Halifax, Nova Scotia B3J 2P8
Telephone: (902) 424-7768
Facsimile: (902) 424-4625
Public official contact regarding indirect collection of information: Executive Director

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Telephone: (416) 593-8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-8122
Email: exemptmarketfilings@osc.gov.on.ca
Public official contact regarding indirect collection of information: Inquiries Officer

Prince Edward Island Securities Office
95 Rochford Street, 4th Floor Shaw Building
P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: (902) 368-4569
Facsimile: (902) 368-5283
Public official contact regarding indirect collection of information: Superintendent of Securities

Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Telephone: (514) 395-0337 or 1-877-525-0337
Facsimile: (514) 873-6155 (For filing purposes only)
Facsimile: (514) 864-6381 (For privacy requests only)
Email: financementdessocietes@lautorite.qc.ca (For corporate finance issuers)
Public official contact regarding indirect collection of information: Corporate Secretary

Financial and Consumer Affairs Authority of Saskatchewan
Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5842
Facsimile: (306) 787-5899
Public official contact regarding indirect collection of information: Director

EXHIBIT 1

INVESTOR PRESENTATION

(See attached.)

Document comparison by Workshare Compare on January-21-18 2:55:28 PM

Input:	
Document 1 ID	file://C:\Users\bsaulnie\Desktop\Fair Hydro Trust - Confidential Offering Memorandum.docx
Description	Fair Hydro Trust - Confidential Offering Memorandum
Document 2 ID	file://C:\Users\bsaulnie\AppData\Local\Temp\Workshare\wmtemp74c_Fair Hydro Trust - Confidential Offering Memorandum.DOCX
Description	_Fair Hydro Trust - Confidential Offering Memorandum
Rendering set	Firm_Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	209
Deletions	462
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	671

_Fair Hydro - Series 2018-1 Senior Notes Term Sheet.pdf

This indicative term sheet accompanies, is incorporated by reference in and forms part of the confidential shelf offering memorandum (the "confidential shelf offering memorandum") dated January 22, 2018 of Fair Hydro Trust (the "Issuer") and is subject to all of the restrictions, conditions and limitations set out in the confidential shelf offering memorandum. This term sheet and the confidential shelf offering memorandum constitute an offering of these securities only in those jurisdictions and to those persons where and to whom they may be lawfully offered for sale. The Issuer is not obligated to accept an offer to purchase the securities described herein.

The summary below describes the principal terms of the Series 2018-1 Senior Notes (as defined below). Certain of the terms summarized below are subject to important limitations and exceptions. The following is not intended to be complete. Prospective investors should review the "Capital Markets Platform" and "Description of Senior Notes" sections of the confidential shelf offering memorandum which contain a more detailed description of certain terms of the Series 2018-1 Senior Notes and the trust indenture (the "Master Trust Indenture") between the Issuer and BNY Trust Company of Canada, acting as trustee, dated December 21, 2017 (and to which the Series 2018-1 Senior Notes will be subject), as supplemented by the term senior series 2018-1 supplemental indenture to the Master Trust Indenture (the "Series 2018-1 Senior Supplemental Indenture") pursuant to which the Series 2018-1 Senior Notes will be issued (together with the Master Trust Indenture, the "Indenture"). In the event of any inconsistency between this indicative term sheet and the confidential shelf offering memorandum, the terms of this indicative term sheet apply. Certain capitalized terms used and not otherwise defined in the summary below have the meanings given thereto in the confidential shelf offering memorandum.

New Issue by Way of Private Placement *January 22, 2018*

FAIR HYDRO TRUST

●% SENIOR NOTES DUE MAY 15, 2033, SERIES 2018-1

Indicative Term Sheet

Issuer:	Fair Hydro Trust, a special purpose trust established under the laws of the Province of Ontario.
Issue:	●% Senior Notes due May 15, 2033, Series 2018-1 (the "**Series 2018-1 Senior Notes**").
Expected Credit Ratings:	DBRS: ● (●) Moody's: ● (●)
Principal Amount:	$●[(1)]
Term:	15.25 years
Launch Date:	●, 2018
Pricing Date:	●, 2018
Settlement Date:	●, 2018 (T+3)
Interest Rate:	●% per annum (the "**Series 2018-1 Interest Rate**")
Issue Spread:	+● bps (+/-● bps) versus Government of Canada curve interpolated between CAN ●% due ● and CAN ●% due ● +● bps (including a ● bps curve adjustment and +● bps delay adjustment), versus the CAN ●% due ● (priced at $● to yield ●%)

(1) The Issuer may offer and sell Series 2018-1 Senior Notes having a principal amount greater than the amount shown above. In that event, the Principal Accumulation Amounts, the principal amounts of the Series 2018-1 Subordinated Notes and the Series 2018-1 Junior Subordinated Notes and the use of proceeds amount will be increased proportionately.

Issue Yield:	●%
Issue Price:	$● per $1,000 principal amount of Series 2018-1 Senior Notes.
Agents Commission:	$● per $1,000 principal amount of Series 2018-1 Senior Notes sold (payable from existing cash resources of the Issuer)
Interest Payment Dates:	The Interest Payment Dates for the Series 2018-1 Senior Notes are as follows: (i) prior to the occurrence of an Amortization Event, interest on the Series 2018-1 Senior Notes shall be payable in equal semi-annual instalments (except the first interest payment) in arrears on May 15 and November 15 of each year, commencing May 15, 2018 (short first coupon); and (ii) following the occurrence of an Amortization Event, interest will be payable in arrears on the outstanding principal amount of the Series 2018-1 Senior Notes on each Payment Date thereafter at a rate equal to the monthly equivalent of the Series 2018-1 Interest Rate; that is, the interest rate that, when compounded monthly for six months on a stated outstanding principal amount, yields interest in an amount equal to the Series 2018-1 Interest Rate, multiplied by such outstanding principal amount and divided by two. The first interest payment on the Series 2018-1 Senior Notes will include accrued and unpaid interest for the period from, and including, the closing date of this Offering (the "**Series 2018-1 Senior Notes Offering**") to, but excluding, the first Interest Payment Date. Subject to the occurrence of an Acceleration Event, the first interest payment will be in an amount equal to $● per $1,000 principal amount of Series 2018-1 Senior Notes. If an Interest Payment Date is not a business day in Toronto, then the payment will be made on the next business day with no adjustment. For any period less than a full semi-annual interest period, interest will be calculated on an actual/365 basis. The record date for each Interest Payment Date is the last day of the calendar month preceding such Interest Payment Date. "**Amortization Event**" means either an Acceleration Event has occurred with respect to the Series 2018-1 Senior Notes, or the outstanding principal amount of the Series 2018-1 Senior Notes has not been paid in full on the Expected Principal Payment Date (as defined below). An "**Acceleration Event**" means either (i) all Issuer Funding Obligations are declared due and payable in accordance with the provisions of the Master Trust Indenture, or (ii) the outstanding principal amount of the Series 2018-1 Senior Notes and all interest thereon is declared due and payable in accordance with the Indenture as a result of the occurrence of a Series 2018-1 Event of Default (as defined below).
Principal Payment Dates and Principal Payment Amount:	Subject to the occurrence of an Acceleration Event, the outstanding principal amount of the Series 2018-1 Senior Notes shall be due and payable on May 15, 2033 (such Payment Date, the "**Expected Principal Payment Date**"). Following the occurrence of an Amortization Event, each Payment Date thereafter shall be a Principal Payment Date in respect of the Series 2018-1 Senior Notes and the then outstanding principal amount of the Series 2018-1 Senior Notes shall be due and payable on each such Payment Date.
Principal Payment Default Date:	May 15, 2035

Principal Accumulation Amounts:	Subject to the occurrence of an Amortization Event, the Series 2018-1 Senior Notes shall have the Principal Accumulation Amounts for the Payment Dates specified in Appendix A hereto. Following the occurrence of an Amortization Event, the Principal Accumulation Amount with respect to each Payment Date thereafter shall be an amount equal to the outstanding principal amount of the Series 2018-1 Senior Notes.
Subordination:	Concurrent with the issuance of the Series 2018-1 Senior Notes, OPG will subscribe for (i) $● of ●% subordinated notes due May 15, 2033, Series 2018-1 (the "**Series 2018-1 Subordinated Notes**"); and (ii) $● of ●% junior subordinated notes due May 15, 2033, Series 2018-1 (the "**Series 2018-1 Junior Subordinated Notes**"). The Series 2018-1 Subordinated Notes shall be subordinated to the Series 2018-1 Senior Notes (and all other Senior Funding Obligations), and the Series 2018-1 Junior Subordinated Notes shall be subordinated to the Series 2018-1 Senior Notes (and all other Senior Funding Obligations) and the Series 2018-1 Subordinated Notes (and all other Subordinated Funding Obligations), in each case in the manner described in the confidential shelf offering memorandum under the heading "*Capital Markets Platform – Subordination Provisions*".
Optional Redemption:	The Series 2018-1 Senior Notes will be redeemable at the option of the Issuer, in whole or in part, at any time and from time to time, on not less than 15 nor more than 60 days' notice at the redemption price specified below. At any time prior to the Par Call Date, the redemption price will be equal to the greater of (i) the Series 2018-1 Canada Yield Price and (ii) par, plus, in each case, accrued and unpaid interest to, but not including, the date of redemption. On or after the Par Call Date, the redemption price will be equal to par, plus accrued and unpaid interest to, but not including, the date of redemption. "**Par Call Date**" means November 15, 2032. "**Series 2018-1 Canada Yield Price**" means a price equal to the price of the Series 2018-1 Senior Notes calculated to provide a yield to the Par Call Date, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third business day preceding the date of redemption, plus ●% per annum. "**Government of Canada Yield**" on any date means, in respect of the Series 2018-1 Senior Notes being redeemed, the yield from the redemption date to the Par Call Date compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in Canadian dollars in Canada at 100% of its principal amount on such date with a term to maturity equal to the remaining term to the Par Call Date (calculated from the date of redemption), such yield being the average of the yields provided by two major Canadian investment dealers specified by the Issuer.

Limited Recourse:	The Series 2018-1 Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Series 2018-1 Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Series 2018-1 Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Series 2018-1 Senior Notes following the occurrence of certain events. See the confidential shelf offering memorandum under *"Change of Law Protection Agreement"*. The Series 2018-1 Senior Notes will be limited recourse obligations, secured only by the collateral described in the confidential shelf offering memorandum. See the confidential shelf offering memorandum under the heading *"Capital Markets Platform — Acceleration and Remedies — Limited Recourse"* and *"Risk Factors"*.
Use of Proceeds:	The proceeds from the Series 2018-1 Senior Notes Offering will be used to refinance $● of indebtedness of the Issuer previously incurred to purchase an Investment Interest from the IESO pursuant to the Master Transfer and Servicing Agreement. See *"Consolidated Capitalization"*. Expenses of the Series 2018-1 Senior Notes Offering are to be paid from existing cash resources.
Ranking:	Subject to the applicable payment waterfalls in the Master Trust Indenture, the Series 2018-1 Senior Notes will be direct, secured and unsubordinated obligations of the Issuer, and will at all times rank equally and proportionately with each other and all other Senior Funding Obligations issued by the Issuer from time to time pursuant to the Indenture, without discrimination or preference.
Change of Law Protection Agreement:	The Series 2018-1 Senior Notes are Approved Obligations under the Change of Law Protection Agreement.
Series 2018-1 Events of Default:	In addition to the Events of Default contained in the Master Trust Indenture and described in the confidential shelf offering memorandum, each of the following events constitute a "**Series 2018-1 Events of Default**": (a) failure to pay interest on the Series 2018-1 Senior Notes when due, subject to a 5-day cure period; (b) failure to pay principal on the Principal Payment Default Date for the Series 2018-1 Senior Notes; (c) breach of representation or warranty in the Series 2018-1 Senior Supplemental Indenture applicable to the Series 2018-1 Senior Notes, subject to materiality requirements and a 60-day cure period; (d) breach of a covenant in the Series 2018-1 Senior Supplemental Indenture, subject to materiality requirements and a 60-day cure period; and (e) an event occurs and as a result thereof, all or any portion of the principal amount of any other Senior Funding Obligation has been accelerated.

Acceleration upon a Series 2018-1 Event of Default:	Upon the occurrence of a Series 2018-1 Event of Default, the holders of Series 2018-1 Senior Notes may, by Ordinary Resolution, declare the outstanding principal and all accrued and unpaid interest on the Series 2018-1 Senior Notes to be immediately due and payable, whether or not all Issuer Funding Obligations have been accelerated pursuant to the Master Trust Indenture. For a discussion of the consequences of such declaration, see the confidential shelf offering memorandum under the headings "*Capital Markets Platform – Acceleration and Remedies*" and "*Risk Factors – If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected*".
Rating Agency Condition:	"**Rating Agency Condition**" means with respect to any action in respect of the Series 2018-1 Senior Notes subject to such condition, the Issuer shall deliver written notice of the proposed action to such Rating Agency or Rating Agencies at least 10 business days prior to the effective date of such action (or if 10 business days prior notice is impractical, such advance notice as is practicable) and (i) the Rating Agencies shall not have informed the Issuer prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to the Series 2018-1 Senior Notes immediately before the taking of such action, or (ii) in the case of DBRS, or any successor thereto, DBRS shall have informed the Issuer in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating in effect with respect to the Series 2018-1 Senior Notes immediately before the taking of such action.
Additional Security:	No Series Account will be established for the Series 2018-1 Senior Notes. No credit enhancement agreement or liquidity agreement has been entered into for the benefit of the Series 2018-1 Noteholders.
Currency:	Canadian dollars.
Minimum Subscription:	Minimum principal amount of $150,000.
Form and Denomination:	Book entry only through participants in CDS. The Series 2018-1 Senior Notes will be issued in multiples of $1,000.
CUSIP/ISIN:	CUSIP – ● ISIN – ●
Agents:	CIBC World Markets Inc. (joint lead and joint bookrunner), Goldman Sachs Canada Inc. (joint lead), RBC Dominion Securities Inc. (joint lead and joint bookrunner), BMO Nesbitt Burns Inc., Scotia Capital Inc., National Bank Financial Inc., TD Securities Inc., Morgan Stanley Canada Limited, HSBC Securities (Canada) Inc., Laurentian Bank Securities Inc., Desjardins Securities Inc. and Casgrain & Company Limited.

Any statement contained in the confidential shelf offering memorandum or in any document incorporated or deemed to be incorporated by reference in the confidential shelf offering memorandum shall be deemed to be modified or superseded, to the extent that a statement contained herein or in any other subsequent document which is or is deemed to be incorporated by reference in the confidential shelf offering memorandum, modifies or supersedes such prior statement. The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information set forth in the document which it modifies or supersedes. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the

circumstances in which it was made. Any statement so modified or superseded shall not constitute a part of the confidential shelf offering memorandum, except as so modified or superseded.

CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. are each, directly or indirectly, a wholly-owned or majority-owned subsidiary or affiliate of a financial institution which is a lender to the Issuer and to which the Issuer is currently indebted under the terms of the Warehouse Facilities (as described herein). The Issuer may use a portion of the net proceeds of the Series 2018-1 Senior Notes Offering to repay certain indebtedness under the Warehouse Facilities. Consequently, the Issuer may be considered to be a "connected issuer" of certain of the Agents for the purposes of securities regulations in certain provinces. See "Relationship between the Issuer and the Agents".

CAPITALIZATION

On December 21, 2017, the Issuer entered into the following supplemental indentures under the Master Trust Indenture for the provision of an aggregate of approximately $1.56 billion in short term indebtedness (collectively, the "**Warehouse Facilities**"), of which a total of $1.179 billion is drawn as of the date hereof:

(i) a warehouse senior series 2017-1 supplemental indenture with, among others, Royal Bank of Canada, as administrative agent for certain commercial paper conduit purchasers and financial institutions named therein, for the provision of an aggregate maximum principal amount of $800,000,000 floating rate variable funding Senior Notes, Series 2017-1 ("**Senior Notes, Series 2017-1**"), of which $601,290,000 is drawn. See "*Relationship between the Issuer and the Agents*";

(ii) a warehouse subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $611,764,705.88 floating rate variable funding Subordinated Notes, Series 2017-1 ("**Subordinated Notes, Series 2017-1**"), of which $459,810,000 is drawn; and

(iii) a warehouse junior subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $156,862,745.10 floating rate variable funding Junior Subordinated Notes, Series 2017-1 ("**Junior Subordinated Notes, Series 2017-1**"), of which $117,900,000 is drawn.

The issuance of Senior Notes, Series 2017-1, Subordinated Notes, Series 2017-1 and Junior Subordinated Notes, Series 2017-1 under the Warehouse Facilities described above were used to acquire a $1.179 billion Investment Interest from the IESO on December 21, 2017.

Concurrently with the issuance of the Series 2018-1 Senior Notes, OPG will also subscribe for the Series 2018-1 Subordinated Notes and the Series 2018-1 Junior Subordinated Notes.

The following table summarizes the capitalization of the Issuer as at the dates indicated before and after completion of the Series 2018-1 Senior Notes Offering.

	As at December 31, 2017 before giving effect to the Series 2018-1 Senior Notes Offering	**As at December 31, 2017 after giving effect to the Series 2018-1 Senior Notes Offering**
Cash and Cash Equivalents……..	Nil	$●
Debt		
Long-term debt, including current portion…….	Nil	$●
Short-term debt……...	$1,179,000,000.00[(2)]	$●
Bank indebtedness……..	Nil	$●
Total Debt……	$1,179,000,000.00[(2)]	$●
Equity		
Equity……	$10,000.01	$10,000.01
Total Capitalization……	$1,179,010,000.01[(2)]	$●

(2) Representing Notes outstanding as of the date hereof under the Warehouse Facilities as follows: (i) $601,290,000, or 51% of all short term debt, represented by Senior Notes, Series 2017-1; (ii) $459,810,000, or 39% of all short term debt, represented by Subordinated Notes, Series 2017-1 held by OPG; and (iii) $117,900,000, or 10% of all short term debt, represented by Junior Subordinated Notes, Series 2017-1 held by OPG.

CERTAIN CANADIAN FEDERAL INCOME TAX CONSIDERATIONS

In the opinion of Torys LLP and Osler, Hoskin & Harcourt LLP, the following summary describes the principal Canadian federal income tax considerations generally applicable under the Income Tax Act (Canada) (the "**Tax Act**") to a holder who acquires Series 2018-1 Senior Notes as beneficial owner pursuant to the Series 2018-1 Senior Notes Offering and who, for purposes of the Tax Act and at all relevant times, deals at arm's length and is not affiliated with the Issuer, and holds Series 2018-1 Senior Notes as capital property (a "**Holder**"). Generally, the Series 2018-1 Senior Notes will be capital property to a Holder provided that the Holder does not acquire or hold the Series 2018-1 Senior Notes in the course of carrying on a business or as part of an adventure or concern in the nature of trade. Certain holders who might not otherwise be considered to hold their Series 2018-1 Senior Notes as capital property may, in certain circumstances, be entitled to treat their Series 2018-1 Senior Notes and any other "Canadian security" (as defined in the Tax Act) owned by them in the taxation year of the election and all subsequent taxation years as capital property by making the irrevocable election permitted by subsection 39(4) of the Tax Act. Such holders are advised to consult their own tax advisors to determine whether such an election is available and desirable in their particular circumstances.

This summary is not applicable to a holder: (i) that is a "financial institution" (as defined in the Tax Act for purposes of the "mark to market property" and "specified debt obligation" rules); (ii) an interest in which is a "tax shelter investment" (as defined in the Tax Act); (iii) that reports its "Canadian tax results" (as defined in the Tax Act) in a currency other than Canadian dollars; or (iv) that has entered into or will enter into a "derivative forward agreement" as defined in the Tax Act in respect of the Series 2018-1 Senior Notes. Any such holders should consult their own tax advisors with respect to an investment in the Series 2018-1 Senior Notes. In addition, this summary does not address the deductibility of interest by a holder who has borrowed money to acquire Series 2018-1 Senior Notes.

On July 18, 2017, the Minister of Finance (Canada) released a consultation paper that included an announcement of its intention to amend the Tax Act to increase the amount of tax applicable to passive investment income earned through a private corporation. No specific amendments to the Tax Act were proposed in connection with this announcement and this summary does not consider the implications of this announcement. On November 18, 2017, the Minister of Finance (Canada) announced that the government intends to move forward with the planned amendments subject to further developments to address concerns of business owners the details of which are not yet available. Holders that are private corporations should consult their own tax advisors regarding the implications of these announcements with respect to their particular circumstances.

This summary is based upon the facts set out in the confidential shelf offering memorandum, the current provisions of the Tax Act and the regulations thereunder (the "**Regulations**"), all specific proposals to amend the Tax Act and the Regulations publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date hereof (the "**Tax Proposals**") and counsel's understanding of the current published administrative policies and practices of the Canada Revenue Agency. There can be no assurance that any Tax Proposals will be implemented in their current form or at all. This summary does not otherwise take into account or anticipate any changes in law or administrative policies and practices, whether by legislative, administrative or judicial action nor does it take into account provincial, territorial or foreign tax legislation or considerations, which may differ significantly from those discussed herein.

This summary is not exhaustive of all possible Canadian federal income tax considerations applicable to an investment in the Series 2018-1 Senior Notes. Moreover, the income and other tax consequences of acquiring, holding or disposing of the Series 2018-1 Senior Notes will vary depending on the Holder's particular circumstances, including the province or territory, or provinces or territories, in which the Holder resides or carries on business. Accordingly, this summary is of a general nature only and is not intended to be legal or tax advice to any particular Holder, and no representations with respect to the income tax consequences to any Holder are made. Investors should consult their own tax advisors for advice with respect to the tax consequences of an investment in the Series 2018-1 Senior Notes based on their particular circumstances. This summary does not address any tax considerations applicable to persons other than Holders and such persons should consult their own tax advisors regarding the consequences of acquiring, holding and disposing of Series 2018-1 Senior Notes under the Tax Act and any jurisdiction in which they may be subject to tax.

Foreign Exchange

For purposes of the Tax Act, all amounts relating to the acquisition, holding or disposition of Series 2018-1 Senior Notes must be expressed in Canadian dollars, including any interest, adjusted cost base and proceeds of disposition. For purposes of the Tax Act, amounts denominated in a currency other than the Canadian dollar generally must be converted into Canadian dollars in accordance with the Tax Act on the date such amounts first arose. A Holder may realize a capital gain or a capital loss on the disposition or deemed disposition of a Series 2018-1 Senior Note by virtue of fluctuations in the value of the U.S. dollar relative to the Canadian dollar. The amount of interest or other amounts required to be included in computing the Holder's income for a taxation year will also be affected by fluctuations in the U.S. dollar relative to the Canadian dollar.

Interest on Series 2018-1 Senior Notes

A Holder that is a corporation, partnership, unit trust or any trust of which a corporation or partnership is a beneficiary will be required to include in computing its income for a taxation year all interest on the Series 2018-1 Senior Notes that accrues or is deemed to accrue to such Holder to the end of the particular taxation year or that becomes receivable or is received by the Holder before the end of that taxation year, including on a redemption or repayment on maturity, except to the extent that such interest was included in computing the Holder's income for a preceding taxation year.

Any other Holder, including an individual, will be required to include in computing its income for a taxation year all interest on the Series 2018-1 Senior Notes that is received or receivable by the Holder in that taxation year (depending upon the method regularly followed by the Holder in computing income), including on a redemption, purchase for cancellation, or repayment on maturity, except to the extent that the interest was included in the Holder's income for a preceding taxation year.

Any premium paid by the Issuer to a Holder on the redemption of a Series 2018-1 Senior Note or a purchase for cancellation of a Series 2018-1 Senior Note (other than in the open market in the manner any such obligation would normally be purchased in the open market by any member of the public), will generally be deemed to be interest received at the time by the Holder to the extent that such premium can reasonably be considered to relate to, and does not exceed the value at the time of the redemption of or purchase for cancellation of, the interest that, would have been paid or payable by the Issuer on the Series 2018-1 Senior Note for a taxation year ending after the redemption or purchase for cancellation, and to the extent such premium was not otherwise included in computing the Holder's income for that taxation year or a previous taxation year.

Where a Holder is required to include in income interest on a Series 2018-1 Senior Note that accrued before such Series 2018-1 Senior Note was acquired by the Holder, the Holder will be entitled to a deduction in computing income of an equivalent amount. The adjusted cost base to the Holder of the Series 2018-1 Senior Note will be reduced by the amount which is so deductible.

If a Series 2018-1 Senior Note is purchased by a Holder at a discount from its face value, the Holder may be required to include an amount equal to such discount in computing income, either in accordance with the deemed interest accrual rules contained in the Tax Act and Regulations or in the taxation year in which an amount in respect of the discount is received or receivable by the Holder. Holders should consult their own tax advisors in these circumstances as the treatment of the discount may vary with the facts and circumstances giving rise to the discount.

Disposition of Series 2018-1 Senior Notes

On a disposition or deemed disposition of a Series 2018-1 Senior Note (including a redemption, purchase for cancellation or repayment at maturity), a Holder will generally be required to include in income any premium deemed to be interest and the amount of interest accrued, or deemed to have accrued, on the Series 2018-1 Senior Note from the date of the last interest payment to the date of disposition to the extent that such amount has not otherwise been included in the Holder's income for the taxation year or a previous taxation year.

A disposition or deemed disposition by a Holder of a Series 2018-1 Senior Note will generally result in the Holder realizing a capital gain (or capital loss) equal to the amount by which the proceeds of disposition, net of any accrued interest or any amount deemed to be interest, exceed (or are exceeded by) the aggregate of the Holder's adjusted cost base thereof and any reasonable costs of disposition.

One half of any capital gain (a "**taxable capital gain**") generally must be included in the Holder's income for the taxation year of the disposition, and one half of any capital loss (an "**allowable capital loss**") realized in a taxation year must be deducted from taxable capital gains realized in that year. Allowable capital losses in excess of taxable capital gains realized in a taxation year may be deducted from net taxable capital gains realized in the three preceding taxation years or any subsequent taxation year, subject to detailed rules contained in the Tax Act in this regard. A capital gain realized by an individual (other than certain specified trusts) may give rise to a liability for alternative minimum tax.

Eligibility for Investment

The Series 2018-1 Senior Notes would, if acquired on the date hereof and if they (i) are issued as part of a single issue of debt of at least $25 million and (ii) have an investment grade rating with certain rating agencies prescribed under the Tax Act, be qualified investments under the Tax Act for a trust governed by a registered retirement savings plan ("**RRSP**"), registered retirement income fund ("**RRIF**"), registered education savings plan ("**RESP**"), registered disability savings plan ("**RDSP**"), tax free savings account ("**TFSA**") and deferred profit sharing plan ("**DPSP**") (except for a trust governed by a DPSP to which the Issuer has made a contribution).

Even if the Series 2018-1 Senior Notes may be qualified investments for a trust governed by an RRSP, RRIF, RESP, RDSP or TFSA, if the Series 2018-1 Senior Notes are "prohibited investments" (as defined in section 207.01 of the Tax Act) for an RRSP, RRIF, RESP, RDSP or TFSA, then a holder of the TFSA or RDSP, a subscriber of the RESP or an annuitant of the RRSP or RRIF, as the case may be, will be subject to a penalty tax as set out in the Tax Act. The Series 2018-1 Senior Notes would not be prohibited investments on the date hereof, provided (i) the holder of the TFSA or RDSP, the subscriber of the RESP or the annuitant of the RRSP or RRIF, as the case may be, deals at arm's length with the Issuer within the meaning of the Tax Act, and (ii) does not have a "significant interest" within the meaning of subsection 207.01(4) of the Tax Act in the Issuer. Investors intending to hold the Series 2018-1 Senior Notes in a TFSA, RRSP, RRIF, RESP or RDSP should consult their own advisors as to whether the Series 2018-1 Senior Notes would be a prohibited investment in their particular circumstances.

RELATIONSHIP BETWEEN THE ISSUER AND THE AGENTS

CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. are each, directly or indirectly, a wholly-owned or majority-owned subsidiary or affiliate of a financial institution which is a lender to the Issuer and to which the Issuer is currently indebted under the terms of the Warehouse Facilities. The Issuer may use a portion of the net proceeds of the Series 2018-1 Senior Notes Offering to repay certain indebtedness under the Warehouse Facilities. Consequently, the Issuer may be considered to be a "connected issuer" of certain of the Agents under applicable Canadian securities legislation. As of the date of this Term Sheet, the Issuer is in compliance with the terms of its indebtedness under the Warehouse Facilities. Since the indebtedness under the Warehouse Facilities was incurred, the financial position of the Issuer has not materially changed. As of ●, 2018, the Issuer had approximately $● outstanding under the Warehouse Facilities. CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. have each advised that the decision to act as Agents for the Series 2018-1 Senior Notes Offering was made independently of the lenders under the Warehouse Facilities and the lenders had no influence as to the determination of the terms of the distribution. None of CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. will receive any benefit in connection with the Series 2018-1 Senior Notes Offering other than its respective portion of the Agents' commission payable by the Issuer.

LEGAL MATTERS

Certain Canadian legal matters in connection with the Series 2018-1 Senior Notes Offering will be passed upon by Torys LLP on behalf of the Issuer and by Osler, Hoskin & Harcourt LLP on behalf of the Agents.

APPENDIX A
PRINCIPAL ACCUMULATION AMOUNTS AND PAYMENT DATES

Payment Date	Principal Accumulation Amount
January 15, 2030	$●
February 15, 2030	$●
March 15, 2030	$●
April 15, 2030	$●
May 15, 2030	$●
June 15, 2030	$●
July 15, 2030	$●
August 15, 2030	$●
September 15, 2030	$●
October 15, 2030	$●
November 15, 2030	$●
December 15, 2031	$●
January 15, 2031	$●
February 15, 2031	$●
March 15, 2031	$●
April 15, 2031	$●
May 15, 2031	$●
June 15, 2031	$●
July 15, 2031	$●
August 15, 2031	$●
September 15, 2031	$●
October 15, 2031	$●
November 15, 2031	$●
December 15, 2031	$●
January 15, 2032	$●
February 15, 2032	$●
March 15, 2032	$●
April 15, 2032	$●
May 15, 2032	$●
June 15, 2032	$●
July 15, 2032	$●
August 15, 2032	$●
September 15, 2032	$●
October 15, 2032	$●
November 15, 2032	$●
December 15, 2033	$●
January 15, 2033	$●
February 15, 2033	$●
March 15, 2033	$●
April 15, 2033	$●
May 15, 2033	$●

Blackline_Series 2018-1 Senior Notes Term Sheet (Fair Hydro Trust).pdf

~~DRAFT: January 17, 2018~~

This indicative term sheet accompanies, is incorporated by reference in and forms part of the confidential shelf offering memorandum (the "confidential shelf offering memorandum") dated January ~~●,~~22, 2018 of Fair Hydro Trust (the "Issuer") and is subject to all of the restrictions, conditions and limitations set out in the confidential shelf offering memorandum. This term sheet and the confidential shelf offering memorandum constitute an offering of these securities only in those jurisdictions and to those persons where and to whom they may be lawfully offered for sale. The Issuer is not obligated to accept an offer to purchase the securities described herein.

The summary below describes the principal terms of the Series 2018-1 Senior Notes (as defined below). Certain of the terms summarized below are subject to important limitations and exceptions. The following is not intended to be complete. Prospective investors should review the "Capital Markets Platform" and "Description of Senior Notes" sections of the confidential shelf offering memorandum which contain a more detailed description of certain terms of the Series 2018-1 Senior Notes and the trust indenture (the "Master Trust Indenture") between the Issuer and BNY Trust Company of Canada, acting as trustee, dated December 21, 2017 (and to which the Series 2018-1 Senior Notes will be subject), as supplemented by the term senior series 2018-1 supplemental indenture to the Master Trust Indenture (the "Series 2018-1 Senior Supplemental Indenture") pursuant to which the Series 2018-1 Senior Notes will be issued (together with the Master Trust Indenture, the "Indenture"). In the event of any inconsistency between this indicative term sheet and the confidential shelf offering memorandum, the terms of this indicative term sheet apply. Certain capitalized terms used and not otherwise defined in the summary below have the meanings given thereto in the confidential shelf offering memorandum.

New Issue by Way of Private Placement *January ~~●,~~22, 2018*

FAIR HYDRO TRUST

●% SENIOR NOTES DUE ~~●, Series~~MAY 15, 2033, SERIES 2018-1

Indicative Term Sheet

Issuer:	Fair Hydro Trust, a special purpose trust established under the laws of the Province of Ontario.
Issue:	●% Senior Notes due ~~●,~~May 15, 2033, Series 2018-1 (the "**Series 2018-1 Senior Notes**").
Expected Credit Ratings:	DBRS: ● (●) Moody's: ● (●)
Principal Amount:	$●[(1)]
Term:	~~●~~15.25 years
Launch Date:	●, 2018
Pricing Date:	●, 2018
Settlement Date:	●, 2018 (T+3)
Interest Rate:	●% per annum (the "**Series 2018-1 Interest Rate**")
Issue Spread:	+● bps (+/-● bps) versus Government of Canada curve interpolated between CAN ●% due ● and CAN ●% due ● +● bps (including a ● bps curve adjustment and +● bps ~~curve~~ delay adjustment), ~~both~~ versus the CAN ●% due ● (priced at $● to yield ●%)

(1) The Issuer may offer and sell Series 2018-1 Senior Notes having a principal amount greater than the amount shown above. In that event, the Principal Accumulation Amounts, the principal amounts of the Series 2018-1 Subordinated Notes and the Series 2018-1 Junior Subordinated Notes and the use of proceeds amount will be increased proportionately.

Issue Yield:	●%
Issue Price:	$● per $1,000 principal amount of Series 2018-1 Senior Notes.
Agents Commission:	$● per $1,000 principal amount of Series 2018-1 Senior Notes sold (payable from existing cash resources of the Issuer)
Interest Payment Dates:	The Interest Payment Dates for the Series 2018-1 Senior Notes are as follows: (i) prior to the occurrence of an Amortization Event, interest on the Series 2018-1 Senior Notes shall be payable in equal **semi-annual instalments** (except the first interest payment) ~~semi-annual instalments~~ in arrears on ~~April~~**May** 15 and ~~October~~**November** 15 of each year, commencing ~~April~~**May** 15, 2018 (short first coupon); and (ii) following the occurrence of an Amortization Event, interest will be payable in arrears on the outstanding principal amount of the Series 2018-1 Senior Notes on each Payment Date thereafter at a rate equal to the monthly equivalent of the Series 2018-1 Interest Rate; that is, the interest rate that, when compounded monthly for six months on a stated outstanding principal amount, yields interest in an amount equal to the Series 2018-1 Interest Rate, multiplied by such outstanding principal amount and divided by two. The first interest payment on the Series 2018-1 Senior Notes will include accrued and unpaid interest for the period from, and including, the closing date of this Offering (the "**Series 2018-1 Senior Notes Offering**") to, but excluding, the first Interest Payment Date. Subject to the occurrence of an Acceleration Event, the first interest payment will be in an amount equal to $● per $1,000 principal amount of Series 2018-1 Senior Notes. If an Interest Payment Date is not a business day in Toronto, then the payment will be made on the next business day with no adjustment. For any period less than a full semi-annual interest period, interest will be calculated on an actual/365 basis. The record date for each Interest Payment Date is the last day of the calendar month preceding such Interest Payment Date. "**Amortization Event**" means either ~~(i)~~ an Acceleration Event has occurred with respect to the Series 2018-1 Senior Notes, or ~~(ii)~~ the outstanding principal amount of the Series 2018-1 Senior Notes has not been paid in full on the Expected Principal Payment Date (as defined below). An "**Acceleration Event**" means either (i) all Issuer Funding Obligations are declared due and payable in accordance with the provisions of the Master Trust Indenture, or (ii) the outstanding principal amount of the Series 2018-1 Senior Notes and all interest thereon is declared due and payable in accordance with the Indenture as a result of the occurrence of a Series 2018-1 Event of Default (as defined below).
Principal Payment Dates and Principal Payment Amount:	Subject to the occurrence of an Acceleration Event, the outstanding principal amount of the Series 2018-1 Senior Notes shall be due and payable on ●**May** 15, ~~20~~●**2033** (such Payment Date, the "**Expected Principal Payment Date**"). Following the occurrence of an Amortization Event, each Payment Date thereafter shall be a Principal Payment Date in respect of the Series 2018-1 Senior Notes and the then outstanding principal amount of the Series 2018-1 Senior Notes shall be due and payable on each such Payment Date.
Principal Payment Default Date:	~~●, 20●~~**May 15, 2035**

Principal Accumulation Amounts: Subject to the occurrence of an Amortization Event, the Series 2018-1 Senior Notes shall have the ~~following~~ Principal Accumulation Amounts ~~on~~**for** the Payment Dates ~~set out below:~~**specified in Appendix A hereto.**

~~Payment Date~~	~~Principal Accumulation Amounts~~
~~●, 20●~~	~~$●~~
~~●, 20●~~	~~$●~~
~~●, 20●~~	~~$●~~
~~●, 20●~~	~~$●~~

Following the occurrence of an Amortization Event, the Principal Accumulation Amount with respect to each Payment Date thereafter shall be an amount equal to the outstanding principal amount of the Series 2018-1 Senior Notes.

Subordination: Concurrent with the issuance of the Series 2018-1 Senior Notes, OPG will subscribe for (i) $● of ●% subordinated notes due ~~●,~~**May 15, 2033,** Series 2018-1 (the "**Series 2018-1 Subordinated Notes**"); and (ii) $● of ●% junior subordinated notes due ~~●,~~**May 15, 2033,** Series 2018-1 (the "**Series 2018-1 Junior Subordinated Notes**"). The Series 2018-1 Subordinated Notes shall be subordinated to the Series 2018-1 Senior Notes (and all other Senior Funding Obligations), and the Series 2018-1 Junior Subordinated Notes shall be subordinated to the Series 2018-1 Senior Notes (and all other Senior Funding Obligations) and the Series 2018-1 Subordinated Notes (and all other Subordinated Funding Obligations), in each case in the manner described in the confidential shelf offering memorandum under the heading "*Capital Markets Platform – Subordination Provisions*".

Optional Redemption: The Series 2018-1 Senior Notes will be redeemable at the option of the Issuer, in whole or in part, at any time and from time to time, on not less than 15 nor more than 60 days' notice at the redemption price specified below. At any time prior to the Par Call Date, the redemption price will be equal to the greater of (i) the Series 2018-1 Canada Yield Price and (ii) par, plus, in each case, accrued and unpaid interest to, but not including, the date of redemption. On or after the Par Call Date, the redemption price will be equal to par, plus accrued and unpaid interest to, but not including, the date of redemption.

"**Par Call Date**" means ~~●, 20●.~~**November 15, 2032.**

"**Series 2018-1 Canada Yield Price**" means a price equal to the price of the Series 2018-1 Senior Notes calculated to provide a yield to the Par Call Date, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third business day preceding the date of redemption, plus ●% per annum.

"**Government of Canada Yield**" on any date means, in respect of the Series 2018-1 Senior Notes being redeemed, the yield from the redemption date to the Par Call Date compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in Canadian dollars in Canada at 100% of its principal amount on such date with a term to maturity equal to the remaining term to the Par Call Date (calculated from the date of redemption), such yield being the average of the yields provided by two major Canadian investment

dealers specified by the Issuer.

Limited Recourse: The Series 2018-1 Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Series 2018-1 Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Series 2018-1 Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Series 2018-1 Senior Notes following the occurrence of certain events. See the confidential shelf offering memorandum under *"Change of Law Protection Agreement"*. The Series 2018-1 Senior Notes will be limited recourse obligations, secured only by the collateral described in the confidential shelf offering memorandum. See the confidential shelf offering memorandum under **the heading** *"Capital Markets Platform — Acceleration and Remedies — Limited Recourse"* and *"Risk Factors"*.

Use of Proceeds: The proceeds from the Series 2018-1 Senior Notes Offering will be used to refinance $● of indebtedness of the Issuer previously incurred to purchase an Investment Interest from the IESO pursuant to the Master Transfer and Servicing Agreement. See *"Consolidated Capitalization"*. **Expenses of the Series 2018-1 Senior Notes Offering are to be paid from existing cash resources.**

Ranking: Subject to the applicable payment waterfalls in the Master Trust Indenture, the Series 2018-1 Senior Notes will be direct, secured and unsubordinated obligations of the Issuer, and will at all times rank equally and proportionately with each other and all other Senior Funding Obligations issued by the Issuer from time to time pursuant to the Indenture, without discrimination or preference.

Change of Law Protection Agreement: The Series 2018-1 Senior Notes are Approved Obligations under the Change of Law Protection Agreement.

Series 2018-1 Events of Default: In addition to the Events of Default contained in the Master Trust Indenture and described in the confidential shelf offering memorandum, each of the following events constitute a "**Series 2018-1 Events of Default**":

(a) failure to pay interest on the Series 2018-1 Senior Notes when due, subject to a 5-day cure period;

(b) failure to pay principal on the Principal Payment Default Date for the Series 2018-1 Senior Notes;

(c) breach of representation or warranty in the Series 2018-1 Senior Supplemental Indenture applicable to the Series 2018-1 Senior Notes, subject to materiality requirements and a 60-day cure period;

(d) breach of a covenant in the Series 2018-1 Senior Supplemental Indenture, subject to materiality requirements and a 60-day cure period; and

(e) an event occurs and as a result thereof, all or any portion of the principal amount of any other Senior Funding Obligation has been accelerated.

Acceleration upon a Series 2018-1 Event of Default: Upon the occurrence of a Series 2018-1 Event of Default, the holders of Series 2018-1 Senior Notes may, by Ordinary Resolution, declare the outstanding principal and all accrued and unpaid interest on the Series 2018-1 Senior Notes to be immediately due and payable, whether or not all Issuer Funding Obligations have been accelerated pursuant to the Master Trust Indenture. For a discussion of

	the consequences of such declaration, see the confidential shelf offering memorandum under the headings "*Capital Markets Platform – Acceleration and Remedies*" and "*Risk Factors – If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected*".
Rating Agency Condition:	"**Rating Agency Condition**" means with respect to any action in respect of the Series 2018-1 Senior Notes subject to such condition, the Issuer shall deliver written notice of the proposed action to such Rating Agency or Rating Agencies at least 10 business days prior to the effective date of such action (or if 10 business days prior notice is impractical, such advance notice as is practicable) and (i) the Rating Agencies shall not have informed the Issuer prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to the Series 2018-1 Senior Notes immediately before the taking of such action, or (ii) in the case of DBRS, or any successor thereto, DBRS shall have informed the Issuer in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating in effect with respect to the Series 2018-1 Senior Notes immediately before the taking of such action.
Additional Security:	No Series Account will be established for the Series 2018-1 Senior Notes. No credit enhancement agreement or liquidity agreement has been entered into for the benefit of the Series 2018-1 Noteholders.
Currency:	Canadian dollars.
Minimum Subscription:	Minimum principal amount of $150,000.
Form and Denomination:	Book entry only through participants in CDS. The Series 2018-1 Senior Notes will be issued in multiples of $1,000.
CUSIP/ISIN:	CUSIP – ● ISIN – ●
Agents:	~~[~~CIBC World Markets Inc. (joint lead and joint bookrunner), Goldman Sachs Canada Inc. (joint lead), RBC Dominion Securities Inc. (~~as co-leads and co-bookrunners)]~~, ●, ●, and ●joint lead and joint bookrunner), BMO Nesbitt Burns Inc., Scotia Capital Inc., National Bank Financial Inc., TD Securities Inc., Morgan Stanley Canada Limited, HSBC Securities (Canada) Inc., Laurentian Bank Securities Inc., Desjardins Securities Inc. and Casgrain & Company Limited.

Any statement contained in the confidential shelf offering memorandum or in any document incorporated or deemed to be incorporated by reference in the confidential shelf offering memorandum shall be deemed to be modified or superseded, to the extent that a statement contained herein or in any other subsequent document which is or is deemed to be incorporated by reference in the confidential shelf offering memorandum, modifies or supersedes such prior statement. The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information set forth in the document which it modifies or supersedes. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. Any statement so modified or superseded shall not constitute a part of the confidential shelf offering memorandum, except as so modified or superseded.

CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. are each, directly or indirectly, a wholly-owned or majority-owned subsidiary or affiliate of a financial institution which is a

lender to the Issuer and to which the Issuer is currently indebted under the terms of the Warehouse Facilities (as described herein). The Issuer may use a portion of the net proceeds of the Series 2018-1 Senior Notes Offering to repay certain indebtedness under the Warehouse Facilities. Consequently, the Issuer may be considered to be a "connected issuer" of certain of the Agents for the purposes of securities regulations in certain provinces. See "Relationship between the Issuer and the Agents".

CAPITALIZATION

On December 21, 2017, the Issuer entered into the following supplemental indentures under the Master Trust Indenture for the provision of an aggregate of approximately $1.56 billion in short term indebtedness (collectively, the "**Warehouse Facilities**"), of which a total of $1.179 billion is drawn as of the date hereof:

(i) a warehouse senior series 2017-1 supplemental indenture with, among others, Royal Bank of Canada, as administrative agent for certain commercial paper conduit purchasers and financial institutions named therein, for the provision of an aggregate maximum principal amount of $800,000,000 floating rate variable funding Senior Notes, Series 2017-1 ("**Senior Notes, Series 2017-1**"), of which $601,290,000 is drawn. See "*Relationship between the Issuer and the Agents*";

(ii) a warehouse subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $611,764,705.88 floating rate variable funding Subordinated Notes, Series 2017-1 ("**Subordinated Notes, Series 2017-1**"), of which $459,810,000 is drawn; and

(iii) a warehouse junior subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $156,862,745.10 floating rate variable funding Junior Subordinated Notes, Series 2017-1 ("**Junior Subordinated Notes, Series 2017-1**"), of which $117,900,000 is drawn.

The issuance of Senior Notes, Series 2017-1, Subordinated Notes, Series 2017-1 and Junior Subordinated Notes, Series 2017-1 under the Warehouse Facilities described above were used to acquire a $1.179 billion Investment Interest from the IESO on December 21, 2017. ~~***[NTD: If there are subsequent draws on the warehouse before the launch of the Series 2018-1 Senior Notes Offering, this section to be updated.]***~~

Concurrently with the issuance of the Series 2018-1 Senior Notes, OPG will also subscribe for the Series 2018-1 Subordinated Notes and the Series 2018-1 Junior Subordinated Notes.

The following table summarizes the capitalization of the Issuer as at the dates indicated before and after completion of the Series 2018-1 Senior Notes Offering.

	As at December 31, 2017 before giving effect to the Series 2018-1 Senior Notes Offering	**As at December 31, 2017 after giving effect to the Series 2018-1 Senior Notes Offering**
Cash and Cash Equivalents……..	Nil	$●
Debt		
Long-term debt, including current portion…….	Nil	$●
Short-term debt……...	$1,179,000,000.00(2)	$●
Bank indebtedness……..	Nil	$●
Total Debt……	$1,179,000,000.00(2)	$●
Equity		
Equity……	$10,000.01	$10,000.01
Total Capitalization……	$1,179,010,000.01(2)	$●

(2) Representing Notes outstanding as of the date hereof under the Warehouse Facilities as follows: (i) $601,290,000, or 51% of all short term debt, represented by Senior Notes, Series 2017-1; (ii) $459,810,000, or 39% of all short term debt, represented by Subordinated Notes, Series 2017-1 held by OPG; and (iii) $117,900,000, or 10% of all short term debt, represented by Junior Subordinated Notes, Series 2017-1 held by OPG.

CERTAIN CANADIAN FEDERAL INCOME TAX CONSIDERATIONS

In the opinion of Torys LLP and Osler, Hoskin & Harcourt LLP, the following summary describes the principal Canadian federal income tax considerations generally applicable under the Income Tax Act (Canada) (the "**Tax Act**") to a holder who acquires Series 2018-1 Senior Notes as beneficial owner pursuant to the Series 2018-1 Senior Notes Offering and who, for purposes of the Tax Act and at all relevant times, deals at arm's length and is not affiliated with the Issuer, and holds Series 2018-1 Senior Notes as capital property (a "**Holder**"). Generally, the Series 2018-1 Senior Notes will be capital property to a Holder provided that the Holder does not acquire or hold the Series 2018-1 Senior Notes in the course of carrying on a business or as part of an adventure or concern in the nature of trade. Certain holders who might not otherwise be considered to hold their Series 2018-1 Senior Notes as capital property may, in certain circumstances, be entitled to treat their Series 2018-1 Senior Notes and any other "Canadian security" (as defined in the Tax Act) owned by them in the taxation year of the election and all subsequent taxation years as capital property by making the irrevocable election permitted by subsection 39(4) of the Tax Act. Such holders are advised to consult their own tax advisors to determine whether such an election is available and desirable in their particular circumstances.

This summary is not applicable to a holder: (i) that is a "financial institution" (as defined in the Tax Act for purposes of the "mark to market property" and "specified debt obligation" rules); (ii) an interest in which is a "tax shelter investment" (as defined in the Tax Act); (iii) that reports its "Canadian tax results" (as defined in the Tax Act) in a currency other than Canadian dollars; or (iv) that has entered into or will enter into a "derivative forward agreement" as defined in the Tax Act in respect of the Series 2018-1 Senior Notes. Any such holders should consult their own tax advisors with respect to an investment in the Series 2018-1 Senior Notes. In addition, this summary does not address the deductibility of interest by a holder who has borrowed money to acquire Series 2018-1 Senior Notes.

On July 18, 2017, the Minister of Finance (Canada) released a consultation paper that included an announcement of its intention to amend the Tax Act to increase the amount of tax applicable to passive investment income earned through a private corporation. No specific amendments to the Tax Act were proposed in connection with this announcement and this summary does not consider the implications of this announcement. On ~~October~~**November** 18, 2017, the Minister of Finance (Canada) announced that the government intends to move forward with the planned amendments subject to further developments to address concerns of business owners the details of which are not yet available. Holders that are private corporations should consult their own tax advisors regarding the implications of these announcements with respect to their particular circumstances.

This summary is based upon the facts set out in the confidential shelf offering memorandum, the current provisions of the Tax Act and the regulations thereunder (the "**Regulations**"), all specific proposals to amend the Tax Act and the Regulations publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date hereof (the "**Tax Proposals**") and counsel's understanding of the current published administrative policies and practices of the Canada Revenue Agency. There can be no assurance that any Tax Proposals will be implemented in their current form or at all. This summary does not otherwise take into account or anticipate any changes in law or administrative policies and practices, whether by legislative, administrative or judicial action nor does it take into account provincial, territorial or foreign tax legislation or considerations, which may differ significantly from those discussed herein.

This summary is not exhaustive of all possible Canadian federal income tax considerations applicable to an investment in the Series 2018-1 Senior Notes. Moreover, the income and other tax consequences of acquiring, holding or disposing of the Series 2018-1 Senior Notes will vary depending on the Holder's particular circumstances, including the province or territory, or provinces or territories, in which the Holder resides or carries on business. Accordingly, this summary is of a general nature only and is not intended to be legal or tax advice to any particular Holder, and no representations with respect to the income tax consequences to any Holder are made. Investors should consult their own tax advisors for advice with respect to the tax consequences of an investment in the Series 2018-1 Senior Notes based on their particular circumstances. This summary does not address any tax considerations applicable to persons other than Holders and such persons should consult their own tax advisors regarding the consequences of acquiring, holding and disposing of Series 2018-1 Senior Notes under the Tax Act and any jurisdiction in which they may be subject to tax.

Foreign Exchange

For purposes of the Tax Act, all amounts relating to the acquisition, holding or disposition of Series 2018-1 Senior Notes must be expressed in Canadian dollars, including any interest, adjusted cost base and proceeds of disposition. For purposes of the Tax Act, amounts denominated in a currency other than the Canadian dollar generally must be converted into Canadian dollars in accordance with the Tax Act on the date such amounts first arose. A Holder may realize a capital gain or a capital loss on the disposition or deemed disposition of a Series 2018-1 Senior Note by virtue of fluctuations in the value of the U.S. dollar relative to the Canadian dollar. The amount of interest or other amounts required to be included in computing the Holder's income for a taxation year will also be affected by fluctuations in the U.S. dollar relative to the Canadian dollar.

Interest on Series 2018-1 Senior Notes

A Holder that is a corporation, partnership, unit trust or any trust of which a corporation or partnership is a beneficiary will be required to include in computing its income for a taxation year all interest on the Series 2018-1 Senior Notes that accrues or is deemed to accrue to such Holder to the end of the particular taxation year or that becomes receivable or is received by the Holder before the end of that taxation year, including on a redemption or repayment on maturity, except to the extent that such interest was included in computing the Holder's income for a preceding taxation year.

Any other Holder, including an individual, will be required to include in computing its income for a taxation year all interest on the Series 2018-1 Senior Notes that is received or receivable by the Holder in that taxation year (depending upon the method regularly followed by the Holder in computing income), including on a redemption, purchase for cancellation, or repayment on maturity, except to the extent that the interest was included in the Holder's income for a preceding taxation year.

Any premium paid by the Issuer to a Holder on the redemption of a Series 2018-1 Senior Note or a purchase for cancellation of a Series 2018-1 Senior Note (other than in the open market in the manner any such obligation would normally be purchased in the open market by any member of the public), will generally be deemed to be interest received at the time by the Holder to the extent that such premium can reasonably be considered to relate to, and does not exceed the value at the time of the redemption of or purchase for cancellation of, the interest that, would have been paid or payable by the Issuer on the Series 2018-1 Senior Note for a taxation year ending after the redemption or purchase for cancellation, and to the extent such premium was not otherwise included in computing the Holder's income for that taxation year or a previous taxation year.

Where a Holder is required to include in income interest on a Series 2018-1 Senior Note that accrued before such Series 2018-1 Senior Note was acquired by the Holder, the Holder will be entitled to a deduction in computing income of an equivalent amount. The adjusted cost base to the Holder of the Series 2018-1 Senior Note will be reduced by the amount which is so deductible.

If a Series 2018-1 Senior Note is purchased by a Holder at a discount from its face value, the Holder may be required to include an amount equal to such discount in computing income, either in accordance with the deemed interest accrual rules contained in the Tax Act and Regulations or in the taxation year in which an amount in respect of the discount is received or receivable by the Holder. Holders should consult their own tax advisors in these circumstances as the treatment of the discount may vary with the facts and circumstances giving rise to the discount.

Disposition of Series 2018-1 Senior Notes

On a disposition or deemed disposition of a Series 2018-1 Senior Note (including a redemption, purchase for cancellation or repayment at maturity), a Holder will generally be required to include in income any premium deemed to be interest and the amount of interest accrued, or deemed to have accrued, on the Series 2018-1 Senior Note from the date of the last interest payment to the date of disposition to the extent that such amount has not otherwise been included in the Holder's income for the taxation year or a previous taxation year.

A disposition or deemed disposition by a Holder of a Series 2018-1 Senior Note will generally result in the Holder realizing a capital gain (or capital loss) equal to the amount by which the proceeds of disposition, net of any accrued interest or any amount deemed to be interest, exceed (or are exceeded by) the aggregate of the Holder's adjusted cost base thereof and any reasonable costs of disposition.

One half of any capital gain (a "**taxable capital gain**") generally must be included in the Holder's income for the taxation year of the disposition, and one half of any capital loss (an "**allowable capital loss**") realized in a taxation year must be deducted from taxable capital gains realized in that year. Allowable capital losses in excess of taxable capital gains realized in a taxation year may be deducted from net taxable capital gains realized in the three preceding taxation years or any subsequent taxation year, subject to detailed rules contained in the Tax Act in this regard. A capital gain realized by an individual (other than certain specified trusts) may give rise to a liability for alternative minimum tax.

Eligibility for Investment

The Series 2018-1 Senior Notes would, if acquired on the date hereof and if they (i) are issued as part of a single issue of debt of at least $25 million and (ii) have an investment grade rating with certain rating agencies prescribed under the Tax Act, be qualified investments under the Tax Act for a trust governed by a registered retirement savings plan ("**RRSP**"), registered retirement income fund ("**RRIF**"), registered education savings plan ("**RESP**"), registered disability savings plan ("**RDSP**"), tax free savings account ("**TFSA**") and deferred profit sharing plan ("**DPSP**") (except for a trust governed by a DPSP to which the Issuer has made a contribution).

Even if the Series 2018-1 Senior Notes may be qualified investments for a trust governed by an RRSP, RRIF, RESP, RDSP or TFSA, if the Series 2018-1 Senior Notes are "prohibited investments" (as defined in section 207.01 of the Tax Act) for an RRSP, RRIF, RESP, RDSP or TFSA, then a holder of the TFSA or RDSP, a subscriber of the RESP or an annuitant of the RRSP or RRIF, as the case may be, will be subject to a penalty tax as set out in the Tax Act. The Series 2018-1 Senior Notes would not be prohibited investments on the date hereof, provided (i) the holder of the TFSA or RDSP, the subscriber of the RESP or the annuitant of the RRSP or RRIF, as the case may be, deals at arm's length with the Issuer within the meaning of the Tax Act, and (ii) does not have a "significant interest" within the meaning of subsection 207.01(4) of the Tax Act in the Issuer. Investors intending to hold the Series 2018-1 Senior Notes in a TFSA, RRSP, RRIF, RESP or RDSP should consult their own advisors as to whether the Series 2018-1 Senior Notes would be a prohibited investment in their particular circumstances.

RELATIONSHIP BETWEEN THE ISSUER AND THE AGENTS

CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. are each, directly or indirectly, a wholly-owned or majority-owned subsidiary or affiliate of a financial institution which is a lender to the Issuer and to which the Issuer is currently indebted under the terms of the Warehouse Facilities. The Issuer may use a portion of the net proceeds of the Series 2018-1 Senior Notes Offering to repay certain indebtedness under the Warehouse Facilities. Consequently, the Issuer may be considered to be a "connected issuer" of certain of the Agents under applicable Canadian securities legislation. As of the date of this Term Sheet, the Issuer is in compliance with the terms of its indebtedness under the Warehouse Facilities. Since the indebtedness under the Warehouse Facilities was incurred, the financial position of the Issuer has not materially changed. As of ●, 2018, the Issuer had approximately $● outstanding under the Warehouse Facilities. CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. have each advised that the decision to act as Agents for the Series 2018-1 Senior Notes Offering was made independently of the lenders under the Warehouse Facilities and the lenders had no influence as to the determination of the terms of the distribution. None of CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. will receive any benefit in connection with the Series 2018-1 Senior Notes Offering other than its respective portion of the Agents' commission payable by the Issuer.

LEGAL MATTERS

Certain Canadian legal matters in connection with the Series 2018-1 Senior Notes Offering will be passed upon by Torys LLP on behalf of the Issuer and by Osler, Hoskin & Harcourt LLP on behalf of the Agents.

APPENDIX A
PRINCIPAL ACCUMULATION AMOUNTS AND PAYMENT DATES

Payment Date	Principal Accumulation Amount
January 15, 2030	$●
February 15, 2030	$●
March 15, 2030	$●
April 15, 2030	$●
May 15, 2030	$●
June 15, 2030	$●
July 15, 2030	$●
August 15, 2030	$●
September 15, 2030	$●
October 15, 2030	$●
November 15, 2030	$●
December 15, 2031	$●
January 15, 2031	$●
February 15, 2031	$●
March 15, 2031	$●
April 15, 2031	$●
May 15, 2031	$●
June 15, 2031	$●
July 15, 2031	$●
August 15, 2031	$●
September 15, 2031	$●
October 15, 2031	$●
November 15, 2031	$●
December 15, 2031	$●
January 15, 2032	$●
February 15, 2032	$●
March 15, 2032	$●
April 15, 2032	$●
May 15, 2032	$●
June 15, 2032	$●
July 15, 2032	$●
August 15, 2032	$●
September 15, 2032	$●
October 15, 2032	$●
November 15, 2032	$●
December 15, 2033	$●
January 15, 2033	$●
February 15, 2033	$●
March 15, 2033	$●
April 15, 2033	$●
May 15, 2033	$●

Document comparison by Workshare Compare on January-21-18 2:56:31 PM

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Description	Series 2018-1 Senior Notes Term Sheet (Fair Hydro Trust)
Document 2 ID	file://C:\Users\bsaulnie\AppData\Local\Temp\Workshare\wmtemp2390_Fair Hydro - Series 2018-1 Senior Notes Term Sheet.DOCX
Description	_Fair Hydro - Series 2018-1 Senior Notes Term Sheet
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	113
Deletions	37
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	150

_Fair Hydro Trust - Agency Agreement.pdf

AGENCY AGREEMENT

February ●, 2018

Fair Hydro Trust
c/o Ontario Power Generation Inc.,
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: **[Name]**
[Title]

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: **[Name]**
[Title]

Dear Ladies and Gentlemen:

The undersigned, CIBC World Markets Inc. ("**CIBC**"), RBC Dominion Securities Inc. ("**RBC**" and together, with CIBC, the "**Joint Bookrunners**"), Goldman Sachs Canada Inc. ("**GSCI**", and collectively with RBC and CIBC, the "**Joint Leads**"), BMO Nesbitt Burns Inc., Scotia Capital Inc., National Bank Financial Inc., TD Securities Inc., Morgan Stanley Canada Limited, HSBC Securities (Canada) Inc., Laurentian Bank Securities Inc., Desjardins Securities Inc. and Casgrain & Company Limited (collectively with the Joint Leads, the "**Agents**"), understand that Fair Hydro Trust (the "**Issuer**") proposes to create, issue, offer and sell (the "**Offering**"), by way of private placement in all of the provinces of Canada (collectively, the "**Offering Jurisdictions**") to certain "accredited investors", as such term is defined under applicable Securities Laws (as defined herein), up to an aggregate principal amount of $● of ●% Senior Notes due May 15, 2033, Series 2018-1 (the "**Notes**"), at a price of $● per $1,000 principal amount and having the attributes set forth in the term sheet attached hereto as Appendix "A" (the "**Term Sheet**").

The Notes will be issued pursuant to a master trust indenture (the "**Master Trust Indenture**") dated as of December 21, 2017 between BNY Trust Company of Canada, as trustee (the "**Indenture Trustee**") and the Issuer, as supplemented by a term senior series 2018-1 supplemental indenture to the Master Trust Indenture (the "**First Term Supplemental Indenture**", and the Master Trust Indenture as amended and supplemented by the First Term Supplemental Indenture, the "**Indenture**") to be entered into as of the Closing Date (as defined herein) between the Indenture Trustee and the Issuer. A confidential shelf offering memorandum dated January ●, 2018 (together with the documents and exhibits included or incorporated by reference therein, the "**Shelf Offering Memorandum**"), as supplemented by the Term Sheet which, among other things, updates the Shelf Offering Memorandum to contain the final pricing information with respect to the Notes (collectively, the Shelf Offering Memorandum and the Term Sheet, the "**Offering Memorandum**"), has been prepared by the Issuer, with the assistance of the Agents, for use by the Agents in connection with the Offering.

The Issuer has entered into a management agreement dated as of December 20, 2017 pursuant to which the Issuer has delegated to Ontario Power Generation Inc. ("**OPG**"), as manager of the Issuer (the "**Manager**"), all of the powers and duties of managing the Issuer. OPG is executing this Agreement as principal only with respect to its representations, warranties and covenants set out in Section 10 and its indemnification obligations set out in Section 15(b) related to such representations, warranties and covenants and in all other respects, OPG is executing this Agreement in its capacity as Manager.

1. **Appointment**. The Issuer hereby appoints the Agents to act as its sole and exclusive agents to effect the solicitation and private placement of the Notes in the Offering Jurisdictions, and in such other jurisdictions as may be agreed upon in writing between the Issuer and the Agents, and the Agents hereby agree to act as exclusive agents for such purpose and to use their reasonable best efforts to solicit offers to purchase the Notes on behalf of the Issuer, subject to the terms and conditions contained herein. The Issuer agrees and acknowledges that the Agents will act as agents only and will not at any time be obligated to purchase any Notes.

2. **Agents' Fee**.

   In consideration of the services rendered or to be rendered by the Agents to the Issuer in connection with the Offering, the Issuer shall, on the closing of the Offering (the "**Closing**"), pay to the Agents a fee equal to ●% of the aggregate principal amount of the Notes sold to purchasers (the "**Purchasers**") under the Offering (the "**Agents' Fee**"). The parties agree and acknowledge that the Agents' Fee shall be allocated among the Agents as follows:

   (a) first, a work fee equal to 15% of the aggregate Agents' Fee shall be allocated equally between the Joint Leads;

   (b) second, the remainder of the aggregate Agents' Fee shall be allocated among the Agents pro rata as follows:

CIBC World Markets Inc.	25.00%
RBC Dominion Securities Inc.	25.00%
Goldman Sachs Canada Inc.	25.00%
BMO Nesbitt Burns Inc.	3.50%
Scotia Capital Inc.	3.50%
National Bank Financial Inc.	3.50%
TD Securities Inc.	3.50%
Morgan Stanley Canada Limited	3.50%
HSBC Securities (Canada) Inc.	3.00%
Laurentian Bank Securities Inc.	1.75%
Desjardins Securities Inc.	1.75%
Casgrain & Company Limited	1.00%

3. **Offering Restrictions.**

(a) The Offering is to be effected in a manner exempt from the prospectus requirements of Securities Laws. The Notes shall be offered for sale to Purchasers in accordance with the "accredited investor exemption" as defined in section 2.3 of National Instrument 45-106 – *Prospectus Exemptions* of the Canadian Securities Administrators ("**NI 45-106**") and, in the case of Purchasers resident in Ontario, section 73.3(2) of the *Securities Act* (Ontario) (the "**OSA**"). For the purposes of this Agreement, "**Securities Laws**" means the applicable securities acts and laws, and the rules and regulations promulgated thereunder, of the Offering Jurisdictions and the rules, instruments, orders, published policy statements, rulings and notices of the securities regulatory authorities of such jurisdictions.

(b) The Agents will solicit offers to purchase the Notes only from "accredited investors" (as such term is defined in section 1.1 of NI 45-106 or in section 73.3 of the OSA, as the case may be) in the Offering Jurisdictions who are not individuals unless such individuals are "permitted clients" (as such term is defined in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Requirements* ("**NI 31-103**")), all in accordance with all applicable Securities Laws and this Agreement and on a private placement basis so as not to require the Issuer to file a prospectus in any jurisdiction.

(c) The Agents acknowledge and agree that the Notes will not be registered under the United States Securities Act of 1933, as amended, (the "**1933 Act**") or applicable state securities laws and the Agents shall not offer or sell, directly or indirectly, in the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction (the "**United States**") or to a U.S. person (as defined in Regulation S under the 1933 Act).

(d) The Agents will, upon the prior consent of the Issuer, be entitled to offer the Notes to purchasers resident in jurisdictions outside of the United States and Canada, provided that the Agents conduct all such activities in compliance with the applicable laws of any such jurisdictions, and provided that the Agents do not solicit offers to purchase or sell the Notes so as to require registration of the Notes or filing of a prospectus with respect to the Notes under the laws of any jurisdiction or impose any additional obligations on the Issuer.

4. **Distribution of Notes**.

(a) The Issuer shall, as soon as reasonably practicable and in any event prior to the Closing Date, use its reasonable commercial efforts to fulfill to the satisfaction of legal counsel to the Agents (the "**Agents' Counsel**"), acting reasonably, all legal requirements to be fulfilled by the Issuer to enable the Notes to be offered for sale and sold in each of the Offering Jurisdictions through the Agents in the manner contemplated herein and without any requirement that a prospectus be filed under the Securities Laws. The Issuer shall also file or cause to be filed with the securities regulatory authorities in the Offering Jurisdictions all information and forms

required to be supplied or filed by it in connection with the Offering under applicable Securities Laws including, without limitation, filing the Offering Memorandum and the reports on Form 45-106F1 required under applicable Securities Laws. Each Agent acknowledges and agrees that it has taken or will take reasonable steps to confirm that each Purchaser of the Notes meets the terms and conditions of the prospectus exemption set forth in section 2.3 of NI 45-106 or section 73.3 of the OSA, as applicable, and obtains and retains, as necessary, relevant information and documentation to evidence the steps taken by such Agent to verify compliance with the exemption in accordance with its usual document retention policies and procedures in compliance with applicable Securities Laws, and will provide to the Issuer forthwith upon request all such information or documentation as the Issuer may reasonably request in good faith and solely for the purpose of verifying compliance with the exemption and assisting the Issuer with complying with its obligations under NI 45-106, including completing Form 45-106F1.

(b) The obligations of the Agents under this Agreement are several and not joint or joint and several. No Agent will be liable for any act, omission, default or conduct by any other Agent or any selling firm appointed by any other Agent.

5. **Deliveries by the Issuer**. The Issuer shall deliver to the Agents:

(a) reasonably promptly upon the Agents' request, such number of commercial copies of the Offering Memorandum to the offices of the Agents as the Agents may reasonably require by notice to the Issuer and an electronic version of the Offering Memorandum; and

(b) concurrently with the preparation thereof, copies of any other documents required to be signed and/or filed by the Issuer under the laws of any Offering Jurisdiction in connection with the Offering, including any Supplementary Material (as defined in Section 6), all of which the Issuer shall complete in form and substance satisfactory to the Agents, acting reasonably, and in compliance with applicable Securities Laws.

6. **Material Change**. For the purposes of this Agreement, the terms "**material change**", "**material fact**" and "**misrepresentation**" have the meanings ascribed thereto in Section 1(1) of the OSA. During the period from the date hereof to the Closing Date, the Issuer shall promptly notify the Agents in writing the full particulars of:

(a) any material change (actual, anticipated or threatened) in the business, affairs, operations, assets, liabilities (absolute, accrued, contingent or otherwise), capital or condition (financial or otherwise) of the Issuer or the Manager, which change is or will likely be of such nature as to result in a misrepresentation in the Offering Memorandum or any Supplementary Material (collectively, the "**Offering Documents**");

(b) any change in any material fact relating to or in respect of the Issuer or the Manager or to the business, affairs, operations, assets, liabilities (absolute, accrued, contingent or otherwise), capital or condition (financial or otherwise) of the Issuer

or the Manager contained in the Offering Documents, which change is or will likely be of such nature as to result in a misrepresentation therein;

(c) any change, to the knowledge of the Issuer, in applicable laws, materially and adversely affecting, or which may materially and adversely affect, the business, operations, affairs, prospects or property of the Issuer, the Notes or the Offering, including, without limitation, the occurrence of a Protection Event (as defined in the Change of Law Protection Agreement (as defined in the Master Trust Indenture)); and

(d) any order of any court or securities regulatory authority preventing or suspending the use of any portion of the Offering Documents, if any, or preventing or suspending the offering or sale of the Notes in accordance with this Agreement.

The Issuer shall first discuss with the Agents in good faith any change in circumstances (actual, anticipated or threatened, financial or otherwise) which is of such a nature that there is reasonable doubt whether notice needs to be given to the Agents pursuant to this Section 6.

The Issuer shall promptly comply with all applicable filings and other requirements under applicable Securities Laws in connection with the matters referred to in subsections (a) to (d) of this Section 6 and shall prepare an amendment or supplement to the Offering Memorandum, and any amendment or supplement thereto (collectively, the "**Supplementary Material**") as may be required by Securities Laws, provided that the Supplementary Material shall be in form and substance satisfactory to the Agents, acting reasonably. Neither the Issuer nor the Agents shall provide to prospective Purchasers any document or other material relating to the Offering other than the Offering Memorandum, any Supplementary Material or any other material previously approved by the Issuer and the Agents from time to time.

7. **Due Diligence**. During the period from the date of this Agreement to the Closing Date, the Agents shall be permitted to conduct such due diligence investigation of the Issuer and its assets, businesses and undertakings, as the Agents, acting reasonably, consider appropriate and to complete formal due diligence question and answer sessions with the Issuer and the Manager and with senior management, legal counsel and the auditor of the Issuer and such other persons as the Agents may reasonably request before the Closing Date. The Issuer and the Manager will make available to the Agents, on a reasonably timely basis, all trust, corporate, business and operating records, financial information, budgets and other information which the Agents may reasonably request, as well as access to appropriate officers and/or senior officers of the Issuer and the Manager (provided, that such access does not unduly interfere with the business operations of the Manager) and advisors and experts retained by the Issuer and/or the Manager in order to enable the Agents to complete their due diligence review.

8. **Offering Documents**. The Issuer and the Manager shall allow the Agents to participate fully in the preparation of the Offering Memorandum and any Supplementary Material and will exercise its reasonable commercial efforts to cause the appropriate officers and/or senior officers of the Issuer and the Manager to make themselves available to provide such assistance with marketing of the Notes as the Agents may reasonably require. The delivery

by the Issuer of the Offering Documents to the Agents will constitute the Issuer's and the Manager's consent to the Agents to the use thereof in connection with the Offering in accordance with the provisions of this Agreement as well as the representation and warranty of the Issuer and the Manager to the Agents that, at the time of such delivery:

(a) the information and statements contained in the Offering Documents (except information and statements relating solely to the Agents and furnished in writing by the Agents for use therein) contain no misrepresentation and contain no untrue statement of a material fact or do not omit to state a material fact regarding the Issuer, the Manager, the Notes or the Program Agreements (as defined in the Master Trust Indenture) that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made; and

(b) the Offering Documents comply in all material respects, as applicable, with all Securities Laws.

9. **Representations, Warranties and Covenants of the Issuer**. The Issuer represents and warrants to, and agrees with, the Agents, as follows:

(a) the Issuer is a trust duly constituted and validly existing under the laws of the province of Ontario and Computershare Trust Company of Canada (the "**Issuer Trustee**") has been appointed as trustee of the Issuer pursuant to the declaration of trust dated as of December 20, 2017 (the "**Declaration of Trust**");

(b) the Issuer is duly qualified to carry on its business in each jurisdiction in which it carries on business and is in good standing in each jurisdiction or place in which such qualification is required, except where the failure so to qualify or to be in good standing would not reasonably be expected to materially adversely affect its business, affairs, operations, financial condition, assets, properties, liabilities, capital, ownership or income taken together or have a material adverse effect on the ability of the Issuer to perform its obligations under any of this Agreement and the other Program Agreements (as defined in the Master Trust Indenture and collectively, the "**Transaction Documents**") to which it is a party (an "**Issuer Material Adverse Effect**");

(c) the Issuer has the power and authority to enter into and perform its obligations under this Agreement and each of the other Transaction Documents to which it is a party, and all other instruments and agreements delivered pursuant hereto and thereto;

(d) the execution, delivery and performance by the Issuer of, this Agreement and each of the other Transaction Documents to which it is a party, and every instrument or agreement delivered pursuant hereto and thereto:

(i) has been or will be duly authorized by all requisite action;

(ii) does not and will not conflict with, result in any breach or violation of, or constitute a default under the Declaration of Trust, or any applicable law, rule, regulation, order, judgment, determination or award presently in effect

and applicable to it, or of any material agreement or any other instrument to which it is now a party or any of its properties are subject or otherwise bound; and

(iii) does not require the consent, filing, authorization, order, registration, qualification or approval (other than those consents or approvals already obtained) of any person or governmental authority, except that the Issuer must file with the applicable securities regulatory authorities a report on Form 45-106F1, prepared and executed in accordance with NI 45-106, accompanied by any applicable prescribed fees, together in certain Offering Jurisdictions with a copy of the Offering Memorandum and any Supplementary Material;

(e) each of the Transaction Documents to which the Issuer is a party has been, or will be at or prior to the Closing, duly executed and delivered by the Issuer Trustee or the Manager, as the case may be, on behalf of the Issuer, and in addition in the case of the Notes, duly certified by the Indenture Trustee and each of the Transaction Documents is, or will be on the Closing, a legal, valid and binding obligation of the Issuer enforceable against it in accordance with its respective terms, subject to applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally and subject to the qualifications that equitable remedies may only be granted in the discretion of a court of competent jurisdiction and except that rights of indemnity, contribution and waiver of contribution may be limited under applicable law;

(f) the Issuer is not in violation of the Declaration of Trust or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which it is a party or by which it may be bound or to which any of the property or assets of the Issuer is subject (including, for the avoidance of doubt, any Transaction Documents to which it is a party), except for such defaults that would not reasonably be expected to have an Issuer Material Adverse Effect;

(g) the Issuer: (i) is not in violation in any material respect of any law, ordinance, franchise, governmental rule or regulation to which it is subject, (ii) has not failed to obtain any material license, permit, qualification or governmental authorization necessary to the ownership of its property or the conduct of its business, and (iii) is not in default in any material respect of any order of any court or governmental authority or arbitration board or tribunal to which it is subject;

(h) no event of default has occurred and is continuing in respect of any outstanding indebtedness of the Issuer;

(i) no Protection Event has occurred and no Suspension Notice (as defined in the Change of Law Protection Agreement) has been received by the Issuer, and upon satisfaction of the Adherence Conditions (as defined in the Change of Law Protection Agreement), the Notes shall constitute Approved Obligations (as defined in the Change of Law Protection Agreement);

(j) the Issuer is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

(k) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes in respect of the Issuer;

(l) since ●, 2017, (i) there has been no Issuer Material Adverse Effect and (ii) there has been no change, which would have a material adverse effect on the ability of the Issuer to fulfill its payment obligations under the Notes;

(m) except as disclosed in the Offering Memorandum, there are no actions, suits or proceedings existing, or, to the Issuer's knowledge after having made due enquiry, pending or threatened, affecting the Issuer in any court or before or by any governmental authority as of the date hereof which if decided, determined or resolved in a manner adverse to the Issuer, could reasonably be expected to have an Issuer Material Adverse Effect or have a material adverse effect on: (i) the ability of the Issuer to perform its obligations under the Transaction Documents to which it is a party; (ii) the ability of the Issuer to fulfill its payment obligations under the Notes; or (iii) the ability of the Issuer to conduct its business as described in the Offering Memorandum;

(n) the Issuer is a direct or indirect subsidiary of the Manager;

(o) the Issuer is structured so as not to be a "covered fund" under the regulations adopted to implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the "Volcker Rule";

(p) the Issuer is not in material default of its obligations under any applicable legislation, rules, regulations, instruments, guidelines or policies, including Securities Laws;

(q) no securities commission, stock exchange or similar regulatory authority has issued any order preventing or suspending trading in any securities of the Issuer or preventing or suspending use of the Shelf Offering Memorandum or the Offering Memorandum, and, to the knowledge of the Issuer, no proceedings, investigations or inquiries for such purpose are pending or contemplated or threatened;

(r) neither the Shelf Offering Memorandum (except to the extent corrected in the Term Sheet) nor the Term Sheet, as of their respective dates, contain any misrepresentation or contain any untrue statement of a material fact or omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which such statement was made, and the Offering Memorandum complies in all material respects with Securities Laws;

(s) the attributes and characteristics of the Notes and the Indenture conform, in all material respects, to the attributes and characteristics thereof described in the Offering Memorandum;

(t) the proceeds from the issuance of the Notes will be applied as described in the Term Sheet under the heading *"Use of Proceeds"*;

(u) the statements in the Shelf Offering Memorandum under the heading *"Statutory Rights of Actions*" and in the Term Sheet under the heading *"Certain Canadian Federal Income Tax Considerations"* accurately summarize, in all material respects, the matters referred to therein;

(v) other than as provided for in this Agreement, the Issuer has not incurred any obligation or liability (absolute, accrued, contingent or otherwise) for brokerage fees, finder's fees, agent's commission or other similar forms of compensation with respect to the transactions contemplated herein;

(w) the Indenture Trustee at its principal office in the City of Toronto, Ontario has been or will be on the Closing Date duly appointed as the trustee under the Indenture in respect of the Notes;

(x) prior to the Closing Date, the form and terms of the global certificate(s) representing the Notes will have been approved and adopted by the Issuer and will comply with all legal requirements and will not conflict with the Indenture;

(y) all requisite action has been, or will be, taken by the Issuer to authorize the delivery of the Offering Memorandum and the filing of the Offering Memorandum with all applicable securities commissions or similar regulatory authorities, as applicable, as required by Securities Laws;

(z) the Issuer Trustee, as trustee of the Issuer, has all requisite power, authority and capacity to create, authorize, issue and sell the Notes and on or prior to the Closing Date all actions required to be taken by or on behalf of the Issuer will have occurred so as to validly create, authorize, issue and sell the Notes; and

(aa) on the Closing Date, upon execution and delivery of the Indenture, the Notes will be duly and validly created and, upon receipt of the purchase price will be duly and validly issued as fully paid Notes.

10. **Representations, Warranties and Covenants of OPG**. OPG represents and warrants to, and agrees with, the Agents, as follows:

(a) OPG is (i) a corporation duly incorporated and organized and validly existing under the *Business Corporations Act* (Ontario), (ii) duly qualified to carry on its business in each jurisdiction in which the conduct of its business or the ownership, leasing or operation of its property and assets requires such qualification, except where the failure to so qualify would not reasonably be expected to materially adversely affect its business, affairs, operations, financial condition, assets, properties, liabilities, capital, ownership or income taken together or have a material adverse effect on its ability to perform its obligations under the change of law process agreement dated as of December 21, 2017 (the "**Change of Law Process Agreement**") between Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**") or its obligations under any of the

Transaction Documents to which it is a party (a "**Manager Material Adverse Effect**"), and (iii) has the power and authority to enter into and perform its obligations under the Change of Law Process Agreement and each of the Transaction Documents to which it is a party (including, for the avoidance of doubt, the Management Agreement);

(b) the execution, delivery and performance by OPG of, this Agreement, the Change of Law Process Agreement and each of the other Transaction Documents to which it is a party, and every instrument or agreement delivered pursuant hereto or thereto:

(i) has been or will be duly authorized by all requisite action;

(ii) does not and will not conflict with, result in any breach or violation of, or constitute a default under its constating documents, as amended, or bylaws, or any resolutions of its board of directors or shareholders, or any applicable law, rule, regulation, order, judgment, determination or award presently in effect and applicable to it, or of any material agreement or any other instrument to which it is now a party or any of its properties are subject or otherwise bound; and

(iii) does not require the consent, filing, authorization, order, registration, qualification or approval (other than those consents or approvals already obtained) of any person or governmental authority;

(c) none of OPG nor any of its subsidiaries is in violation of its constating documents or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which it or any of its subsidiaries is a party or by which it or any of them may be bound or to which any of the property or assets of OPG or any subsidiary of OPG is subject (including, for the avoidance of doubt, the Change of Law Process Agreement and any Transaction Documents to which it is a party), except for such defaults that would not reasonably be expected to have a Manager Material Adverse Effect;

(d) the Change of Law Process Agreement and each of the Transaction Documents to which OPG is a party has been, or will be at or prior to the Closing, duly executed and delivered by OPG, and the Change of Law Process Agreement and each of the Transaction Documents to which OPG is a party is, or will be on the Closing, a valid and binding obligation of OPG enforceable against it in accordance with its respective terms, subject to applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally and subject to the qualifications that equitable remedies may only be granted in the discretion of a court of competent jurisdiction and except that rights of indemnity, contribution and waiver of contribution may be limited under applicable law;

(e) OPG is not in material default of its obligations under any applicable legislation, rules, regulations, instruments, guidelines or policies, including Securities Laws, except, in each case for such defaults that would not reasonably be expected to have a Manager Material Adverse Effect;

(f) no Protection Event has occurred and no Suspension Notice has been received by OPG, and upon satisfaction of the Adherence Conditions, the Notes shall constitute Approved Obligations;

(g) except as disclosed in the Offering Memorandum, there are no actions, suits or proceedings pending or, to OPG's knowledge after having made due enquiry, pending or threatened, affecting OPG in any court or before or by any governmental authority as of the date hereof against OPG, any of its undertaking, property and assets which, if adversely decided, could reasonably be expected to materially adversely affect the issuance of the Notes or the consummation of the transactions contemplated by the Change of Law Process Agreement or the Transaction Documents; and

(h) neither the Shelf Offering Memorandum (except to the extent corrected in the Term Sheet) nor the Term Sheet, as of their respective dates, contain any misrepresentation or contain any untrue statement of a material fact or omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which such statement was made, and the Offering Memorandum complies in all material respects with Securities Laws.

11. **Representations, Warranties and Covenants of the Agents**. Each of the Agents, severally (and not jointly or jointly and severally) represent and warrant to the Issuer and agree with the Issuer that:

(a) it has not offered or sold, and will not offer or sell, any Notes to, or for the benefit of, any resident of Canada or any province thereof or to, or for the benefit of, any resident of any other jurisdiction (to the extent permitted to offer and sell Notes in such other jurisdictions pursuant to Section 3(d) hereof) in contravention of applicable Securities Laws or such other jurisdictions, as applicable;

(b) any offer of Notes in Canada will be made only pursuant to the exemption from the requirement to file a prospectus set forth in Section 2.3 of NI 45-106 and, in the case of Purchasers resident in Ontario, section 73.3(2) of the OSA, such that: (i) each Purchaser of Notes will be an "accredited investor" (as such term is defined in section 1.1 of NI 45-106 or in section 73.3 of the OSA, as the case may be) and further such that one or more of the categories set forth in the definition of "accredited investor" will correctly and in all respects describe such Purchaser; (ii) such Purchaser will not be a person created or being used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in Section 1.1 of NI 45-106; and (iii) such Purchaser will either be purchasing the Notes as principal for their own account, or are deemed to be purchasing the Notes as principal by applicable law;

(c) any offer of Notes will not be made to individuals unless such individuals are "permitted clients" (as such term is defined in NI 31-103);

(d) it has taken or will take reasonable steps to confirm that each Purchaser of Notes in Canada meets the terms and conditions of the "accredited investor exemption" as defined in section 2.3 of NI 45-106 and, in the case of Purchasers resident in

Ontario, section 73.3(2) of the OSA (collectively, the "**AI Requirements**") and shall obtain and retain, as necessary, relevant information and documentation to evidence the steps taken to verify compliance with the AI Requirements in accordance with its usual document retention policies and procedures in compliance with applicable laws and provide to the Issuer forthwith upon request all such information or documentation as the Issuer may reasonably request in good faith and solely for the purpose of verifying compliance with the AI Requirements and assisting the Issuer with complying with its obligations under NI 45-106, including completing Form 45-106F1;

(e) it is duly qualified in the Offering Jurisdictions in a category of registration under applicable Securities Laws that permits it to offer and sell the Notes to purchasers resident in each of the Offering Jurisdictions in the manner contemplated herein and in the Offering Memorandum; and

(f) it has not and shall not make any representation or warranty with respect to the Issuer, the Manager or the Notes other than as set forth in the Offering Documents.

12. **Closing**. The Closing of the purchase and sale of the Notes under this Agreement will take place at the offices of Torys LLP, 79 Wellington St. West, 30th Floor, Box 270, TD South Tower Toronto, Ontario at [**9:00]** a.m. (Toronto time) on February ●, 2018 or at such other date and time as may be agreed upon by the Agents and the Issuer (the date of Closing, the "**Closing Date**" and the time of Closing on the Closing Date, the "**Closing Time**").

13. **Conditions to Closing; Closing Deliveries**. The obligations of the Agents under this Agreement to complete the purchase and sale of the Notes at the Closing Time is subject to the following conditions:

(a) the Issuer shall have obtained and provided to the Agents a final rating letter in respect of the Notes from each of DBRS Limited and Moody's Investor Services, Inc. providing a rating of **[AAA(sf)]** and **[Aa2(sf)]**, respectively, and such ratings shall not have been withdrawn, or down-graded or placed under "credit watch" nor shall any such action have been threatened;

(b) each of the Program Agreements to which the Issuer is a party (excluding the 2018-1 Term Supplemental Indentures (as defined below)) shall be in full force and effect as of the Closing Date;

(c) each of the First Term Supplemental Indenture, the junior subordinated series 2018-1 supplemental indenture to the Master Trust Indenture (the "**Junior Subordinated Term Supplemental Indenture**") and the subordinated series 2018-1 supplemental indenture to the Master Trust Indenture (the "**Subordinated Term Supplemental Indenture**" and together with the First Term Supplemental Indenture and the Junior Subordinated Term Supplemental Indenture, the "**2018-1 Term Supplemental Indentures**") shall have been executed and delivered by the appropriate parties thereunder, in form and substance satisfactory to the Agents, acting reasonably and the notes contemplated thereby shall have been validly issued;

(d) an adherence compliance certificate with respect to the Notes required pursuant to Section 4.02(a)(ii) of the Change of Law Protection Agreement or written confirmation that the Notes constitute Approved Obligations pursuant to Section 4.01(ii) of the Change of Law Protection Agreement, shall have been executed and delivered by the appropriate parties thereunder, in form and substance satisfactory to the Agents, acting reasonably;

(e) the Agents shall have received certificates from each of the Issuer and OPG dated the Closing Date, addressed to the Agents, and signed by two Responsible Officers (as defined in the Indenture) of the Issuer and two officers of OPG as may be acceptable to the Agents, acting reasonably, substantially as set out in Appendix "B" and Appendix "C", as applicable;

(f) the Agents shall have received a certificate, dated the Closing Date, signed by any Responsible Officer of the Issuer and addressed to the Agents and the Agents' Counsel, with respect to the constating documents of the Issuer and other action relating to the Master Trust Indenture, the 2018-1 Term Supplemental Indentures, the authorization, creation, issue and sale of the Notes and the incumbency and specimen signatures of signing officers;

(g) the Agents shall have received a certificate, dated the Closing Date, signed by any authorized officer of the Manager, with respect to: (i) a copy of its incorporating documents and all amendments thereto and applicable by-laws; (ii) resolutions of the board of directors of the Manager approving and authorizing the execution, delivery and performance of each of the Master Trust Indenture and 2018-1 Term Supplemental Indentures; and (iii) incumbency and signatures of signing officers of the Manager executing the Master Trust Indenture and the 2018-1 Term Supplemental Indentures and the other documents to be delivered by the Manager thereunder, in each case showing their names, offices and specimen signatures;

(h) the Agents shall have received a certificate, dated the Closing Date, signed by any authorized officer of the Issuer Trustee with respect to: (i) a copy of its incorporating documents and all amendments thereto and applicable by-laws; and (ii) incumbency and signatures of signing officers of the Issuer Trustee, in each case showing their names, offices and specimen signatures;

(i) the Agents shall have received certificates of status or compliance or other similar documents issued by the applicable governmental authority to evidence that each of the Issuer Trustee and the Manager is validly existing pursuant to the laws of the jurisdiction of their respective establishment or incorporation;

(j) the Agents shall have received:

(i) an opinion of Torys LLP, legal counsel to the Issuer, addressed to the Agents, the Agents' Counsel and the Issuer dated the Closing Date, in form and substance satisfactory to the Agents, acting reasonably, with respect to matters relating to the Issuer and the Offering; it being understood that Torys LLP may rely, to the extent appropriate in the circumstances, as to

matters of fact, on certificates of officers, trustees, directors or other representatives of the Issuer, the Manager or the Issuer Trustee;

(i) an opinion of Hunton & Williams LLP, U.S. legal counsel to the Issuer, addressed to the Agents, the Agents' Counsel and the Issuer dated the Closing Date, in form and substance satisfactory to the Agents, acting reasonably, that the Issuer is structured so as not to be a "covered fund" under the regulations adopted to implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the "Volcker Rule"; it being understood that Hunton & Williams LLP may rely, to the extent appropriate in the circumstances, as to matters of fact, on certificates of officers, trustees, directors or other representatives of Issuer, the Manager or the Issuer Trustee;

(k) the Agents shall have received a final report from Operis Business Engineering Limited, the model auditor, in form and substance acceptable to the Agents, acting reasonably, with respect to their review of the financial model;

(l) the Agents shall have received a favourable legal opinion, addressed to the Agents and dated the Closing Date, from Agents' Counsel, in a form acceptable to the Agents, acting reasonably; it being understood that Agents' Counsel may rely, to the extent appropriate in the circumstances, as to matters of fact, on certificates of officers, directors or other representatives of the Issuer, the Issuer Trustee or the Manager;

(m) the Issuer shall have met all requirements of CDS Clearing and Depository Services Inc. ("**CDS**") necessary to make use of its book entry system;

(n) the Issuer shall deliver one global certificate representing the Notes, registered in the name of "CDS & Co." (or in such other name as the Agents may direct in writing not less than 24 hours prior to the Closing) and duly signed by a Responsible Officer of the Issuer and countersigned by the Indenture Trustee, against payment to the Issuer, or as the Issuer may direct to the Agents in writing not less than 48 hours prior to the Closing, of the aggregate purchase price for the Notes, net of the Agents' Fee, by electronic wire transfer of immediately available funds or in such other manner as the Issuer and the Agents may agree;

(o) all consents, approvals and authorizations from any governmental authority or body or any other third party required for the creation, issuance, sale and delivery of the Notes or the fulfillment of the terms of the Transaction Documents shall have been obtained; and

(p) the receipt of such other documentation or information as may be requested by the Agents and which they have determined to be necessary to give effect to the Offering, acting reasonably.

14. **Rights of Termination.**

(a) If, prior to the Closing:

(i) any action, suit or other proceeding, whether formal or informal, occurs or is commenced, announced or threatened, or any order is made by any governmental authority or there is a change of law or in the interpretation or administration thereof (including a Protection Event), which in the opinion of any of the Agents, acting reasonably, operates to prevent or materially restrict trading or the distribution of the Notes or which would be expected to have an Issuer Material Adverse Effect or which materially adversely affects the market price or value of the Notes;

(ii) there occurs any material change or a change in any material fact or any new fact such as is contemplated by Section 6, which has, or in the opinion of any of the Agents could reasonably be expected to have, an Issuer Material Adverse Effect or materially adversely affect the market price or value of the Notes; or

(iii) there develops, occurs or comes into effect or existence any event, action, state, condition or major financial occurrence of national or international consequence, acts of hostilities or escalation thereof or other calamity or crises or any change or development involving a prospective change in national or international political, financial or economic conditions or any incident, governmental action, law, regulation, policy, inquiry or other occurrence of any nature whatsoever which, in the reasonable opinion of any of the Agents, materially adversely affects, or involves, or will materially adversely affect the financial markets or which operates to prevent or materially restrict the trading or the distribution of the Notes;

the Agents (or any of them) are entitled at their sole option, to terminate their obligations under this Agreement by written notice to that effect given to the Issuer any time prior to the Closing Time.

(b) The Issuer agrees that all terms and conditions contained herein will be construed as conditions, that they shall use commercially reasonable efforts to cause such conditions to be complied with, and that any breach or failure by the Issuer to comply with any such conditions, in any material respect, will entitle any of the Agents to terminate their obligations under this Agreement by written notice to that effect given to the Issuer at or prior to the Closing Time. The Agents may waive, in whole or in part, or extend the time for compliance with, any terms and conditions without prejudice to their rights in respect of any other terms and conditions or any other breach, subsequent breach or non-compliance, provided that to be binding on an Agent, any such waiver must be in writing and signed by such Agent.

(c) The rights of termination contained in subsections (a) and (b) of this Section 14 are in addition to any other rights or remedies the Agents may have in respect of any default, act or failure to act or non-compliance by the Issuer in respect of any of the

matters contemplated by this Agreement or otherwise. In the event of any such termination, there will be no further liability on the part of the Agents to the Issuer, or on the part of the Issuer to the Agents, except, in each case, in respect of any liability which may have arisen prior to or which arises after such termination under any of Sections 15 and 16.

15. **Indemnity.**

(a) The Issuer agrees to indemnify and hold harmless each of the Agents and each of their affiliates and each of their respective directors, officers, employees and agents, (collectively, the "**Indemnified Parties**" and individually, an "**Indemnified Party**"), from and against any and all losses (other than loss of profit in connection with the distribution of the Notes), expenses, claims (including shareholder actions, derivative or otherwise), actions, damages and liabilities, joint or several, including, without limitation, the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees and expenses of their counsel (collectively, the "**Losses**") that may be suffered by, imposed upon or asserted against an Indemnified Party as a result of, in respect of, or connected with or arising out of any action, suit, proceeding, investigation or claim that may be made or threatened by any person or in enforcing this indemnity (collectively the "**Claims**") insofar as the Claims relate to, are caused by, or result from, arise out of or are based upon, directly or indirectly:

(i) any breach by the Issuer of applicable Securities Laws in connection with the offer, issue and sale of the Notes under this Agreement or as a result of any order made against the Issuer by any court or governmental authority in the Offering Jurisdictions which operates to prevent or materially restrict trading in or the distribution of the Notes;

(ii) any misrepresentation or alleged misrepresentation in the Offering Documents or any untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made (other than a misrepresentation or any untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made in the information contained therein relating solely to the Agents which was furnished in writing by the Agents for use therein);

(iii) any order made or any inquiry, investigation or proceeding commenced or threatened by any securities regulatory authority or other competent authority, based on any misrepresentation or any alleged misrepresentation or any untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made in the Offering Memorandum, which prevents or restricts the trading in or the distribution of the Notes;

(iv) any inaccuracy of any representation or warranty of the Issuer contained in this Agreement or in any certificate or other document delivered by the Issuer pursuant hereto; or

(v) any breach by the Issuer of any covenant, term or condition to be performed by it contained in this Agreement or in any document or certificate delivered by the Issuer pursuant hereto.

(b) In addition to the Issuer's obligations under section 15(a), OPG agrees to indemnify and hold harmless each of the Indemnified Parties, from and against any and all Losses that may be suffered by, imposed upon or asserted against an Indemnified Party as a result of, in respect of, or connected with or arising out of any Claim insofar as the Claims relate to, are caused by, or result from, arise out of or are based upon, directly or indirectly:

(i) any breach by OPG or the Issuer of applicable Securities Laws in connection with the offer, issue and sale of the Notes under this Agreement or as a result of any order made against the Issuer by any court or governmental authority in the Offering Jurisdictions which operates to prevent or materially restrict trading in or the distribution of the Notes;

(ii) any misrepresentation or alleged misrepresentation in the Offering Documents or any untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made (other than a misrepresentation or any untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made in the information contained therein relating solely to the Agents which was furnished in writing by the Agents for use therein);

(iii) any order made or any inquiry, investigation or proceeding commenced or threatened by any securities regulatory authority or other competent authority, based on any misrepresentation or any alleged misrepresentation or any untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made in the Offering Memorandum, which prevents or restricts the trading in or the distribution of the Notes;

(iv) any inaccuracy of any representation or warranty of OPG or the Issuer contained in this Agreement or in any certificate or other document delivered by OPG or the Issuer pursuant hereto; or

(v) any breach by OPG or the Issuer of any covenant, term or condition to be performed by either of them contained in this Agreement or in any document or certificate delivered by OPG or the Issuer pursuant hereto, excluding the 2018-1 Term Supplemental Indentures or the notes issued thereunder.

(c) Notwithstanding anything contained in this Agreement, it is expressly understood that with respect to its indemnification obligations set out in Section 15(b)(i), (iv) and (v), OPG is not agreeing to indemnify or hold any Indemnified Party harmless with respect to any of the following:

(i) any Losses resulting from any breach by the Issuer of any covenant, term or condition to be performed by it contained in this Agreement or in any document or certificate delivered by the Issuer pursuant hereto caused by a breach or failure to perform on the part of any other third party under any Program Agreement, the Ontario Fair Hydro Plan Act, 2017 or the regulations passed thereunder; provided that this Section 15(c)(i) shall not apply to limit the liability of OPG in respect of any delegation to a third party as provided for in Section 4.7 of the Management Agreement;

(ii) any Losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision, other than Losses resulting solely from OPG's failure to comply with Section 4.1(a)(xiv) of the Management Agreement; or

(iii) any Losses resulting from the validity of the Change of Law Protection Agreement or the applicability thereof to the Province, the Issuer or the Indenture Trustee or any material part thereof being disaffirmed by or on behalf of the Province.

(d) The parties hereto agree that neither the Issuer nor OPG is providing any representations, warranties or covenants in this Agreement or in any document or certificate delivered by OPG or the Issuer pursuant hereto, and shall have no liability to any Indemnified Party, with respect to the collectability of the Clean Energy Adjustment (as defined in the Management Agreement) or the Carrying Costs (as defined in the Management Agreement), or that the Clean Energy Adjustment amounts or Carrying Costs collected will be sufficient to satisfy the Notes, provided that, for greater certainty, the foregoing qualification is not meant to diminish in any way the representations and warranties given by OPG or the Issuer in this Agreement, or in any document or certificate delivered by OPG or the Issuer pursuant hereto, that neither the Shelf Offering Memorandum (except to the extent corrected in the Term Sheet) nor the Term Sheet, as of their respective dates, contain any misrepresentation or contain any untrue statement of a material fact or omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which such statement was made.

(e) The Issuer and OPG are each referred to in this Section 15 as an "**Indemnifying Party**". Each Indemnifying Party agrees to waive any right such Indemnifying Party may have of first requiring an Indemnified Party to proceed against or enforce any other right, power, remedy or security or claim payment from any other person before claiming under the indemnity in this Section 15. Each Indemnifying Party will not, without the Agents' prior written consent (as the case may be), such consent not to be unreasonably withheld, settle, compromise, consent to the entry

of any judgment in or otherwise seek to terminate any Claim in respect of which indemnification may be sought hereunder (whether or not any Indemnified Party is a party thereto) unless such settlement, compromise, consent or termination includes an unconditional release of each Indemnified Party from any liabilities arising out of such Claim without any admission of negligence, misconduct, liability or responsibility by or on behalf of any Indemnified Party.

(f) Promptly after receiving notice of a Claim against the Agents or any other Indemnified Party or receipt of notice of the commencement of any investigation which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought from an Indemnifying Party, the Agents or any such other Indemnified Party will notify the Indemnifying Party promptly in writing of the particulars thereof, provided that the omission so to notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability which the Indemnifying Party may have to the Agents or any other Indemnified Party except and only to the extent that any such delay in or failure to give notice as herein required prejudices the defence of such Claim or results in any material increase in the liability which the Indemnifying Party has under this Section 15. Each Indemnifying Party shall have 14 calendar days after receipt of the notice to undertake, conduct and control, through counsel of its own choosing and at its own expense, the settlement or defence of the Claim. If the Indemnifying Party undertakes, conducts and controls the settlement or defence of the Claim, the relevant Indemnified Parties shall have the right to participate in the settlement or defence of the Claim at their own cost subject to Section 15(h).

(g) The indemnity in this Section 15 shall cease to apply to an Indemnified Party to the extent that a court of competent jurisdiction in a final judgment that has become non-appealable determines that such Losses to which the Indemnified Party may be subject were primarily caused by the fraud, fraudulent misrepresentation or gross negligence of such Indemnified Party or the Claim being asserted is as a result of a person not being provided with the Offering Memorandum or any Supplementary Material which corrects any misrepresentation or omission or alleged misrepresentation or omission in the Offering Memorandum or any other Supplementary Material due to a failure by the Agents to provide to such person such documents, as applicable, and which the Indemnifying Party has provided to the Agents to provide to such person, and in such event the Indemnified Party shall reimburse to the Indemnifying Party any funds advanced to the Indemnified Party in respect of such Claim.

(h) Each of the Indemnified Parties may retain counsel to separately represent them in the defence of a Claim, which shall be at the applicable Indemnifying Party's expense if: (i) the Indemnifying Party does not promptly assume the defence of the Claim no later than 14 calendar days after receiving actual notice of the Claim, (ii) the Indemnifying Party agrees to such separate representation, or (iii) the Indemnified Party, as the case may be, are advised by counsel that there is an actual or potential conflict between the Indemnifying Party's interests on the one hand and the Indemnified Party's interests on the other hand or additional defences are

available to the Indemnified Parties, which makes representation by the same counsel inappropriate.

(i) In order to provide for just and equitable contribution in circumstances in which the indemnity in this Section 15 is unavailable (other than in accordance with the terms hereof) to the Indemnified Parties or insufficient to hold them harmless in respect of a Claim, the Indemnifying Parties shall jointly and severally contribute to the amount paid or payable by the Agents, as a result of such Claim in such proportion so that the Agents shall be responsible for that portion represented by percentage that the Agents' Fee received by the Agents hereunder bears to the aggregate principal amount of the Notes sold hereunder and the Indemnifying Parties shall be responsible for the balance whether or not they have been sued separately or together, provided, however that each Agent shall not in any event be liable to contribute, in the aggregate, any amount in excess of the Agents' Fee actually received by such Agent. The rights to contribution provided hereunder shall be in addition to and not in derogation of any other right to contribution which the Agents may have by statute or otherwise at law. No person that is determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have engaged in any fraud, fraudulent misrepresentation or gross negligence in connection with any matter that is the subject of the contribution payments contemplated by this Section 15(i) shall be entitled to such contribution.

(j) Each Indemnifying Party hereby constitutes each of the Agents as trustee, respectively, for each of the other Indemnified Parties, as appropriate, of the Indemnifying Party's covenants under the indemnity in this Section 15 with respect to those persons and the Agents agree to accept that trust and to hold and enforce those covenants on behalf of those persons.

(k) The obligations of the Indemnifying Party hereunder are in addition to any liabilities which such Indemnifying Party may otherwise have to the Agents or any other Indemnified Party.

16. **Expenses**. Whether or not the Offering is completed, all expenses of or incidental to the creation, authorization, issue, delivery and sale of the Notes and of or incidental to all other matters in connection with the Offering shall be borne by the Issuer, including, without limitation, reasonable expenses payable in connection with the fees and expenses of counsel to the Issuer, counsel to the Agents and local counsel in each of the Offering Jurisdictions, fees and disbursements of its accountants and auditors and other experts, the Indenture Trustee's fees, fees of ratings agencies and CDS, printing costs, delivery charges, fees and costs incurred in connection with the marketing of the Notes including travel expenses, road-shows, and filing fees (including securities regulatory private placement filing fees and fees payable to the Investment Industry Regulatory Organization of Canada), reasonable and documented out-of-pocket expenses of the Agents and all taxes payable on such fees and expenses.

17. **Severability**. If any provision of this Agreement is determined to be void or unenforceable in whole or in part, it shall be deemed not to affect or impair the validity of any other provision of this Agreement and such void or unenforceable provision shall be severable from this Agreement.

18. **Public Announcement**. For the period commencing on the date hereof and expiring on the Closing Date, and subject to the requirements of the Securities Laws, each of the Issuer and the Manager shall not, without first obtaining the approval of the Agents (such approval not to be unreasonably withheld), and the Agents shall not, without first obtaining the approval of the Issuer and the Manager, make any public communications, verbally, electronically or in writing, including issuing any press release respecting the issue of the Notes.

19. **Survival**. The representations, warranties, covenants, obligations and agreements of the parties contained herein or delivered pursuant hereto shall survive the issuance and sale of the Notes and shall continue in full force and effect notwithstanding any subsequent disposition of the Notes. The Agents shall be entitled to rely on the representations and warranties of the Issuer and the Manager contained in Sections 8, 9 and 10 herein or delivered pursuant hereto notwithstanding any investigation which the Agents may undertake or which may be undertaken on the Agents' behalf.

20. **Acknowledgement of Agents**. Each Agent (i) acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor (as defined in the Master Trust Indenture) under the Master Trust Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Master Trust Indenture including, without limitation, Sections 7.04 through 7.11 and 8.13 (Payment Priorities), Section 7.12 (Payments Held in Trust), Section 8.11 (Control by Controlling Class Creditors), Section 8.12 (Limitation on Suits), Section 8.14 (Limited Recourse), Article IX (Indenture Trustee) (including all limitations of liability hereunder), Section 9.14 (Communications to Specified Creditors) and Section 16.01 (No Petition); (ii) irrevocably authorizes and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI, Article VII and Section 8.13 of the Master Trust Indenture, and appoints the Indenture Trustee as its agent for any and all such purposes; and (iii) consents, requests and authorizes the Issuer and the Indenture Trustee to (y) add the Agents (or their respective agents) to the register of Specified Creditors described in Section 13.13 of the Master Trust Indenture and (z) disseminate the notice details of the Agents to other Specified Creditors for the purposes set out in subsection 9.14(b) of the Master Trust Indenture.

21. **Notices**. Any notice or other communication to be given hereunder shall, in the case of notice to the Issuer, be addressed to:

Fair Hydro Trust
c/o Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: Lubna Ladak
Telephone: (416) 592-5984
Facsimile: (416) 592-4189
E-mail: lubna.ladak@opg.com

with a copy to:

Computershare Trust Company of Canada, in its capacity as Issuer Trustee for the Issuer
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1

Attention: ●
Telephone: ●
Facsimile: ●
E-mail: ●

- and -

Ontario Power Generation Inc., in its capacity as Manager of the Issuer
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: Lubna Ladak
Telephone: (416) 592-5984
Facsimile: (416) 592-4189
E-mail: lubna.ladak@opg.com

with a copy to:

Torys LLP
79 Wellington St. West
30th Floor, Box 270
TD South Tower
Toronto, ON M5K 1N2

Attention: Rima Ramchandani
Telephone: (416) 865-7500
Facsimile: (416) 865-7380
E-mail: rramchandani@torys.com

and, in the case of notice to the Agents, to:

CIBC World Markets Inc.
Brookfield Place
5th Floor, 161 Bay Street
Toronto, ON M5J 2S8

Attention: ●

Telephone: ●
Facsimile: (416) 594-7760
E-mail: ●

- and -

RBC Dominion Securities Inc.

200 Bay Street, 2nd Floor
Royal Bank Plaza, North Tower
Toronto, ON M5J 2W7

Attention: Nur Khan, Managing Director
Telephone: (416) 842-3828
Facsimile: (416) 842-3888
E-mail: Nur.Khan@rbccm.com

- and -

Goldman Sachs Canada Inc.
●

Attention: ●
●

Telephone: ●
Facsimile: ●
E-mail: ●

- and -

BMO Nesbitt Burns Inc.
●

Attention: ●
●

Telephone: ●
Facsimile: ●
E-mail: ●

- and -

Scotia Capital Inc.
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Attention: ●
●

Telephone: ●
Facsimile: ●
E-mail: ●

- and -

National Bank Financial Inc.

●

Attention: ●
●

Telephone: ●
Facsimile: ●
E-mail: ●

- and -

TD Securities Inc.
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Attention: ●
●

Telephone: ●
Facsimile: ●
E-mail: ●

- and -

Morgan Stanley Canada Limited
●

Attention: ●
●

Telephone: ●
Facsimile: ●
E-mail: ●

- and -

HSBC Securities (Canada) Inc.
●

Attention: ●
●

Telephone: ●
Facsimile: ●
E-mail: ●

- and -

Laurentian Bank Securities Inc.

●

Attention: ●
●

Telephone: ●
Facsimile: ●
E-mail: ●

- and -

Desjardins Securities Inc.
●

Attention: ●
●

Telephone: ●
Facsimile: ●
E-mail: ●

- and -

Casgrain & Company Limited
●

Attention: ●
●

Telephone: ●
Facsimile: ●
E-mail: ●

with a copy to the Agents' Counsel at:

Osler, Hoskin & Harcourt LLP
100 King Street West
Suite 6200, P.O. Box 50
1 First Canadian Place
Toronto, ON M5X 1B8

Attention: Michael Innes
Telephone: (416) 862-4284
Facsimile: (416) 862-6666
E-mail: MInnes@osler.com

Any such notice or other communication shall be in writing, and unless delivered personally to a responsible officer of the addressee, shall be given by courier service or fax (with receipt confirmed) or e-mail, and will be deemed to have been received, if given by fax or e-mail, on the day of sending (if such day is a Business Day and, if not, on the next Business Day following the sending thereof) and, if given by courier service, on the next Business Day following the sending thereof. For the purposes of this Agreement, a "**Business Day**" means a day which is not a Saturday, a Sunday or a statutory or civic holiday in Toronto, Ontario.

22. **Confidentiality.** Other than the terms and conditions of this Agreement that are disclosed in the Offering Memorandum, the Issuer, the Manager and the Agents agree that they shall keep the terms and conditions of this Agreement confidential and shall not disclose the terms and conditions of this Agreement to any other person except to their affiliates and those directors, officers, employees and agents of each of the Issuer, the Manager and the Agents who need to review such terms and conditions so as to be able to give effect to the Offering (including pursuant to standard internal requirements); provided, however, that nothing in this Section 22 shall restrict disclosure by the Issuer, the Manager or any of the Agents of the terms and conditions of this Agreement if: (i) such party is legally compelled to do so by order of a court or other competent governmental or regulatory agency, in the course of any judicial or administrative proceeding or by applicable law, or (ii) such party is reasonably required to do so in order to protect its legitimate interests in connection with a legal proceeding under this Agreement.

23. **Time of the Essence**. Time is of the essence of this Agreement.

24. **Currency**. Unless otherwise indicated, all references to "$" in this Agreement are references to the lawful currency of Canada.

25. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein and the courts of such province will have exclusive jurisdiction over any dispute hereunder.

26. **Entire Agreement**. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede any and all prior negotiations and understandings relating to the Offering. This Agreement may only be amended or modified in any respect by the written agreement of all of the parties hereto.

27. **Assignment.** None of the rights and obligations of the parties hereunder shall be assignable or transferable by any party without the prior written consent of the other parties hereto.

28. **Successors and Assigns**. The terms and provisions of this Agreement shall be binding upon and enure to the benefit of the Issuer, the Manager and the Agents and their respective successors and permitted assigns.

29. **Singular and Plural; Gender**. Where the context so requires, words importing the singular number include the plural and *vice versa*, and words importing gender shall include the masculine, feminine and neuter genders.

30. **Execution in Counterparts**. This Agreement may be executed in counterparts (including counterparts by facsimile), each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

[Signature page follows]

If the foregoing is acceptable to the Issuer and the Manager, please signify such acceptance by signing and returning one copy of this letter to the Agents, which accepted offer shall constitute the contract for the provision of services of the Agents in connection with the Offering referred to herein and shall constitute a binding agreement between the parties hereto.

Yours very truly,

CIBC WORLD MARKETS INC.

By: _____
Name:
Title:

RBC DOMINION SECURITIES INC.

By: _____
Name:
Title:

GOLDMAN SACHS CANADA INC.

By: _____
Name:
Title:

BMO NESBITT BURNS INC.

By: _____
Name:
Title:

SCOTIA CAPITAL INC.

By: _____
Name:
Title:

[Signature page to Agency Agreement]

NATIONAL BANK FINANCIAL INC.

By: _____
Name:
Title:

TD SECURITIES INC.

By: _____
Name:
Title:

MORGAN STANLEY CANADA LIMITED

By: _____
Name:
Title:

HSBC SECURITIES (CANADA) INC.

By: _____
Name:
Title:

LAURENTIAN BANK SECURITIES INC.

By: _____
Name:
Title:

DESJARDINS SECURITIES INC.

By: _____
Name:
Title:

[Signature page to Agency Agreement]

CASGRAIN & COMPANY LIMITED

By: _____
Name:
Title:

[Signature page to Agency Agreement]

ACCEPTED AND AGREED to this _____ day of February, 2018.

FAIR HYDRO TRUST, by its Manager, **ONTARIO POWER GENERATION INC.**

By: _____
Name:
Title:

By: _____
Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

[Signature page to Agency Agreement]

APPENDIX “A”

TERM SHEET

(see attached)

APPENDIX "B"

FORM OF OFFICERS' CERTIFICATE OF THE ISSUER

1. the Issuer has duly complied with all terms and conditions of this Agreement, the Master Trust Indenture and the 2018-1 Term Supplemental Indentures on its part to be complied with and satisfied at or prior to the Closing and no Termination Event (as defined in the Master Trust Indenture) has occurred;

2. no order, ruling or determination having the effect of suspending the sale or ceasing or suspending trading in the Notes or any other securities of the Issuer has been issued by any securities commission or any other regulatory authority and is continuing in effect and no proceedings for such purpose have been instituted and are continuing or are pending or, to the knowledge, information and belief of the persons signing such certificate, are contemplated or threatened;

3. the representations and warranties of the Issuer contained in this Agreement are true and correct as of the Closing Time with the same force and effect as if made at and as of the Closing Time, after giving effect to the transactions contemplated by this Agreement;

4. the representations and warranties of the Issuer set forth in Section 12.01 of the Master Trust Indenture and Section 3.1 of the Supplemental Indenture are true and correct as of the Closing Time with the same force and effect as if made at and as of the Closing Time after giving effect to the transactions contemplated hereby; and

5. to the knowledge of the Issuer (after due inquiry), no default or Event of Default has occurred or is continuing. For the purposes of such certificate, an "Event of Default" has the meaning to be given to such terms in the Indenture.

APPENDIX "C"

FORM OF OFFICERS' CERTIFICATE OF OPG

1. OPG has duly complied with all terms and conditions of this Agreement on its part to be complied with and satisfied at or prior to the Closing; and

2. the representations and warranties of OPG contained in this Agreement are true and correct as of the Closing Time with the same force and effect as if made at and as of the Closing Time, after giving effect to the transactions contemplated by this Agreement.

Blackline_Fair Hydro Trust - Agency Agreement.pdf

AGENCY AGREEMENT

~~January~~February ●, 2018

Fair Hydro Trust
c/o Ontario Power Generation Inc.,
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: **[Name]**
[Title]

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: **[Name]**
[Title]

Dear Ladies and Gentlemen:

The undersigned, CIBC World Markets Inc. ("CIBC"), RBC Dominion Securities Inc. ("RBC" and together, with CIBC, the "Joint Bookrunners"), Goldman Sachs Canada Inc.~~, ● and ● (collectively~~ ("GSCI", and collectively with RBC and CIBC, the "Joint Leads"), BMO Nesbitt Burns Inc., Scotia Capital Inc., National Bank Financial Inc., TD Securities Inc., Morgan Stanley Canada Limited, HSBC Securities (Canada) Inc., Laurentian Bank Securities Inc., Desjardins Securities Inc. and Casgrain & Company Limited (collectively with the Joint Leads, the "**Agents**"), understand that Fair Hydro Trust (the "**Issuer**") proposes to create, issue, offer and sell (the "**Offering**"), by way of private placement in all of the provinces of Canada (collectively, the "**Offering Jurisdictions**") to certain "accredited investors", as such term is defined under applicable Securities Laws (as defined herein), up to an aggregate principal amount of $● of ●% Senior Notes due ●~~,~~ May 15, 2033, Series 2018-1 (the "**Notes**"), at a price of $● per $1,000 principal amount and having the attributes set forth in the term sheet attached hereto as Appendix "A" (the "**Term Sheet**").

The Notes will be issued pursuant to a master trust indenture (the "**Master Trust Indenture**") dated as of December 21, 2017 between BNY Trust Company of Canada, as trustee (the "**Indenture Trustee**") and the Issuer, as supplemented by a term senior series ~~[~~2018-1~~]~~ supplemental indenture to the Master Trust Indenture (the "**First Term Supplemental Indenture**", and the Master Trust Indenture as amended and supplemented by the First Term Supplemental Indenture, the "**Indenture**") to be entered into as of the Closing Date (as defined herein) between the Indenture Trustee and the Issuer. A confidential shelf offering memorandum dated January ●, 2018 (together with the documents and exhibits included or incorporated by reference therein, the "**Shelf Offering Memorandum**"), as supplemented by the Term Sheet which, among other things, updates the Shelf Offering Memorandum to contain the final pricing information with respect to the Notes (collectively, the Shelf Offering Memorandum and the

Term Sheet, the "**Offering Memorandum**"), has been prepared by the Issuer, with the assistance of the Agents, for use by the Agents in connection with the Offering.

The Issuer has entered into a management agreement dated as of December 20, 2017 pursuant to which the Issuer has delegated to Ontario Power Generation Inc. ("**OPG**"), as manager of the Issuer (the "**Manager**"), all of the powers and duties of managing the Issuer. OPG is executing this Agreement as principal only with respect to its representations, warranties and covenants set out in Section 10 and its indemnification obligations set out in Section 15(b) related to such representations, warranties and covenants and in all other respects, OPG is executing this Agreement in its capacity as Manager.

1. **Appointment**. The Issuer hereby appoints the Agents to act as its sole and exclusive agents to effect the solicitation and private placement of the Notes in the Offering Jurisdictions, and in such other jurisdictions as may be agreed upon in writing between the Issuer and the Agents, and the Agents hereby agree to act as exclusive agents for such purpose and to use their reasonable best efforts to solicit offers to purchase the Notes on behalf of the Issuer, subject to the terms and conditions contained herein. The Issuer agrees and acknowledges that the Agents will act as agents only and will not at any time be obligated to purchase any Notes.

2. **Agents' Fee**.

In consideration of the services rendered or to be rendered by the Agents to the Issuer in connection with the Offering, the Issuer shall, on the closing of the Offering (the "**Closing**"), pay to the Agents a fee equal to ●% of the aggregate principal amount of the Notes sold to purchasers (the "**Purchasers**") under the Offering (the "**Agents' Fee**"). The parties agree and acknowledge that the Agents' Fee shall be allocated among the Agents as follows:

(a) first, a work fee equal to 15% of the aggregate Agents' Fee shall be allocated equally between the Joint Leads;

(b) second, the remainder of the aggregate Agents' Fee shall be allocated among the Agents pro rata as follows:

CIBC World Markets Inc.	●25.00%
RBC Dominion Securities Inc.	●25.00%
Goldman Sachs Canada Inc.	●25.00%
●BMO Nesbitt Burns Inc.	●3.50%
●Scotia Capital Inc.	●3.50%
National Bank Financial Inc.	3.50%
TD Securities Inc.	3.50%
Morgan Stanley Canada Limited	3.50%
HSBC Securities (Canada) Inc.	3.00%
Laurentian Bank Securities Inc.	1.75%
Desjardins Securities Inc.	1.75%

Casgrain & Company Limited	1.00%

3. **Offering Restrictions.**

(a) The Offering is to be effected in a manner exempt from the prospectus requirements of Securities Laws. The Notes shall be offered for sale to Purchasers in accordance with the "accredited investor exemption" as defined in section 2.3 of National Instrument 45-106 – *Prospectus Exemptions* of the Canadian Securities Administrators ("**NI 45-106**") and, in the case of Purchasers resident in Ontario, section 73.3(2) of the *Securities Act* (Ontario) (the "**OSA**"). For the purposes of this Agreement, "**Securities Laws**" means the applicable securities acts and laws, and the rules and regulations promulgated thereunder, of the Offering Jurisdictions and the rules, instruments, orders, published policy statements, rulings and notices of the securities regulatory authorities of such jurisdictions.

(b) The Agents will solicit offers to purchase the Notes only from "accredited investors" (as such term is defined in section 1.1 of NI 45-106 or in section 73.3 of the OSA, as the case may be) in the Offering Jurisdictions who are not individuals unless such individuals are "permitted clients" (as such term is defined in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Requirements* ("**NI 31-103**")), all in accordance with all applicable Securities Laws and this Agreement and on a private placement basis so as not to require the Issuer to file a prospectus in any jurisdiction.

(c) The Agents acknowledge and agree that the Notes will not be registered under the United States Securities Act of 1933, as amended, (the "**1933 Act**") or applicable state securities laws and the Agents shall not offer or sell, directly or indirectly, in the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction (the "**United States**") or to a U.S. person (as defined in Regulation S under the 1933 Act).

(d) The Agents will, upon the prior consent of the Issuer, be entitled to offer the Notes to purchasers resident in jurisdictions outside of the United States and Canada, provided that the Agents conduct all such activities in compliance with the applicable laws of any such jurisdictions, and provided that the Agents do not solicit offers to purchase or sell the Notes so as to require registration of the Notes or filing of a prospectus with respect to the Notes under the laws of any jurisdiction or impose any additional obligations on the Issuer.

4. **Distribution of Notes**.

(a) The Issuer shall, as soon as reasonably practicable and in any event prior to the Closing Date, use its reasonable commercial efforts to fulfill to the satisfaction of

legal counsel to the Agents (the "**Agents' Counsel**"), acting reasonably, all legal requirements to be fulfilled by the Issuer to enable the Notes to be offered for sale and sold in each of the Offering Jurisdictions through the Agents in the manner contemplated herein and without any requirement that a prospectus be filed under the Securities Laws. The Issuer shall also file or cause to be filed with the securities regulatory authorities in the Offering Jurisdictions all information and forms required to be supplied or filed by it in connection with the Offering under applicable Securities Laws including, without limitation, filing the Offering Memorandum and the reports on Form 45-106F1 required under applicable Securities Laws. Each Agent acknowledges and agrees that it has taken or will take reasonable steps to confirm that each Purchaser of the Notes meets the terms and conditions of the prospectus exemption set forth in section 2.3 of NI 45-106 or section 73.3 of the OSA, as applicable, and obtains and retains, as necessary, relevant information and documentation to evidence the steps taken by such Agent to verify compliance with the exemption in accordance with its usual document retention policies and procedures in compliance with applicable Securities Laws, and will provide to the Issuer forthwith upon request all such information or documentation as the Issuer may reasonably request in good faith and solely for the purpose of verifying compliance with the exemption and assisting the Issuer with complying with its obligations under NI 45-106, including completing Form 45-106F1.

(b) The obligations of the Agents under this Agreement are several and not joint or joint and several. No Agent will be liable for any act, omission, default or conduct by any other Agent or any selling firm appointed by any other Agent.

5. **Deliveries by the Issuer**. The Issuer shall deliver to the Agents:

(a) reasonably promptly upon the Agents' request, such number of commercial copies of the Offering Memorandum to the offices of the Agents as the Agents may reasonably require by notice to the Issuer and an electronic version of the Offering Memorandum; and

(b) concurrently with the preparation thereof, copies of any other documents required to be signed and/or filed by the Issuer under the laws of any Offering Jurisdiction in connection with the Offering, including any Supplementary Material (as defined in Section 6), all of which the Issuer shall complete in form and substance satisfactory to the Agents, acting reasonably, and in compliance with applicable Securities Laws.

6. **Material Change**. For the purposes of this Agreement, the terms "**material change**", "**material fact**" and "**misrepresentation**" have the meanings ascribed thereto in Section 1(1) of the OSA. During the period from the date hereof to the Closing Date, the Issuer shall promptly notify the Agents in writing the full particulars of:

(a) any material change (actual, anticipated or threatened) in the business, affairs, operations, assets, liabilities (absolute, accrued, contingent or otherwise), capital or condition (financial or otherwise) of the Issuer or the Manager, which change is or will likely be of such nature as to result in a misrepresentation in the Offering

Memorandum or any Supplementary Material (collectively, the "**Offering Documents**");

(b) any change in any material fact relating to or in respect of the Issuer or the Manager or to the business, affairs, operations, assets, liabilities (absolute, accrued, contingent or otherwise), capital or condition (financial or otherwise) of the Issuer or the Manager contained in the Offering Documents, which change is or will likely be of such nature as to result in a misrepresentation therein;

(c) any change, to the knowledge of the Issuer, in applicable laws, materially and adversely affecting, or which may materially and adversely affect, the business, operations, affairs, prospects or property of the Issuer, the Notes or the Offering, including, without limitation, the occurrence of a Protection Event (as defined in the Change of Law Protection Agreement (as defined in the Master Trust Indenture)); and

(d) any order of any court or securities regulatory authority preventing or suspending the use of any portion of the Offering Documents, if any, or preventing or suspending the offering or sale of the Notes in accordance with this Agreement.

The Issuer shall first discuss with the Agents in good faith any change in circumstances (actual, anticipated or threatened, financial or otherwise) which is of such a nature that there is reasonable doubt whether notice needs to be given to the Agents pursuant to this Section 6.

The Issuer shall promptly comply with all applicable filings and other requirements under applicable Securities Laws in connection with the matters referred to in subsections (a) to (d) of this Section 6 and shall prepare an amendment or supplement to the Offering Memorandum, and any amendment or supplement thereto (collectively, the "**Supplementary Material**") as may be required by Securities Laws, provided that the Supplementary Material shall be in form and substance satisfactory to the Agents, acting reasonably. Neither the Issuer nor the Agents shall provide to prospective Purchasers any document or other material relating to the Offering other than the Offering Memorandum, any Supplementary Material or any other material previously approved by the Issuer and the Agents from time to time.

7. **Due Diligence**. During the period from the date of this Agreement to the Closing Date, the Agents shall be permitted to conduct such due diligence investigation of the Issuer and its assets, businesses and undertakings, as the Agents, acting reasonably, consider appropriate and to complete formal due diligence question and answer sessions with the Issuer and the Manager and with senior management, legal counsel and the auditor of the Issuer and such other persons as the Agents may reasonably request before the Closing Date. The Issuer and the Manager will make available to the Agents, on a reasonably timely basis, all trust, corporate, business and operating records, financial information, budgets and other information which the Agents may reasonably request, as well as access to appropriate officers and/or senior officers of the Issuer and the Manager (provided, that such access does not unduly interfere with the business operations of the Manager) and advisors and experts retained by the Issuer and/or the Manager in order to enable the Agents to complete their due diligence review.

8. **Offering Documents**. The Issuer and the Manager shall allow the Agents to participate fully in the preparation of the Offering Memorandum and any Supplementary Material and will exercise its reasonable commercial efforts to cause the appropriate officers and/or senior officers of the Issuer and the Manager to make themselves available to provide such assistance with marketing of the Notes as the Agents may reasonably require. The delivery by the Issuer of the Offering Documents to the Agents will constitute the Issuer's and the Manager's consent to the Agents to the use thereof in connection with the Offering in accordance with the provisions of this Agreement as well as the representation and warranty of the Issuer and the Manager to the Agents that, at the time of such delivery:

(a) the information and statements contained in the Offering Documents (except information and statements relating solely to the Agents and furnished in writing by the Agents for use therein) contain no misrepresentation and contain no untrue statement of a material fact or do not omit to state a material fact regarding the Issuer, the Manager, the Notes or the Program Agreements (as defined ~~below~~**in the Master Trust Indenture**) that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made; and

(b) the Offering Documents comply in all material respects, as applicable, with all Securities Laws.

9. **Representations, Warranties and Covenants of the Issuer**. The Issuer represents and warrants to, and agrees with, the Agents, as follows:

(a) the Issuer is a trust duly constituted and validly existing under the laws of the province of Ontario and Computershare Trust Company of Canada (the "**Issuer Trustee**") has been appointed as trustee of the Issuer pursuant to the declaration of trust dated as of December 20, 2017 (the "**Declaration of Trust**");

(b) the Issuer is duly qualified to carry on its business in each jurisdiction in which it carries on business and is in good standing in each jurisdiction or place in which such qualification is required, except where the failure so to qualify or to be in good standing would not reasonably be expected to materially adversely affect its business, affairs, operations, financial condition, assets, properties, liabilities, capital, ownership or income taken together or have a material adverse effect on the ability of the Issuer to perform its obligations under any of this Agreement and the other Program Agreements (as defined in the Master Trust Indenture and collectively, the "**Transaction Documents**") to which it is a party (an "**Issuer Material Adverse Effect**");

(c) the Issuer has the power and authority to enter into and perform its obligations under this Agreement and each of the other Transaction Documents to which it is a party, and all other instruments and agreements delivered pursuant hereto and thereto;

(d) the execution, delivery and performance by the Issuer of, this Agreement and each of the other Transaction Documents to which it is a party, and every instrument or agreement delivered pursuant hereto and thereto:

(i) has been or will be duly authorized by all requisite action;

(ii) does not and will not conflict with, result in any breach or violation of, or constitute a default under the Declaration of Trust, or any applicable law, rule, regulation, order, judgment, determination or award presently in effect and applicable to it, or of any material agreement or any other instrument to which it is now a party or any of its properties are subject or otherwise bound; and

(iii) does not require the consent, filing, authorization, order, registration, qualification or approval (other than those consents or approvals already obtained) of any person or governmental authority, except that the Issuer must file with the applicable securities regulatory authorities a report on Form 45-106F1, prepared and executed in accordance with NI 45-106, accompanied by any applicable prescribed fees, together in certain Offering Jurisdictions with a copy of the Offering Memorandum and any Supplementary Material;

(e) each of the Transaction Documents to which the Issuer is a party has been, or will be at or prior to the Closing, duly executed and delivered by the Issuer Trustee or the Manager, as the case may be, on behalf of the Issuer, and in addition in the case of the Notes, duly certified by the Indenture Trustee and each of the Transaction Documents is, or will be on the Closing, a legal, valid and binding obligation of the Issuer enforceable against it in accordance with its respective terms, subject to applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally and subject to the qualifications that equitable remedies may only be granted in the discretion of a court of competent jurisdiction and except that rights of indemnity, contribution and waiver of contribution may be limited under applicable law;

(f) the Issuer is not in violation of the Declaration of Trust or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which it is a party or by which it may be bound or to which any of the property or assets of the Issuer is subject (including, for the avoidance of doubt, any Transaction Documents to which it is a party), except for such defaults that would not reasonably be expected to have an Issuer Material Adverse Effect;

(g) the Issuer: (i) is not in violation in any material respect of any law, ordinance, franchise, governmental rule or regulation to which it is subject, (ii) has not failed to obtain any material license, permit, qualification or governmental authorization necessary to the ownership of its property or the conduct of its business, and (iii) is not in default in any material respect of any order of any court or governmental authority or arbitration board or tribunal to which it is subject;

(h) no event of default has occurred and is continuing in respect of any outstanding indebtedness of the Issuer;

(i) no Protection Event has occurred and no Suspension Notice (as defined in the Change of Law Protection Agreement) has been received by the Issuer, and upon satisfaction of the Adherence Conditions (as defined in the Change of Law Protection Agreement), the Notes shall constitute Approved Obligations (as defined in the Change of Law Protection Agreement);

(j) the Issuer is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);

(k) all tax returns (federal, provincial and local) required to be filed with respect to the Issuer have been filed and there has been paid or adequate provision made for the payment of all material Taxes in respect of the Issuer;

(l) since ●, 2017, (i) there has been no Issuer Material Adverse Effect and (ii) there has been no change, which would have a material adverse effect on the ability of the Issuer to fulfill its payment obligations under the Notes;

(m) except as disclosed in the Offering Memorandum, there are no actions, suits or proceedings existing, or, to the Issuer's knowledge after having made due enquiry, pending or threatened, affecting the Issuer in any court or before or by any governmental authority as of the date hereof which if decided, determined or resolved in a manner adverse to the Issuer, could reasonably be expected to have an Issuer Material Adverse Effect or have a material adverse effect on: (i) the ability of the Issuer to perform its obligations under the Transaction Documents to which it is a party; (ii) the ability of the Issuer to fulfill its payment obligations under the Notes; or (iii) the ability of the Issuer to conduct its business as described in the Offering Memorandum;

~~(n) as of the date of delivery, the financial model delivered by the Issuer to the Agents (the "**Financial Model**") contains the Issuer's reasonable estimate of projected [describe financial model metrics]. The Financial Model has been prepared in good faith, with due care and skill, is based on all information known to the Issuer and the Manager at the time which could reasonably be relevant to the preparation thereof, and is subject to assumptions that, as of the date of delivery, are reasonable in the circumstances and the Issuer is not aware of any material inaccuracies in the Financial Model;~~

(n) ~~(o)~~ the Issuer is a direct or indirect subsidiary of the Manager;

(o) ~~(p)~~ the Issuer is structured so as not to be a "covered fund" under the regulations adopted to implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the "Volcker Rule";

(p) ~~(q)~~ the Issuer is not in material default of its obligations under any applicable legislation, rules, regulations, instruments, guidelines or policies, including Securities Laws;

(q) ~~(r)~~ no securities commission, stock exchange or similar regulatory authority has issued any order preventing or suspending trading in any securities of the Issuer or preventing or suspending use of the Shelf Offering Memorandum or the Offering Memorandum, and, to the knowledge of the Issuer, no proceedings, investigations or inquiries for such purpose are pending or contemplated or threatened;

(r) ~~(s)~~ neither the Shelf Offering Memorandum (except to the extent corrected in the Term Sheet) nor the Term Sheet, as of their respective dates, contain any misrepresentation or contain any untrue statement of a material fact or omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which such statement was made, and the Offering Memorandum complies in all material respects with Securities Laws;

(s) ~~(t)~~ the attributes and characteristics of the Notes and the Indenture conform, in all material respects, to the attributes and characteristics thereof described in the Offering Memorandum;

(t) ~~(u)~~ the proceeds from the issuance of the Notes will be applied as described in the Term Sheet under the heading *"Use of Proceeds"*;

(u) ~~(v)~~ the statements in the Shelf Offering Memorandum under the heading *"Statutory Rights of Actions*" and in the Term Sheet under the heading *"Certain Canadian Federal Income Tax Considerations"* accurately summarize, in all material respects, the matters referred to therein;

(v) ~~(w)~~ other than as provided for in this Agreement, the Issuer has not incurred any obligation or liability (absolute, accrued, contingent or otherwise) for brokerage fees, finder's fees, agent's commission or other similar forms of compensation with respect to the transactions contemplated herein;

(w) ~~(x)~~ the Indenture Trustee at its principal office in the City of Toronto, Ontario has been or will be on the Closing Date duly appointed as the trustee under the Indenture in respect of the Notes;

(x) ~~(y)~~ prior to the Closing Date, the form and terms of the global certificate(s) representing the Notes will have been approved and adopted by the Issuer and will comply with all legal requirements and will not conflict with the Indenture;

(y) ~~(z)~~ all requisite action has been, or will be, taken by the Issuer to authorize the delivery of the Offering Memorandum and the filing of the Offering Memorandum with all applicable securities commissions or similar regulatory authorities, as applicable, as required by Securities Laws;

(z) ~~(aa)~~ the Issuer Trustee, as trustee of the Issuer, has all requisite power, authority and capacity to create, authorize, issue and sell the Notes and on or prior to the Closing Date all actions required to be taken by or on behalf of the Issuer will have occurred so as to validly create, authorize, issue and sell the Notes; and

(aa) ~~(bb)~~ on the Closing Date, upon execution and delivery of the Indenture, the Notes will be duly and validly created and, upon receipt of the purchase price will be duly and validly issued as fully paid Notes.

10. **Representations, Warranties and Covenants of OPG**. OPG represents and warrants to, and agrees with, the Agents, as follows:

(a) OPG is (i) a corporation duly incorporated and organized and validly existing under the *Business Corporations Act* (Ontario), (ii) duly qualified to carry on its business in each jurisdiction in which the conduct of its business or the ownership, leasing or operation of its property and assets requires such qualification, except where the failure to so qualify would not reasonably be expected to materially adversely affect its business, affairs, operations, financial condition, assets, properties, liabilities, capital, ownership or income taken together or have a material adverse effect on its ability to perform its obligations under the change of law process agreement dated as of December 21, 2017 (the "**Change of Law Process Agreement**") between Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and the Minister of Finance (the "**Province**") or its obligations under any of the Transaction Documents to which it is a party (a "**Manager Material Adverse Effect**"), and (iii) has the power and authority to enter into and perform its obligations under the Change of Law Process Agreement and each of the Transaction Documents to which it is a party (including, for the avoidance of doubt, the Management Agreement);

(b) the execution, delivery and performance by OPG of, this Agreement, the Change of Law Process Agreement and each of the other Transaction Documents to which it is a party, and every instrument or agreement delivered pursuant hereto or thereto:

(i) has been or will be duly authorized by all requisite action;

(ii) does not and will not conflict with, result in any breach or violation of, or constitute a default under its constating documents, as amended, or bylaws, or any resolutions of its board of directors or shareholders, or any applicable law, rule, regulation, order, judgment, determination or award presently in effect and applicable to it, or of any material agreement or any other instrument to which it is now a party or any of its properties are subject or otherwise bound; and

(iii) does not require the consent, filing, authorization, order, registration, qualification or approval (other than those consents or approvals already obtained) of any person or governmental authority;

(c) none of OPG nor any of its subsidiaries is in violation of its constating documents or in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, deed of trust, loan or credit agreement, note, lease or other agreement or instrument to which it or any of its subsidiaries is a party or by which it or any of them may be bound or to which any of the property or assets of OPG or any subsidiary of OPG

is subject (including, for the avoidance of doubt, the Change of Law Process Agreement and any Transaction Documents to which it is a party), except for such defaults that would not reasonably be expected to have a Manager Material Adverse Effect;

(d) the Change of Law Process Agreement and each of the Transaction Documents to which OPG is a party has been, or will be at or prior to the Closing, duly executed and delivered by OPG, and the Change of Law Process Agreement and each of the Transaction Documents to which OPG is a party is, or will be on the Closing, a valid and binding obligation of OPG enforceable against it in accordance with its respective terms, subject to applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally and subject to the qualifications that equitable remedies may only be granted in the discretion of a court of competent jurisdiction and except that rights of indemnity, contribution and waiver of contribution may be limited under applicable law;

(e) OPG is not in material default of its obligations under any applicable legislation, rules, regulations, instruments, guidelines or policies, including Securities Laws, except, in each case for such defaults that would not reasonably be expected to have a Manager Material Adverse Effect;

(f) no Protection Event has occurred and no Suspension Notice has been received by OPG, and upon satisfaction of the Adherence Conditions, the Notes shall constitute Approved Obligations;

(g) except as disclosed in the Offering Memorandum, there are no actions, suits or proceedings pending or, to OPG's knowledge after having made due enquiry, pending or threatened, affecting OPG in any court or before or by any governmental authority as of the date hereof against OPG, any of its undertaking, property and assets which, if adversely decided, could reasonably be expected to materially adversely affect the issuance of the Notes or the consummation of the transactions contemplated by the Change of Law Process Agreement or the Transaction Documents; and

(h) neither the Shelf Offering Memorandum (except to the extent corrected in the Term Sheet) nor the Term Sheet, as of their respective dates, contain any misrepresentation or contain any untrue statement of a material fact or omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which such statement was made, and the Offering Memorandum complies in all material respects with Securities Laws.

11. **Representations, Warranties and Covenants of the Agents**. Each of the Agents, severally (and not jointly or jointly and severally) represent and warrant to the Issuer and agree with the Issuer that:

(a) it has not offered or sold, and will not offer or sell, any Notes to, or for the benefit of, any resident of Canada or any province thereof or to, or for the benefit of, any resident of any other jurisdiction (to the extent permitted to offer and sell Notes in

such other jurisdictions pursuant to Section 3(d) hereof) in contravention of applicable Securities Laws or such other jurisdictions, as applicable;

(b) any offer of Notes in Canada will be made only pursuant to the exemption from the requirement to file a prospectus set forth in Section 2.3 of NI 45-106 and, in the case of Purchasers resident in Ontario, section 73.3(2) of the OSA, such that: (i) each Purchaser of Notes will be an "accredited investor" (as such term is defined in section 1.1 of NI 45-106 or in section 73.3 of the OSA, as the case may be) and further such that one or more of the categories set forth in the definition of "accredited investor" will correctly and in all respects describe such Purchaser; (ii) such Purchaser will not be a person created or being used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in Section 1.1 of NI 45-106; and (iii) such Purchaser will either be purchasing the Notes as principal for their own account, or are deemed to be purchasing the Notes as principal by applicable law;

(c) any offer of Notes will not be made to individuals unless such individuals are "permitted clients" (as such term is defined in NI 31-103);

(d) it has taken or will take reasonable steps to confirm that each Purchaser of Notes in Canada meets the terms and conditions of the "accredited investor exemption" as defined in section 2.3 of NI 45-106 and, in the case of Purchasers resident in Ontario, section 73.3(2) of the OSA (collectively, the "**AI Requirements**") and shall obtain and retain, as necessary, relevant information and documentation to evidence the steps taken to verify compliance with the AI Requirements in accordance with its usual document retention policies and procedures in compliance with applicable laws and provide to the Issuer forthwith upon request all such information or documentation as the Issuer may reasonably request in good faith and solely for the purpose of verifying compliance with the AI Requirements and assisting the Issuer with complying with its obligations under NI 45-106, including completing Form 45-106F1;

(e) it is duly qualified in the Offering Jurisdictions in a category of registration under applicable Securities Laws that permits it to offer and sell the Notes to purchasers resident in each of the Offering Jurisdictions in the manner contemplated herein and in the Offering Memorandum; and

(f) it has not and shall not make any representation or warranty with respect to the Issuer, the Manager or the Notes other than as set forth in the Offering Documents.

12. **Closing**. The Closing of the purchase and sale of the Notes under this Agreement will take place at the offices of Torys LLP, 79 Wellington St. West, 30th Floor, Box 270, TD South Tower Toronto, Ontario at [**9:00]** a.m. (Toronto time) on ~~January~~**February** ●, 2018 or at such other date and time as may be agreed upon by the Agents and the Issuer (the date of Closing, the "**Closing Date**" and the time of Closing on the Closing Date, the "**Closing Time**").

13. **Conditions to Closing; Closing Deliveries**. The obligations of the Agents under this Agreement to complete the purchase and sale of the Notes at the Closing Time is subject to the following conditions:

(a) the Issuer shall have obtained and provided to the Agents a final rating letter in respect of the Notes from each of DBRS Limited and Moody's Investor Services, Inc. providing a rating of **[AAA(sf)]** and **[Aa2(sf)]**, respectively, and such ratings shall not have been withdrawn, or down-graded or placed under "credit watch" nor shall any such action have been threatened;

(b) each of the Program Agreements to which the Issuer is a party (excluding the 2018-1 Term Supplemental Indentures (as defined below)) shall be in full force and effect as of the Closing Date;

(c) each of the First Term Supplemental Indenture, the junior subordinated series 2018-1 supplemental indenture to the Master Trust Indenture (the "**Junior Subordinated Term Supplemental Indenture**") and the subordinated series 2018-1 supplemental indenture to the Master Trust Indenture (the "**Subordinated Term Supplemental Indenture**" and together with the First Term Supplemental Indenture and the Junior Subordinated Term Supplemental Indenture, the "**2018-1 Term Supplemental Indentures**") shall have been executed and delivered by the appropriate parties thereunder, in form and substance satisfactory to the Agents, acting reasonably and the notes contemplated thereby shall have been validly issued;

(d) an adherence compliance certificate with respect to the Notes required pursuant to Section 4.02(a)(ii) of the Change of Law Protection Agreement or written confirmation that the Notes constitute Approved Obligations pursuant to Section 4.01(ii) of the Change of Law Protection Agreement, shall have been executed and delivered by the appropriate parties thereunder, in form and substance satisfactory to the Agents, acting reasonably;

(e) the Agents shall have received certificates from each of the Issuer and OPG dated the Closing Date, addressed to the Agents, and signed by two Responsible Officers (as defined in the Indenture) of the Issuer and two officers of OPG as may be acceptable to the Agents, acting reasonably, substantially as set out in Appendix "B" and Appendix "C", as applicable;

(f) the Agents shall have received a certificate, dated the Closing Date, signed by any Responsible Officer of the Issuer and addressed to the Agents and the Agents' Counsel, with respect to the constating documents of the Issuer and other action relating to the Master Trust Indenture, the 2018-1 Term Supplemental Indentures, the authorization, creation, issue and sale of the Notes and the incumbency and specimen signatures of signing officers;

(g) the Agents shall have received a certificate, dated the Closing Date, signed by any authorized officer of the Manager, with respect to: (i) a copy of its incorporating documents and all amendments thereto and applicable by-laws; (ii) resolutions of the board of directors of the Manager approving and authorizing the execution,

delivery and performance of each of the Master Trust Indenture and 2018-1 Term Supplemental Indentures; and (iii) incumbency and signatures of signing officers of the Manager executing the Master Trust Indenture and the 2018-1 Term Supplemental Indentures and the other documents to be delivered by the Manager thereunder, in each case showing their names, offices and specimen signatures;

(h) the Agents shall have received a certificate, dated the Closing Date, signed by any authorized officer of the Issuer Trustee with respect to: (i) a copy of its incorporating documents and all amendments thereto and applicable by-laws; and (ii) incumbency and signatures of signing officers of the Issuer Trustee, in each case showing their names, offices and specimen signatures;

(i) the Agents shall have received certificates of status or compliance or other similar documents issued by the applicable governmental authority to evidence that each of the Issuer Trustee and the Manager is validly existing pursuant to the laws of the jurisdiction of their respective establishment or incorporation;

(j) the Agents shall have received:

(i) an opinion of Torys LLP, legal counsel to the Issuer, addressed to the Agents, the Agents' Counsel and the Issuer dated the Closing Date, in form and substance satisfactory to the Agents, acting reasonably, with respect to matters relating to the Issuer and the Offering; it being understood that Torys LLP may rely, to the extent appropriate in the circumstances, as to matters of fact, on certificates of officers, trustees, directors or other representatives of the Issuer, the Manager or the Issuer Trustee;

(i) an opinion of Hunton & Williams LLP, U.S. legal counsel to the Issuer, addressed to the Agents, the Agents' Counsel and the Issuer dated the Closing Date, in form and substance satisfactory to the Agents, acting reasonably, that the Issuer is structured so as not to be a "covered fund" under the regulations adopted to implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the "Volcker Rule"; it being understood that Hunton & Williams LLP may rely, to the extent appropriate in the circumstances, as to matters of fact, on certificates of officers, trustees, directors or other representatives of Issuer, the Manager or the Issuer Trustee;

(k) the Agents shall have received a final report from Operis Business Engineering Limited, the model auditor, in form and substance acceptable to the Agents, acting reasonably, with respect to their review of the ~~Financial Model~~**financial model**;

(l) the Agents shall have received a favourable legal opinion, addressed to the Agents and dated the Closing Date, from Agents' Counsel, in a form acceptable to the Agents, acting reasonably; it being understood that Agents' Counsel may rely, to the extent appropriate in the circumstances, as to matters of fact, on certificates of officers, directors or other representatives of the Issuer, the Issuer Trustee or the Manager;

(m) the Issuer shall have met all requirements of CDS Clearing and Depository Services Inc. ("**CDS**") necessary to make use of its book entry system;

(n) the Issuer shall deliver one global certificate representing the Notes, registered in the name of "CDS & Co." (or in such other name as the Agents may direct in writing not less than 24 hours prior to the Closing) and duly signed by a Responsible Officer of the Issuer and countersigned by the Indenture Trustee, against payment to the Issuer, or as the Issuer may direct to the Agents in writing not less than 48 hours prior to the Closing, of the aggregate purchase price for the Notes, net of the Agents' Fee, by electronic wire transfer of immediately available funds or in such other manner as the Issuer and the Agents may agree;

(o) all consents, approvals and authorizations from any governmental authority or body or any other third party required for the creation, issuance, sale and delivery of the Notes or the fulfillment of the terms of the Transaction Documents shall have been obtained; and

(p) the receipt of such other documentation or information as may be requested by the Agents and which they have determined to be necessary to give effect to the Offering, acting reasonably.

14. **Rights of Termination.**

(a) If, prior to the Closing:

(i) any action, suit or other proceeding, whether formal or informal, occurs or is commenced, announced or threatened, or any order is made by any governmental authority or there is a change of law or in the interpretation or administration thereof (including a Protection Event), which in the opinion of any of the Agents, acting reasonably, operates to prevent or materially restrict trading or the distribution of the Notes or which would be expected to have an Issuer Material Adverse Effect or which materially adversely affects the market price or value of the Notes;

(ii) there occurs any material change or a change in any material fact or any new fact such as is contemplated by Section 6, which has, or in the opinion of any of the Agents could reasonably be expected to have, an Issuer Material Adverse Effect or materially adversely affect the market price or value of the Notes; or

(iii) there develops, occurs or comes into effect or existence any event, action, state, condition or major financial occurrence of national or international consequence, acts of hostilities or escalation thereof or other calamity or crises or any change or development involving a prospective change in national or international political, financial or economic conditions or any incident, governmental action, law, regulation, policy, inquiry or other occurrence of any nature whatsoever which, in the reasonable opinion of any of the Agents, materially adversely affects, or involves, or will

materially adversely affect the financial markets or which operates to prevent or materially restrict the trading or the distribution of the Notes;

the Agents (or any of them) are entitled at their sole option, to terminate their obligations under this Agreement by written notice to that effect given to the Issuer any time prior to the Closing Time.

(b) The Issuer agrees that all terms and conditions contained herein will be construed as conditions, that they shall use commercially reasonable efforts to cause such conditions to be complied with, and that any breach or failure by the Issuer to comply with any such conditions, in any material respect, will entitle any of the Agents to terminate their obligations under this Agreement by written notice to that effect given to the Issuer at or prior to the Closing Time. The Agents may waive, in whole or in part, or extend the time for compliance with, any terms and conditions without prejudice to their rights in respect of any other terms and conditions or any other breach, subsequent breach or non-compliance, provided that to be binding on an Agent, any such waiver must be in writing and signed by such Agent.

(c) The rights of termination contained in subsections (a) and (b) of this Section 14 are in addition to any other rights or remedies the Agents may have in respect of any default, act or failure to act or non-compliance by the Issuer in respect of any of the matters contemplated by this Agreement or otherwise. In the event of any such termination, there will be no further liability on the part of the Agents to the Issuer, or on the part of the Issuer to the Agents, except, in each case, in respect of any liability which may have arisen prior to or which arises after such termination under any of Sections 15 and 16.

15. **Indemnity.**

(a) The Issuer agrees to indemnify and hold harmless each of the Agents and each of their affiliates and each of their respective directors, officers, employees and agents, (collectively, the "**Indemnified Parties**" and individually, an "**Indemnified Party**"), from and against any and all losses (other than loss of profit in connection with the distribution of the Notes), expenses, claims (including shareholder actions, derivative or otherwise), actions, damages and liabilities, joint or several, including, without limitation, the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees and expenses of their counsel (collectively, the "**Losses**") that may be suffered by, imposed upon or asserted against an Indemnified Party as a result of, in respect of, or connected with or arising out of any action, suit, proceeding, investigation or claim that may be made or threatened by any person or in enforcing this indemnity (collectively the "**Claims**") insofar as the Claims relate to, are caused by, or result from, arise out of or are based upon, directly or indirectly:

(i) any breach by the Issuer of applicable Securities Laws in connection with the offer, issue and sale of the Notes under this Agreement or as a result of any order made against the Issuer by any court or governmental authority

in the Offering Jurisdictions which operates to prevent or materially restrict trading in or the distribution of the Notes;

(ii) any misrepresentation or alleged misrepresentation in the Offering Documents or any untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made (other than a misrepresentation or any untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made in the information contained therein relating solely to the Agents which was furnished in writing by the Agents for use therein);

(iii) any order made or any inquiry, investigation or proceeding commenced or threatened by any securities regulatory authority or other competent authority, based on any misrepresentation or any alleged misrepresentation or any untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made in the Offering Memorandum, which prevents or restricts the trading in or the distribution of the Notes;

(iv) any inaccuracy of any representation or warranty of the Issuer contained in this Agreement or in any certificate or other document delivered by the Issuer pursuant hereto; or

(v) any breach by the Issuer of any covenant, term or condition to be performed by it contained in this Agreement or in any document or certificate delivered by the Issuer pursuant hereto.

(b) In addition to the Issuer's obligations under section 15(a), OPG agrees to indemnify and hold harmless each of the Indemnified Parties, from and against any and all Losses that may be suffered by, imposed upon or asserted against an Indemnified Party as a result of, in respect of, or connected with or arising out of any Claim insofar as the Claims relate to, are caused by, or result from, arise out of or are based upon, directly or indirectly:

(i) any breach by OPG or the Issuer of applicable Securities Laws in connection with the offer, issue and sale of the Notes under this Agreement or as a result of any order made against the Issuer by any court or governmental authority in the Offering Jurisdictions which operates to prevent or materially restrict trading in or the distribution of the Notes;

(ii) any misrepresentation or alleged misrepresentation in the Offering Documents or any untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made (other than a misrepresentation or any untrue statement of a

material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made in the information contained therein relating solely to the Agents which was furnished in writing by the Agents for use therein);

(iii) any order made or any inquiry, investigation or proceeding commenced or threatened by any securities regulatory authority or other competent authority, based on any misrepresentation or any alleged misrepresentation or any untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made in the Offering Memorandum, which prevents or restricts the trading in or the distribution of the Notes;

(iv) any inaccuracy of any representation or warranty of OPG or the Issuer contained in this Agreement or in any certificate or other document delivered by OPG or the Issuer pursuant hereto; or

(v) any breach by OPG or the Issuer of any covenant, term or condition to be performed by either of them contained in this Agreement or in any document or certificate delivered by OPG or the Issuer pursuant hereto, excluding the 2018-1 Term Supplemental Indentures or the notes issued thereunder.

(c) Notwithstanding anything contained in this Agreement, it is expressly understood that with respect to its indemnification obligations set out in Section 15(b)(i), (iv) and (v), OPG is not agreeing to indemnify or hold any Indemnified Party harmless with respect to any of the following:

(i) any Losses resulting from any breach by the Issuer of any covenant, term or condition to be performed by it contained in this Agreement or in any document or certificate delivered by the Issuer pursuant hereto caused by a breach or failure to perform on the part of any other third party under any Program Agreement, the Ontario Fair Hydro Plan Act, 2017 or the regulations passed thereunder; provided that this Section 15(c)(i) shall not apply to limit the liability of OPG in respect of any delegation to a third party as provided for in Section 4.7 of the Management Agreement;

(ii) any Losses resulting from changes in law after the date hereof, whether such changes in law are effected by means of any legislative enactment or any final and non-appealable judicial decision, other than Losses resulting solely from OPG's failure to comply with Section 4.1(a)(xiv) of the Management Agreement; or

(iii) any Losses resulting from the validity of the Change of Law Protection Agreement or the applicability thereof to the Province, the Issuer or the Indenture Trustee or any material part thereof being disaffirmed by or on behalf of the Province.

(d) The parties hereto agree that neither the Issuer nor OPG is providing any representations, warranties or covenants in this Agreement or in any document or certificate delivered by OPG or the Issuer pursuant hereto, and shall have no liability to any Indemnified Party, with respect to the collectability of the Clean Energy Adjustment (as defined in the Management Agreement) or the Carrying Costs (as defined in the Management Agreement), or that the Clean Energy Adjustment amounts or Carrying Costs collected will be sufficient to satisfy the Notes, provided that, for greater certainty, the foregoing qualification is not meant to diminish in any way the representations and warranties given by OPG or the Issuer in this Agreement, or in any document or certificate delivered by OPG or the Issuer pursuant hereto, that neither the Shelf Offering Memorandum (except to the extent corrected in the Term Sheet) nor the Term Sheet, as of their respective dates, contain any misrepresentation or contain any untrue statement of a material fact or omit to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which such statement was made.

(e) The Issuer and OPG are each referred to in this Section 15 as an "**Indemnifying Party**". Each Indemnifying Party agrees to waive any right such Indemnifying Party may have of first requiring an Indemnified Party to proceed against or enforce any other right, power, remedy or security or claim payment from any other person before claiming under the indemnity in this Section 15. Each Indemnifying Party will not, without the Agents' prior written consent (as the case may be), such consent not to be unreasonably withheld, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any Claim in respect of which indemnification may be sought hereunder (whether or not any Indemnified Party is a party thereto) unless such settlement, compromise, consent or termination includes an unconditional release of each Indemnified Party from any liabilities arising out of such Claim without any admission of negligence, misconduct, liability or responsibility by or on behalf of any Indemnified Party.

(f) Promptly after receiving notice of a Claim against the Agents or any other Indemnified Party or receipt of notice of the commencement of any investigation which is based, directly or indirectly, upon any matter in respect of which indemnification may be sought from an Indemnifying Party, the Agents or any such other Indemnified Party will notify the Indemnifying Party promptly in writing of the particulars thereof, provided that the omission so to notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability which the Indemnifying Party may have to the Agents or any other Indemnified Party except and only to the extent that any such delay in or failure to give notice as herein required prejudices the defence of such Claim or results in any material increase in the liability which the Indemnifying Party has under this Section 15. Each Indemnifying Party shall have 14 calendar days after receipt of the notice to undertake, conduct and control, through counsel of its own choosing and at its own expense, the settlement or defence of the Claim. If the Indemnifying Party undertakes, conducts and controls the settlement or defence of the Claim, the relevant Indemnified Parties shall have the right to participate in the settlement or defence of the Claim at their own cost subject to Section 15(h).

(g) The indemnity in this Section 15 shall cease to apply to an Indemnified Party to the extent that a court of competent jurisdiction in a final judgment that has become non-appealable determines that such Losses to which the Indemnified Party may be subject were primarily caused by the fraud, fraudulent misrepresentation or gross negligence of such Indemnified Party or the Claim being asserted is as a result of a person not being provided with the Offering Memorandum or any Supplementary Material which corrects any misrepresentation or omission or alleged misrepresentation or omission in the Offering Memorandum or any other Supplementary Material due to a failure by the Agents to provide to such person such documents, as applicable, and which the Indemnifying Party has provided to the Agents to provide to such person, and in such event the Indemnified Party shall reimburse to the Indemnifying Party any funds advanced to the Indemnified Party in respect of such Claim.

(h) Each of the Indemnified Parties may retain counsel to separately represent them in the defence of a Claim, which shall be at the applicable Indemnifying Party's expense if: (i) the Indemnifying Party does not promptly assume the defence of the Claim no later than 14 calendar days after receiving actual notice of the Claim, (ii) the Indemnifying Party agrees to such separate representation, or (iii) the Indemnified Party, as the case may be, are advised by counsel that there is an actual or potential conflict between the Indemnifying Party's interests on the one hand and the Indemnified Party's interests on the other hand or additional defences are available to the Indemnified Parties, which makes representation by the same counsel inappropriate.

(i) In order to provide for just and equitable contribution in circumstances in which the indemnity in this Section 15 is unavailable (other than in accordance with the terms hereof) to the Indemnified Parties or insufficient to hold them harmless in respect of a Claim, the Indemnifying Parties shall jointly and severally contribute to the amount paid or payable by the Agents, as a result of such Claim in such proportion so that the Agents shall be responsible for that portion represented by percentage that the Agents' Fee received by the Agents hereunder bears to the aggregate principal amount of the Notes sold hereunder and the Indemnifying Parties shall be responsible for the balance whether or not they have been sued separately or together, provided, however that each Agent shall not in any event be liable to contribute, in the aggregate, any amount in excess of the Agents' Fee actually received by such Agent. The rights to contribution provided hereunder shall be in addition to and not in derogation of any other right to contribution which the Agents may have by statute or otherwise at law. No person that is determined by a court of competent jurisdiction in a final judgment that has become non-appealable to have engaged in any fraud, fraudulent misrepresentation or gross negligence in connection with any matter that is the subject of the contribution payments contemplated by this Section 15(i) shall be entitled to such contribution.

(j) Each Indemnifying Party hereby constitutes each of the Agents as trustee, respectively, for each of the other Indemnified Parties, as appropriate, of the Indemnifying Party's covenants under the indemnity in this Section 15 with

respect to those persons and the Agents agree to accept that trust and to hold and enforce those covenants on behalf of those persons.

(k) The obligations of the Indemnifying Party hereunder are in addition to any liabilities which such Indemnifying Party may otherwise have to the Agents or any other Indemnified Party.

16. **Expenses**. Whether or not the Offering is completed, all expenses of or incidental to the creation, authorization, issue, delivery and sale of the Notes and of or incidental to all other matters in connection with the Offering shall be borne by the Issuer, including, without limitation, reasonable expenses payable in connection with the fees and expenses of counsel to the Issuer, counsel to the Agents and local counsel in each of the Offering Jurisdictions, fees and disbursements of its accountants and auditors and other experts, the Indenture Trustee's fees, fees of ratings agencies and CDS, printing costs, delivery charges, fees and costs incurred in connection with the marketing of the Notes including travel expenses, road-shows, and filing fees (including securities regulatory private placement filing fees and fees payable to the Investment Industry Regulatory Organization of Canada), reasonable and documented out-of-pocket expenses of the Agents and all taxes payable on such fees and expenses.

17. **Severability**. If any provision of this Agreement is determined to be void or unenforceable in whole or in part, it shall be deemed not to affect or impair the validity of any other provision of this Agreement and such void or unenforceable provision shall be severable from this Agreement.

18. **Public Announcement**. For the period commencing on the date hereof and expiring on the Closing Date, and subject to the requirements of the Securities Laws, each of the Issuer and the Manager shall not, without first obtaining the approval of the Agents (such approval not to be unreasonably withheld), and the Agents shall not, without first obtaining the approval of the Issuer and the Manager, make any public communications, verbally, electronically or in writing, including issuing any press release respecting the issue of the Notes.

19. **Survival**. The representations, warranties, covenants, obligations and agreements of the parties contained herein or delivered pursuant hereto shall survive the issuance and sale of the Notes and shall continue in full force and effect notwithstanding any subsequent disposition of the Notes. The Agents shall be entitled to rely on the representations and warranties of the Issuer and the Manager contained in Sections 8, 9 and 10 herein or delivered pursuant hereto notwithstanding any investigation which the Agents may undertake or which may be undertaken on the Agents' behalf.

20. **Acknowledgement of Agents**. Each Agent (i) acknowledges and agrees in favour of the Indenture Trustee that it is a Specified Creditor (as defined in the Master Trust Indenture) under the Master Trust Indenture and its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Master Trust Indenture including, without limitation, Sections 7.04 through 7.11 and 8.13 (Payment Priorities), Section 7.12 (Payments Held in Trust), Section 8.11 (Control by Controlling Class Creditors), Section 8.12 (Limitation on Suits), Section 8.14 (Limited Recourse), Article IX (Indenture Trustee) (including all limitations of liability hereunder), Section 9.14

(Communications to Specified Creditors) and Section 16.01 (No Petition); (ii) irrevocably authorizes and directs the Indenture Trustee on its behalf to take such action (including the execution and delivery of documents of subordination) as may be necessary or appropriate to further assure the priority arrangements provided for in Article VI, Article VII and Section 8.13 of the Master Trust Indenture, and appoints the Indenture Trustee as its agent for any and all such purposes; and (iii) consents, requests and authorizes the Issuer and the Indenture Trustee to (y) add the Agents (or their respective agents) to the register of Specified Creditors described in Section 13.13 of the Master Trust Indenture and (z) disseminate the notice details of the Agents to other Specified Creditors for the purposes set out in subsection 9.14(b) of the Master Trust Indenture.

21. **Notices**. Any notice or other communication to be given hereunder shall, in the case of notice to the Issuer, be addressed to:

Fair Hydro Trust
c/o Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: Lubna Ladak
Telephone: (416) 592-5984
Facsimile: (416) 592-4189
E-mail: lubna.ladak@opg.com

with a copy to:

Computershare Trust Company of Canada, in its capacity as Issuer Trustee for the Issuer
100 University Avenue, 11th Floor
Toronto, Ontario M5J 2Y1

Attention: ●
Telephone: ●
Facsimile: ●
E-mail: ●

- and -

Ontario Power Generation Inc., in its capacity as Manager of the Issuer
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: Lubna Ladak
Telephone: (416) 592-5984
Facsimile: (416) 592-4189
E-mail: lubna.ladak@opg.com

with a copy to:

Torys LLP
79 Wellington St. West
30th Floor, Box 270
TD South Tower
Toronto, ON M5K 1N2

Attention: Rima Ramchandani
Telephone: (416) 865-7500
Facsimile: (416) 865-7380
E-mail: rramchandani@torys.com

and, in the case of notice to the Agents, to:

CIBC World Markets Inc.
Brookfield Place
5th Floor, 161 Bay Street
Toronto, ON M5J 2S8

Attention: ●

Telephone: ●
Facsimile: (416) 594-7760
E-mail: ●

- and -

RBC Dominion Securities Inc.
200 Bay Street, ~~4th~~**2nd** Floor
Royal Bank Plaza, ~~South~~**North** Tower
Toronto, ON M5J 2W7

Attention: ~~●~~
~~●~~
Nur Khan, Managing Director
Telephone: (416) 842-3828
Facsimile: (416) 842-~~7777~~**3888**
E-mail: Nur.Khan@rbccm.com

- and -

Goldman Sachs Canada Inc.
●

Attention: ●
●

Telephone: ●
Facsimile: ●

E-mail: ●

- and -

BMO Nesbitt Burns Inc.
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Attention: ●
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~~Facsimile~~**Telephone**: ●
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~~Attention:~~ ●
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Facsimile: ●
E-mail: ●

- and -

Scotia Capital Inc.
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Attention: ●
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Telephone: ●
Facsimile: ●
E-mail: ●

- and -

National Bank Financial Inc.
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Attention: ●
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Telephone: ●
Facsimile: ●
E-mail: ●

- and -

TD Securities Inc.
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Attention: ●
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Telephone: ●
Facsimile: ●
E-mail: ●

- and -

Morgan Stanley Canada Limited
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Attention: ●
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Telephone: ●
Facsimile: ●
E-mail: ●

- and -

HSBC Securities (Canada) Inc.
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Attention: ●
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Telephone: ●
Facsimile: ●
E-mail: ●

- and -

Laurentian Bank Securities Inc.
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Attention: ●
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Telephone: ●
Facsimile: ●
E-mail: ●

- and -

Desjardins Securities Inc.
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Attention: ●
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Telephone: ●
Facsimile: ●
E-mail: ●

- and -

Casgrain & Company Limited
●

Attention: ●
●

Telephone: ●
Facsimile: ●
E-mail: ●

with a copy to the Agents' Counsel at:

Osler, Hoskin & Harcourt LLP
100 King Street West
Suite 6200, P.O. Box 50
1 First Canadian Place
Toronto, ON M5X 1B8

Attention: Michael Innes
Telephone: (416) 862-4284
Facsimile: (416) 862-6666
E-mail: MInnes@osler.com

Any such notice or other communication shall be in writing, and unless delivered personally to a responsible officer of the addressee, shall be given by courier service or fax (with receipt confirmed) or e-mail, and will be deemed to have been received, if given by fax or e-mail, on the day of sending (if such day is a Business Day and, if not, on the next Business Day following the sending thereof) and, if given by courier service, on the next Business Day following the sending thereof. For the purposes of this Agreement, a "**Business Day**" means a day which is not a Saturday, a Sunday or a statutory or civic holiday in Toronto, Ontario.

22. **Confidentiality.** Other than the terms and conditions of this Agreement that are disclosed in the Offering Memorandum, the Issuer, the Manager and the Agents agree that they shall keep the terms and conditions of this Agreement confidential and shall not disclose the terms and conditions of this Agreement to any other person except to their affiliates and those directors, officers, employees and agents of each of the Issuer, the Manager and the Agents who need to review such terms and conditions so as to be able to give effect to

the Offering (including pursuant to standard internal requirements); provided, however, that nothing in this Section 22 shall restrict disclosure by the Issuer, the Manager or any of the Agents of the terms and conditions of this Agreement if: (i) such party is legally compelled to do so by order of a court or other competent governmental or regulatory agency, in the course of any judicial or administrative proceeding or by applicable law, or (ii) such party is reasonably required to do so in order to protect its legitimate interests in connection with a legal proceeding under this Agreement.

23. **Time of the Essence**. Time is of the essence of this Agreement.

24. **Currency**. Unless otherwise indicated, all references to "$" in this Agreement are references to the lawful currency of Canada.

25. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein and the courts of such province will have exclusive jurisdiction over any dispute hereunder.

26. **Entire Agreement**. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede any and all prior negotiations and understandings relating to the Offering. This Agreement may only be amended or modified in any respect by the written agreement of all of the parties hereto.

27. **Assignment.** None of the rights and obligations of the parties hereunder shall be assignable or transferable by any party without the prior written consent of the other parties hereto.

28. **Successors and Assigns**. The terms and provisions of this Agreement shall be binding upon and enure to the benefit of the Issuer, the Manager and the Agents and their respective successors and permitted assigns.

29. **Singular and Plural; Gender**. Where the context so requires, words importing the singular number include the plural and *vice versa*, and words importing gender shall include the masculine, feminine and neuter genders.

30. **Execution in Counterparts**. This Agreement may be executed in counterparts (including counterparts by facsimile), each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

[Signature page follows]

If the foregoing is acceptable to the Issuer and the Manager, please signify such acceptance by signing and returning one copy of this letter to the Agents, which accepted offer shall constitute the contract for the provision of services of the Agents in connection with the Offering referred to herein and shall constitute a binding agreement between the parties hereto.

Yours very truly,

CIBC WORLD MARKETS INC.

By:
Name:
Title:

RBC DOMINION SECURITIES INC.

By:
Name:
Title:

GOLDMAN SACHS CANADA INC.

By:
Name:
Title:

BMO NESBITT BURNS INC.

By:
Name:
Title:

SCOTIA CAPITAL INC.

By:
Name:
Title:

[Signature page to Agency Agreement]

NATIONAL BANK FINANCIAL INC.

By:
Name:
Title:

~~**[NTD: Other Dealers to be added as determined**~~**TD SECURITIES INC.**~~**]**~~

By:
Name:
Title:

MORGAN STANLEY CANADA LIMITED

By:
Name:
Title:

HSBC SECURITIES (CANADA) INC.

By:
Name:
Title:

LAURENTIAN BANK SECURITIES INC.

By:
Name:
Title:

DESJARDINS SECURITIES INC.

By:
Name:
Title:

[Signature page to Agency Agreement]

CASGRAIN & COMPANY LIMITED

By:
Name:
Title:

[Signature page to Agency Agreement]

ACCEPTED AND AGREED to this _____ day of ~~January~~**February**, 2018.

FAIR HYDRO TRUST, by its Manager,
ONTARIO POWER GENERATION INC.

By:
Name:
Title:
By:
Name:
Title:

ONTARIO POWER GENERATION INC.

By:
Name:
Title:
By:
Name:
Title:

[Signature page to Agency Agreement]

APPENDIX "A"

TERM SHEET

(see attached)

APPENDIX "B"

FORM OF OFFICERS' CERTIFICATE OF THE ISSUER

1. the Issuer has duly complied with all terms and conditions of this Agreement, the Master Trust Indenture and the 2018-1 Term Supplemental Indentures on its part to be complied with and satisfied at or prior to the Closing and no Termination Event (as defined in the Master Trust Indenture) has occurred;

2. no order, ruling or determination having the effect of suspending the sale or ceasing or suspending trading in the Notes or any other securities of the Issuer has been issued by any securities commission or any other regulatory authority and is continuing in effect and no proceedings for such purpose have been instituted and are continuing or are pending or, to the knowledge, information and belief of the persons signing such certificate, are contemplated or threatened;

3. the representations and warranties of the Issuer contained in this Agreement are true and correct as of the Closing Time with the same force and effect as if made at and as of the Closing Time, after giving effect to the transactions contemplated by this Agreement;

4. the representations and warranties of the Issuer set forth in Section 12.01 of the Master Trust Indenture and Section 3.1 of the Supplemental Indenture are true and correct as of the Closing Time with the same force and effect as if made at and as of the Closing Time after giving effect to the transactions contemplated hereby; and

5. to the knowledge of the Issuer (after due inquiry), no default or Event of Default has occurred or is continuing. For the purposes of such certificate, an "Event of Default" has the meaning to be given to such terms in the Indenture.

APPENDIX "C"

FORM OF OFFICERS' CERTIFICATE OF OPG

1. OPG has duly complied with all terms and conditions of this Agreement on its part to be complied with and satisfied at or prior to the Closing; and

2. the representations and warranties of OPG contained in this Agreement are true and correct as of the Closing Time with the same force and effect as if made at and as of the Closing Time, after giving effect to the transactions contemplated by this Agreement.

Document comparison by Workshare Compare on January-21-18 3:01:10 PM

Input:	
Document 1 ID	file://C:\Users\bsaulnie\Desktop\Form of Agency Agreement.docx
Description	Form of Agency Agreement
Document 2 ID	file://C:\Users\bsaulnie\AppData\Local\Temp\Workshare\wmtemp22f0\#46582593v _1_ - FH Trust - Agency Agreement (Draft - January 201....docx
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
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Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	235

Fair Hydro Trust Investor Presentation - Jan 19.pdf

Fair Hydro Trust
Investor Presentation

January [xx], 2018

Disclaimers

This presentation and its contents are being supplied for informational purposes only by Fair Hydro Trust (the "Issuer") and are not an offer to buy or sell or a solicitation of an offer to buy or sell any securities of the Issuer.

This presentation does not, and does not purport to, contain all information that may be material to an investment decision in respect of the Issuer's Notes. It is only a summary of certain information in respect of the Issuer. Prior to making an investment decision with respect to the Issuer's Notes, prospective investors should carefully review the Confidential Shelf Offering Memorandum, including the related Term Sheet, pursuant to which such Notes are offered (the Offering Memorandum). The information and opinions contained in this presentation are qualified in their entirety by reference to the Offering Memorandum. In particular, reference should be made to the risks of any investment in the Issuer's Notes offered and the statutory rights of rescission or rights to damages available to purchasers of such Notes described in the Offering Memorandum. No representation or warranty, express or implied, is given by or on behalf of the Issuer, the Agents or any other person as to the accuracy or completeness of the information or opinions contained in this presentation.

Some of the statements contained in this presentation, including those relating to the Issuer's expectations, forecasts, strategic and other statements, are forward-looking information within the meaning of securities laws. The forward-looking information contained in this presentation is presented for the purposes of assisting prospective purchasers in making an investment decision regarding the Notes and may not be appropriate for other circumstances. Reference should be made to the information under the headings "Caution Regarding Forward-Looking Information" and "Risk Factors" in the Offering Memorandum.

The information presented herein is only current as of the date on the cover of this presentation. Except as required by law, neither the Issuer nor Ontario Power Generation ("OPG") intends, or assumes any obligation, to revise or update any information in this presentation.

By attending this presentation, or accepting a copy of this presentation, each prospective purchaser agrees that all information contained herein, all documents delivered in connection herewith and all other information obtained by such prospective purchaser in relation to the Issuer or OPG (collectively, the Confidential Information) is confidential, that none of the Confidential Information will be copied, transcribed, recorded or transmitted by the recipient for any reason or used for any purpose other than evaluating an investment in the Issuer's Notes, and that the recipient will hold all of the Confidential Information in confidence and will not provide any of it to third parties other than persons retained to advise the recipient with respect to the purchase of the Issuer's Notes (so long as they advise such persons of the confidential nature of such Confidential Information), without the prior written consent of the Issuer and OPG.

Presenters

ONTARIO POWER GENERATION

Ken Hartwick
Chief Financial Officer &
Senior Vice President – Finance

John Lee
Vice President, Treasurer

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II. Ontario Electricity Market
III. Legislative and Regulatory Framework
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VI. Key Risks and Mitigants
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VIII. Investment Highlights

Appendix – Key Agreement Summaries

I. Introduction and Transaction Overview

Introduction

Ontario's Fair Hydro Plan	• The Province of Ontario announced its Fair Hydro Plan ("FHP") on March 2, 2017, which proposed to lower the average electricity bill for eligible customers[1] by 25% (the "Fair Adjustment") • The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax granted by the Ontario government in January 2017
Legislation	• On June 1, 2017, the Ontario Legislature passed the *Ontario Fair Hydro Plan Act, 2017* (the "FHPA" or the "Act") to give effect to the FHP • The FHPA was enacted to ensure that clean energy costs and clean energy benefits associated with Ontario's clean energy initiatives are fairly allocated among present and future Specified Consumers and to provide fairness for Specified Consumers over time • The FHPA is supplemented by regulations related to the implementation of the FHPA (the "Regulations" and together with the FHPA, the "Legislation") • The FHPA imposes an irrevocable and non-bypassable charge recoverable from Specified Consumers which is referred to as the Clean Energy Adjustment ("CEA"); the CEA will be determined by Ontario Power Generation ("OPG") in accordance with the Legislation in its role as Financial Services Manager ("FSM") under the Act • The CEA will be determined for each six month reference period and converted by the Ontario Energy Board ("OEB") into a $/kWh rate and added to electricity invoices sent to Specified Consumers commencing on May 1, 2021 • From July 1, 2017 to April 30, 2021 (the "Moratorium Period"), no payments in respect of CEA are expected to be collected; during the Moratorium Period and extending to July 31, 2021, the Independent Electricity System Operator ("IESO") is obligated to pay all funding and other expenses of the Trust (excluding principal) (referred to as "Carrying Costs") under the Legislation
Fair Hydro Trust	• The implementation of the Fair Hydro Plan will be financed by the Fair Hydro Trust ("FHT", the "Trust" or the "Issuer") through the issuance of senior, subordinated and junior subordinated notes • Structured to be bankruptcy remote and even though consolidated by OPG on an accounting basis, the Trust is ring fenced from OPG's other creditors • The FHT term notes will be repaid through the CEA payments received from Specified Consumers

[1] Defined as Specified Consumers under the FHPA.

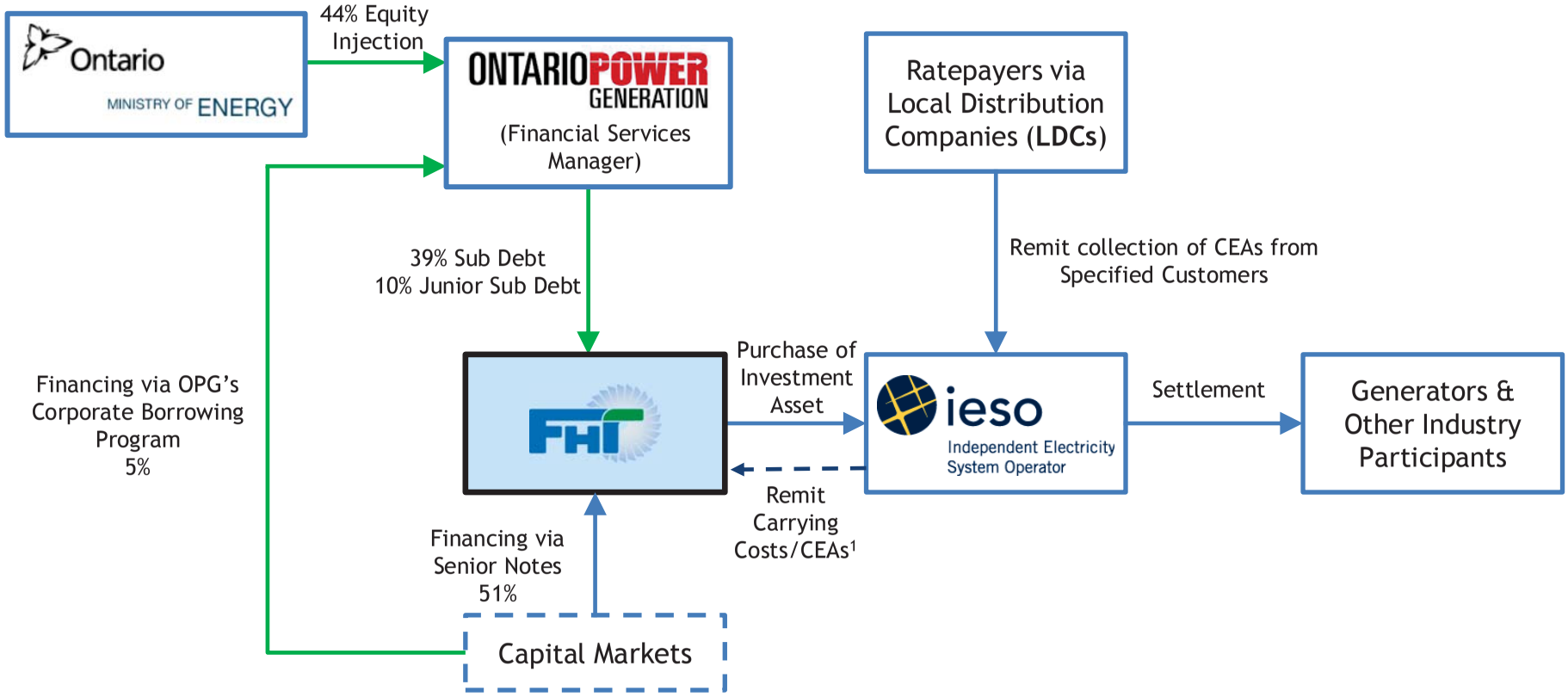
Summary of Indicative Terms

Overview of Notes

Class	Senior	Subordinated	Junior Subordinated
Issue Amount	$[●]MM	$[●]MM (placed with OPG)	$[●]MM (placed with OPG)
Initial % of Aggregate Notes	51%	39%	10%
Expected Ratings (DBRS / Moody's)	[AAA(sf)/AA(sf)]	[●(sf)/●(sf)]	[●(sf)/●(sf)]
Term to Maturity	15.25 years	15.25 years	15.25 years
Expected Maturity Date	May 15, 2033	May 15, 2033	May 15, 2033
Principal Payment Default Date	May 15, 2035	May 15, 2035	May 15, 2035
Par Call Date	November 15, 2032	November 15, 2032	November 15, 2032
Principal Accumulation	Principal will be accumulated monthly commencing January 2030 to facilitate repayment of notes on the Expected Maturity Date		
Interest Type	Fixed rate		
Day Count	180/360, first payment actual/365		
Payment Dates	May 15 and November 15 or next business day		
Senior Note Credit Enhancements	Credit enhancements for the FHT 2018-1 Senior Notes will consist of: • Subordinated and Junior Subordinated notes initially equal to 49% of the aggregate issuance amount and will be retained by OPG • A segregated trust account with an eligible institution, referred to as a Program Cash Reserve Account, which will begin to be funded from Clean Energy Adjustments following the Moratorium Period until it reaches 0.50% of the aggregate amount of all outstanding senior, subordinated and junior subordinated funding obligations • True-up mechanism to address any shortfalls in collections		
Operating Agents	OPG serving as the Financial Services Manager and the Independent Electricity System Operator as the Servicer		

Transaction Structure

- Concurrent with every issuance of senior notes, it is expected that OPG will purchase subordinated debt and junior subordinated debt of the Trust in an aggregate amount not to exceed 49% of all outstanding debt
  - The subordination amount may vary but must at least be equal to or greater than 35% of all outstanding debt

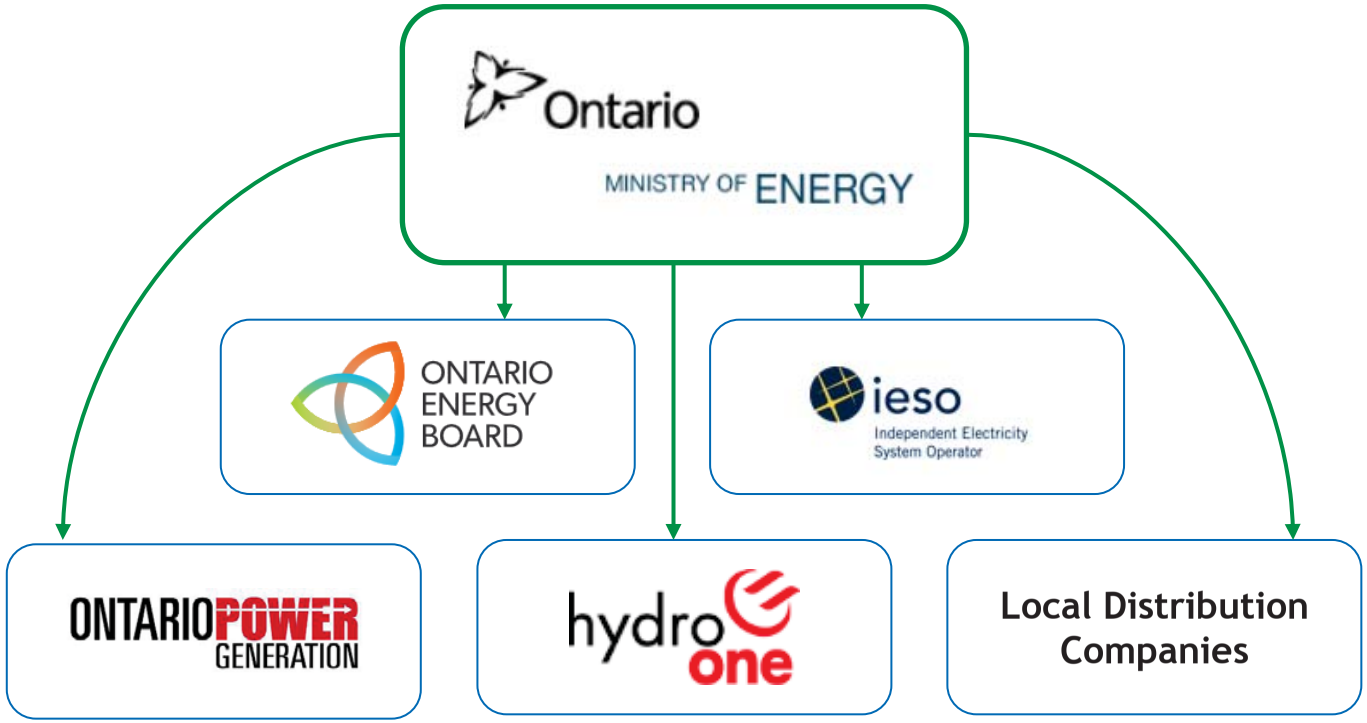


[1] The IESO is required to pay and remit Carrying Costs to the FHT up to July 31, 2021. Commencing May 1, 2021, CEAs will be included on invoices sent to Specified Consumers and collections will be used to pay all funding and other expenses of the Trust. The additional three months of IESO remittances from May 1, 2021 to July 31, 2021 is intended to cover billing and collection lags from the introduction of CEAs.
Note: The diagram above is based on subordinated debt of 49% of all outstanding debt.
Note: The assets and liabilities of the Trust are deemed, under the *Electricity Act, 1998* to exclude the assets and liabilities of OPG, and vice versa.

II. Ontario Electricity Market

Overview of Ontario's Electricity Market

- Highly regulated electricity market comprised primarily of three components: generation, transmission and distribution; ~$22 billion in average annual cash flows[1]
- Transmission rates, distribution rates, and OPG's regulated rates are set by the OEB
- Rates for the majority of the remaining generation supply are set by the wholesale electricity market and by direct contracts with the IESO (e.g. Bruce Power (nuclear), wind, solar, hydroelectric)



[1] Source: "Ontario Planning Outlook – A technical report on the electricity system prepared by the IESO" dated September 1, 2016. The amount represents the mathematical average of the system costs on page 44 in the appendix "Data Tables for the OPO Technical Report".

Key Industry Participants

Participants	Credit Ratings *(DBRS / S&P / Moody's)*	Description
Ontario Ministry of Energy	**AA (l) / A+ / Aa2** [1]	• The Province of Ontario through the Ministry of Energy sets policy for the electricity system
Ontario Energy Board	--	• Independent public regulatory agency established under the *Ontario Energy Board Act, 1998* and has the authority to regulate Ontario's electricity market, including the activities of transmitters and distributors • Sets the regulated price for the commodity cost charged to most residential electricity customers via the Regulated Price Plan ("RPP"); RPP rates are set twice a year (May and November)
ieso Independent Electricity System Operator	**A(h) / -- / Aa2**	• Corporation without share capital established under the *Electricity Act, 1998 (Ontario)* • Manages the operation and reliability of Ontario's bulk power system and administers the wholesale electricity market
Ontario Power Generation	**A(l) / BBB+ / --**	• Corporation formed under the *Business Corporation Act (Ontario)*, whose sole shareholder is the Province of Ontario • Principal business is the generation and sale of electricity in Ontario and is Ontario's largest clean energy electricity generator, providing a significant portion of the province's electricity
Hydro One	**A(h) / A / A3**	• Ontario's largest electricity transmission and distribution company, delivering electricity to over 1.3 million customers across the province, and to large industrial customers and municipal utilities

[1] The credit ratings noted are for the Province of Ontario.

Key Industry Participants – LDC Overview

- As part of the restructuring of Ontario's electricity industry under the *Energy Competition Act, 1998*, the municipal electricity utilities became municipally-owned business corporations. The majority of LDCs continue to be municipally-owned, while others have been acquired by Hydro One or private-sector owners
- An LDC, referenced as an Electricity Vendor in the FHPA, is responsible for distributing electricity to customers in its OEB-licensed service territory, and in some cases to other distributors

Select Aggregate Market Stats[1]

Number of LDCs in Ontario	65
Total Revenue	$18.89 billion
Total Metered Usage (kWh)	116.11 billion
Residential Customers	4.61 million
Small Commercial[2] Usage Customers	0.44 million
Total Residential & Small Commercial[2] Customers	5.05 million

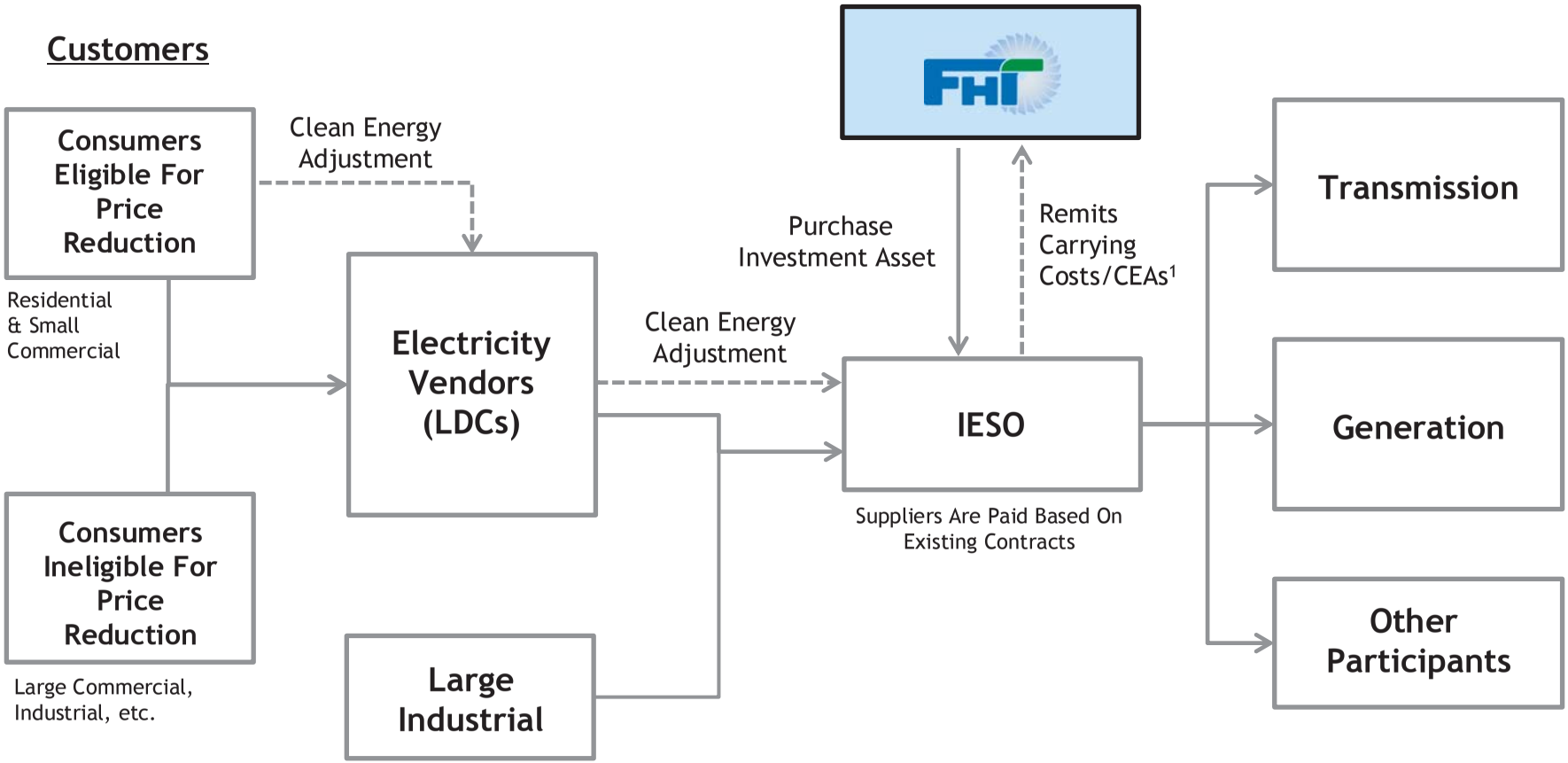
Top 5 LDCs by Customer Base[1]

	Rating[3] *(S&P/DBRS/Moody's)*	Customers[4] *(MM)*	Total Revenue *(C$MM)*
hydro one	A / A(h) / A3	1.30	$4,533
alectra utilities	A / A / --	0.96	$3,642
TORONTO HYDRO	A / A / --	0.75	$3,886
HydroOttawa	BBB+ / A / --	0.32	$1,130
London Hydro	A / -- / --	0.15	$488
		3.49	**$13,680**
Percentage of Residential & Small Commercial[2]		**69%**	

[1] Source: OEB 2016 Yearbook of Electricity Distributors
[2] Small Commercial includes General Service <50kW Customers
[3] Most recent rating reports from S&P, DBRS and Moody's
[4] Residential and Small Commercial customers

Electricity Market with FHT

- Under the FHPA, each month the IESO determines the IESO deferral (the shortfall that results from the Fair Adjustment together with Carrying Costs paid, financing costs and other related costs)
- FHT will finance the shortfall and is entitled to recover its costs and the principal and interest on its debt through CEAs from Specified Consumers, commencing May 1, 2021



[1] The IESO is required to pay and remit Carrying Costs to the FHT up to July 31, 2021. Commencing May 1, 2021, CEAs will be included on invoices sent to Specified Consumers and collections will be used to pay all funding and other expenses of the Trust. The additional three months of IESO remittances from May 1, 2021 to July 31, 2021 is intended to cover billing and collection lags from the introduction of CEAs.

III. Legislative and Regulatory Framework

Legislation Overview

Purpose	• The FHPA was enacted to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future Specified Consumers • Clean energy costs are costs allocated to Specified Consumers as a result of Ontario's clean energy initiatives; clean energy benefits are benefits that accrue to both present and future electricity consumers
Specified Consumers	• A category of consumers that generally is comprised of residential consumers, small businesses and farms • Includes consumers with a demand for electricity of 50 kW or less or those that use not more than 250,000 kWh of electricity annually
Rate Reduction Period	• **July 1, 2017 – April 30, 2018** – Specified Consumers charged an invoice amount that is 25%[1] less than the regulated rate that would otherwise have been determined by the OEB; the 25% reduction includes an 8% rebate equivalent to the provincial portion of the HST previously granted by the Ontario government • **May 1, 2018 – April 30, 2019** - regulated rate established in the first year of the Rate Reduction Period anticipated to increase by the rate of inflation in Ontario • **May 1, 2019 – April 30, 2021** - rate reductions will be established by future regulation but anticipated to increase by the rate of inflation in Ontario

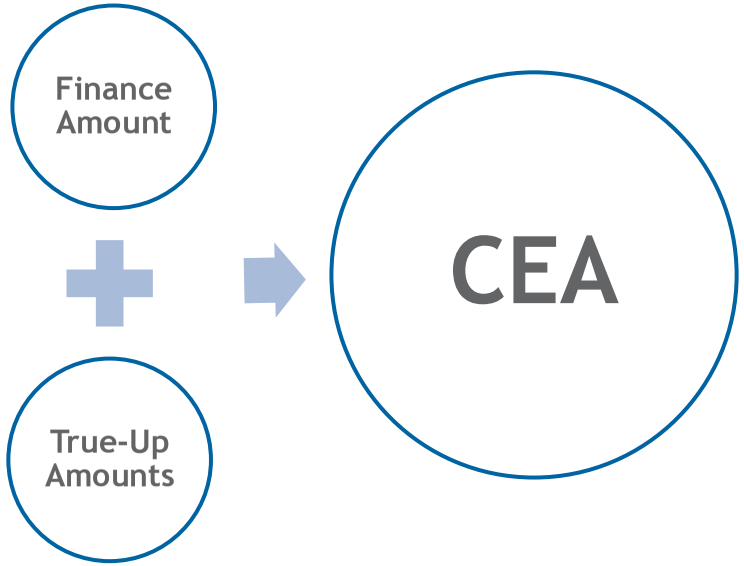
[1] Based on a typical Toronto Hydro customer; the amount of the reduction for any given Specified Consumer may vary from this account.

Legislation Overview, cont'd

Regulatory Asset	• Each month the IESO determines the IESO deferral (the shortfall that results from the Fair Adjustment together with Carrying Costs paid, financing costs and other related costs) and records this amount, in a variance account • The IESO has the right to recover the balance recorded in the variance account from Specified Consumers (such right is the "Regulatory Asset") • The IESO may from time to time transfer a specified portion of the Regulatory Asset to the Trust for a cash purchase price equal to the corresponding amount recorded in the variance account
Investment Asset	• The Trust is not obligated to purchase Regulatory Assets from the IESO • If the IESO and the Trust agree to the transfer of a specified portion of the Regulatory Asset, such transfer results in the creation of a current and irrevocable property right that is immediately vested in the Trust (such right is an "Investment Interest" in an Investment Asset) • By acquiring an Investment Interest, the Trust will be entitled to recover all of its associated financing costs and acquires the right to collect, receive and recover CEAs from Specified Consumers in accordance with the Legislation
Moratorium Period *(July 1, 2017 to April 30, 2021)*	• CEAs are not permitted to be collected from Specified Consumers during this period • The IESO is obligated to pay the Trust all Carrying Costs, excluding repayment of principal on any debt obligations, during the Moratorium Period and extending to July 31, 2021. The Carrying Costs incurred by the IESO will be added to its Regulatory Asset variance account pursuant to the Regulations • As security for the performance of its obligations, the IESO has granted the Trust a first-priority security interest in its accounts receivable owing by Electricity Vendors to the IESO • The IESO has a $2 billion credit facility from the Ontario Financing Authority ("OFA") which can be used, among other things, to fund payments of the Carrying Costs

Clean Energy Adjustments

- Under the FHPA, the CEA is the amount payable by Specified Consumers to cover the financing and other costs related to the acquisition by the Trust of the Investment Asset and the associated costs of the financing, including payment of principal, interest, operating costs of the Trust and funding of reserve accounts
- CEAs shown on an invoice issued to Specified Consumers represent the amount of the consumers' indebtedness and may not be set off or bypassed

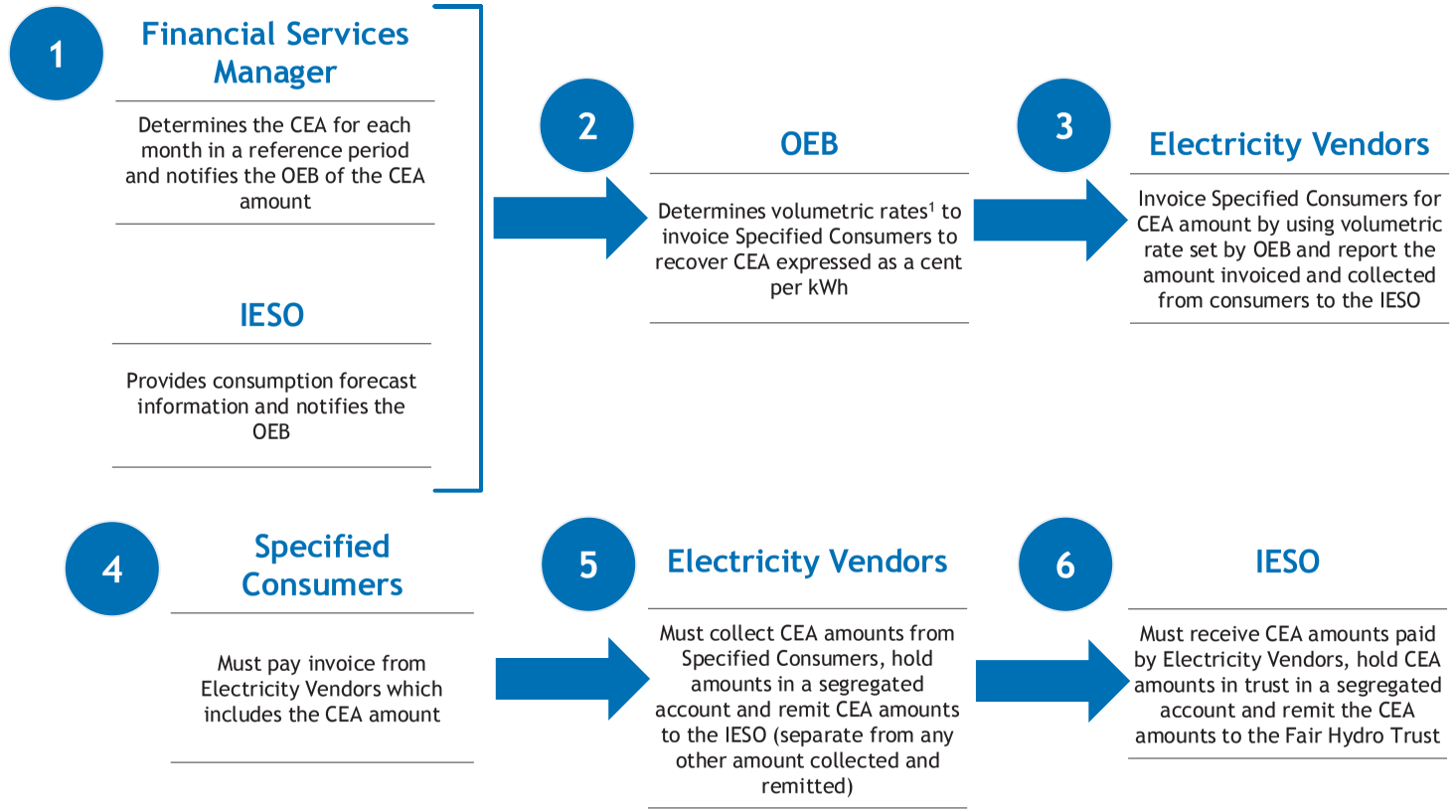


Finance amount is an estimate of the amount payable by the Trust mainly in respect of principal payments, interest costs, Trust expenses and taxes, reserve account deposits and derivative payments

True-up amounts capture the difference between the finance amounts incurred by the Trust and the CEAs collected from Specified Consumers and also include other reasonably foreseeable differences due to various factors (e.g. consumer defaults and delays, billing lags, write-offs and variations in electricity consumption)

Billing and Collection of CEAs

- CEA amounts for billing and collection purposes will be managed outside of the IESO's current settlement processes set out in the Market Rules for electricity invoice amounts
- Collection risk for CEA amounts are mitigated through statutory rights in the FHPA, the obligations of the IESO under the Master Transfer & Servicing Agreement, and the ability to include amounts in the CEA by means of the true-up mechanism
- IESO is required to segregate the CEAs during a monthly period before remitting to FHT. If the IESO's credit rating is downgraded below investment grade, the IESO will be required to remit within two business days of receipt

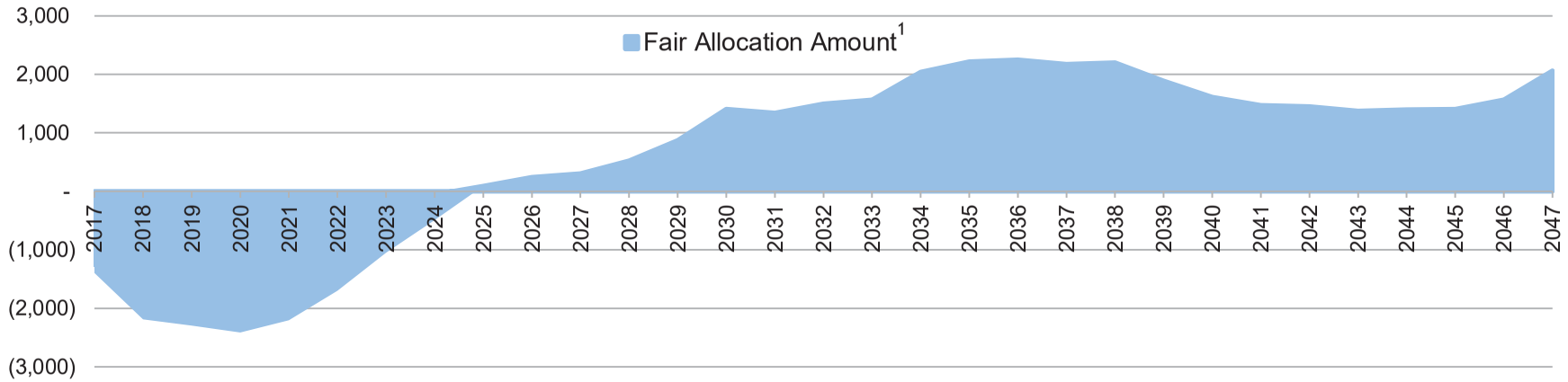


[1] The rates will be determined by dividing the CEA amount by the forecasted energy consumption in the reference period by Specified Consumers.

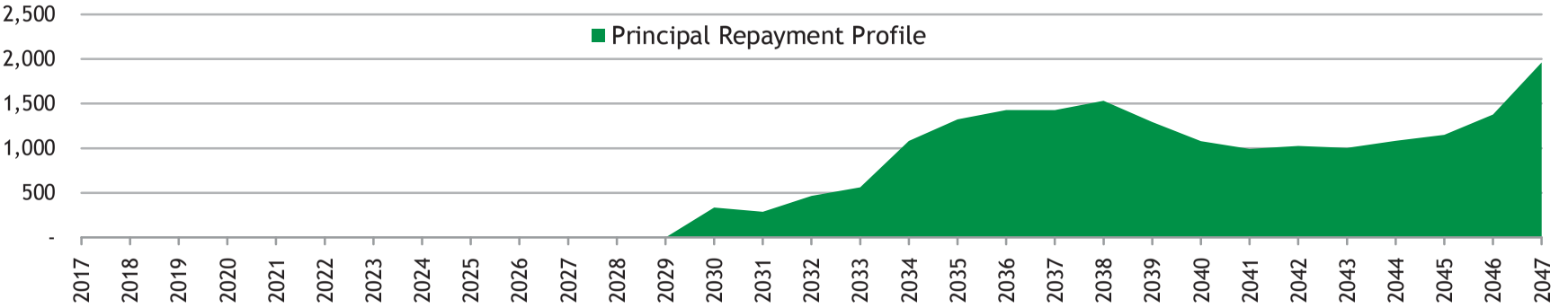
Fair Allocation Amount

- The Fair Allocation Amount ("FAA") is an amount calculated under the FHPA by the Minister of Energy in respect of each reference period that, among other things, allocates the estimated value of clean energy costs in proportion to the relative attribution of the value of clean energy benefits among Specified Consumers

Fair Allocation Amount ($ million)



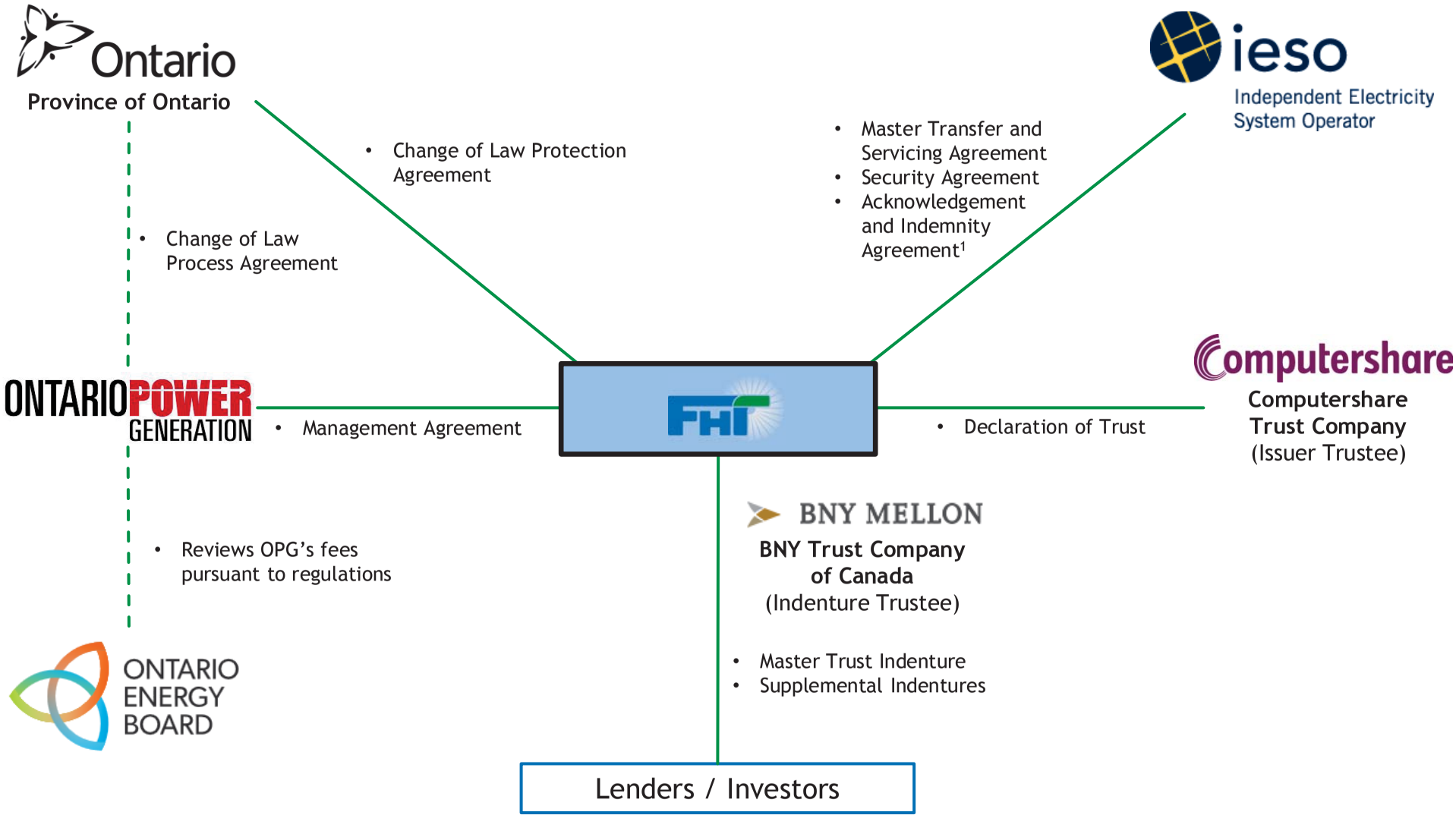
Principal Repayment Profile (derived from the FAA)



[1] Prior to 2025, the above graph of the FAA incorporates the Readjustment Amount. The Readjustment Amount represents the estimated amounts by which Specified Consumers overpaid for clean energy initiatives in the past. It has been incorporated into the FAA to further reduce electricity bills for such consumers.

IV. Contractual Framework

Simplified Contractual Structure



[1] Agreement between IESO and Indenture Trustee.

Contract Highlights

Change of Law Protection Agreement

Purpose	• Provides assurance to Specified Creditors[1] that upon the occurrence of a Protection Event, the Province of Ontario is required to make payments in respect of all Approved Obligations when due and payable
Protection Events	The occurrence of any of the following events: (1) • The Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof • The Legislature enacts or amends any other statute • The Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof • The Lieutenant Governor in Council makes or amends any "Regulation" as in effect on the date hereof • The implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province in each case that adversely affects the ability of the Trust to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable, taking into account any funds available in reserve accounts, any credit enhancement available and any reasonably expected potential effect of a true-up amount; or (2) • A court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, is *ultra vires* or invalid in a way that adversely affects the ability of the Trust to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable

Note: Additional information on the Change of Law Protection Agreement can be found in the Appendix.

[1] **Specified Creditors** refers to any Person that is owed a payment obligation by the Issuer that gives rise to a Finance Amount in respect of the Issuer.

Contract Highlights

Key Agreements

Master Transfer and Servicing Agreement	• Provides for the transfer by the IESO to the Trust of the Regulatory Asset, and upon such transfer the Trust acquires an Investment Interest in the Investment Asset • The IESO will be responsible for servicing the Investment Interest, including receiving CEA amounts from Electricity Vendors and remitting to the Trust
Management Agreement	• Issuer Trustee delegates to OPG, as Manager under the Management Agreement, all powers and duties of managing the Trust • The Manager will determine how and when to incur funding obligations to acquire Investment Interests
Other Key Agreements	• Security Agreement • Acknowledgement and Indemnity Agreement • Change of Law Process Agreement • Declaration of Trust

Note: Additional information on these key agreements can be found in the Appendix.

Allocation of Servicing Role and Responsibilities

- The shared responsibilities of servicing and management roles are summarized below

	OPG	IESO	LDC
Review Records of LDCs with Respect to CEAs (annually or less frequently in certain circumstances)	✔		
Determination of CEA for a Reference Period, including the True-Up Amount	✔		
Ongoing Reporting for Trust and Reporting to the Rating Agencies	✔		
Management of Ongoing Debt Issuances	✔		
Cash Management	✔	✔	
Preparation of Monthly Servicer Reports		✔	
Remittance of CEA to IESO and to the Trust		✔	✔
Responding to inquiries by customers if practicable, or forwarding such inquiries to OPG		✔	✔
Customer Billing			✔
Customer Collections			✔
Customer Meter Reading			✔

V. Financing Program

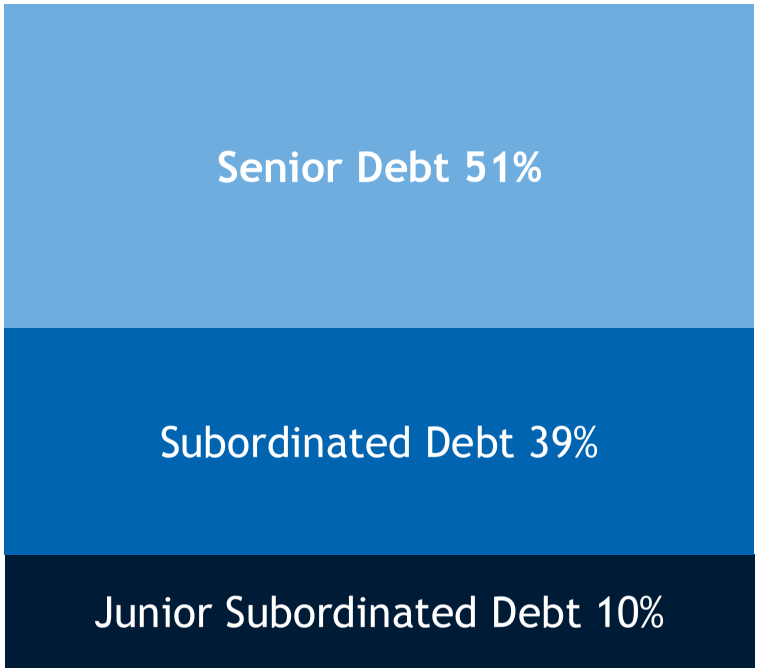
Financing Plan / Strategy

- OPG is responsible for administering the FHT financing program
- Given the size (~$20 billion) and longevity (~10 years) of the FHT financing program, the funding strategy has been designed to provide flexibility
- Warehouse financing (ABCP conduit and bank funded senior debt) and subordinated warehouse debt and junior subordinated warehouse debt funded by OPG will be used to fund monthly Regulatory Asset purchases from the IESO
  - Periodically refinance the warehouse facility through the issuance of term debt (likely access the market 2-3 times per year)
- Term debt can take the form of bullet bonds or could be issued as amortizing bonds

Warehouse Financing	• ABCP conduit and bank funded senior debt with subordinated debt funded by OPG will be used by the Trust to fund monthly Regulatory Asset purchases from the IESO
Term Debt	• Term debt issuances will be used to refinance warehouse financing and the subordinated and junior subordinated warehouse debt funded by OPG • Both Canadian term debt and U.S. term debt market will be considered • Maturity profiles will be structured to ensure reasonable alignment with the FAA (bullet bonds with sinking funds or amortizing bonds) • FHT may issue debt that may be refinanced in the future
Subordinated Debt	• Subordinated debt provides credit enhancement for senior debt (ranks behind senior debt in cash flow waterfall)

Financing Structure

- The Trust will fund Regulatory Asset purchases through the issuance of senior, subordinated and junior subordinated secured debt
- Senior debt (51% anticipated) will be sourced monthly from committed warehouse facilities, and the periodic issuance of term debt
- Subordinated debt (49% anticipated; minimum of 35% required[1]) will be purchased by OPG, primarily funded by equity injections from the Province (44% of 49%) and the remaining portion from OPG (5% of 49%)



Senior Notes
Warehouse facilities and term debt issuances (in Canada and/or the U.S.)

Subordinated Notes
Provided to Trust by OPG via equity injection from the Province

Junior Subordinated Debt
- OPG equity injection (5%) via its corporate borrowing program
- Provided to Trust by OPG via the Province (5%)

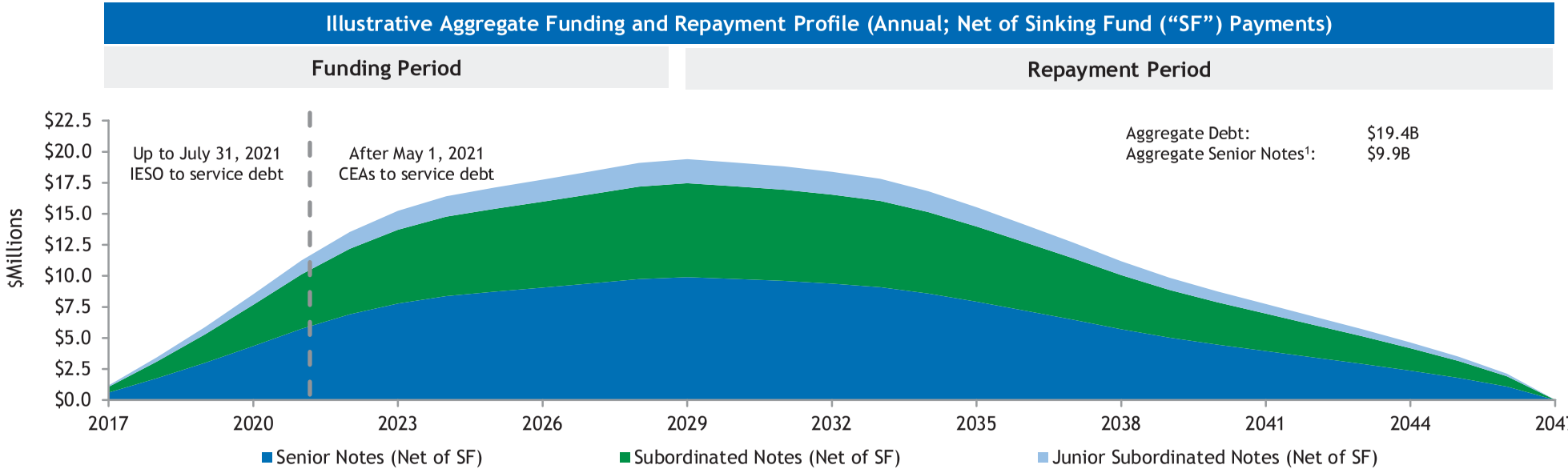
Note: Assumes 49% subordinated debt.

[1] Under the MTI, FHT is required at all times to ensure that all outstanding subordinated and junior subordinated debt be not less than 35% of all outstanding debt.

Aggregate Financing Program

Illustrative Debt Summary - Funding & Repayment Period (Annual)

- Based on the Fair Allocation Amount and the Province's electricity bill reduction targets, the following debt profile for the program is expected, peaking at just under $20 billion by 2029
- Various tranches of debt will be issued periodically during the period of 2018 - 2028, which are expected to mature over a period after 2029



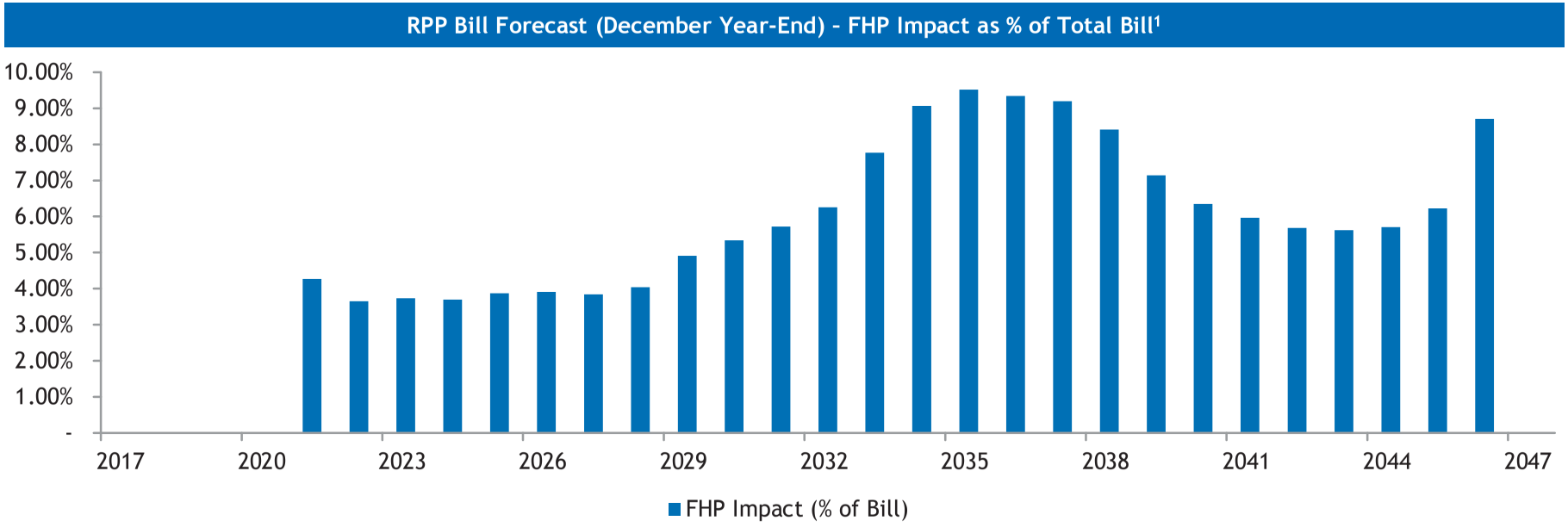
[1] Assumes 51% Senior Notes

Note: During the Moratorium Period and extending three additional months to July 31, 2021, the IESO is required under the Regulations to pay all Carrying Costs. The additional three month period is intended to cover the billing and collection lag from the introduction of Clean Energy Adjustments in May 2021.

Consumer Bill Forecast with FHP

RPP Bill Forecast - FHP Impact % of Total Bill (C$ per Month)

- Over the duration of the Fair Hydro Program, the CEA for the average residential customer is anticipated to remain below 10% of the total electricity bill
- Maximum CEA as a percent of the total bill is forecast to be 10.0%
- Average CEA as a percent of the total bill is forecast to be 6.9%



[1] Presents % of total bill at December year-ends; individual months in any given year may have a higher or lower impact as % of total bill.

Capital Markets Platform

Master Trust Indenture

Parties	• (1) Computershare Trust Company (Issuer Trustee), on behalf of the Trust, acting through OPG as the Manager; (2) BNY Trust Company (Indenture Trustee) on behalf of Specified Creditors
Purpose	• Governs the terms of the debt issued by FHT and cash flow waterfall and collateral structure for all Trust obligations to all Specified Creditors

Key Terms

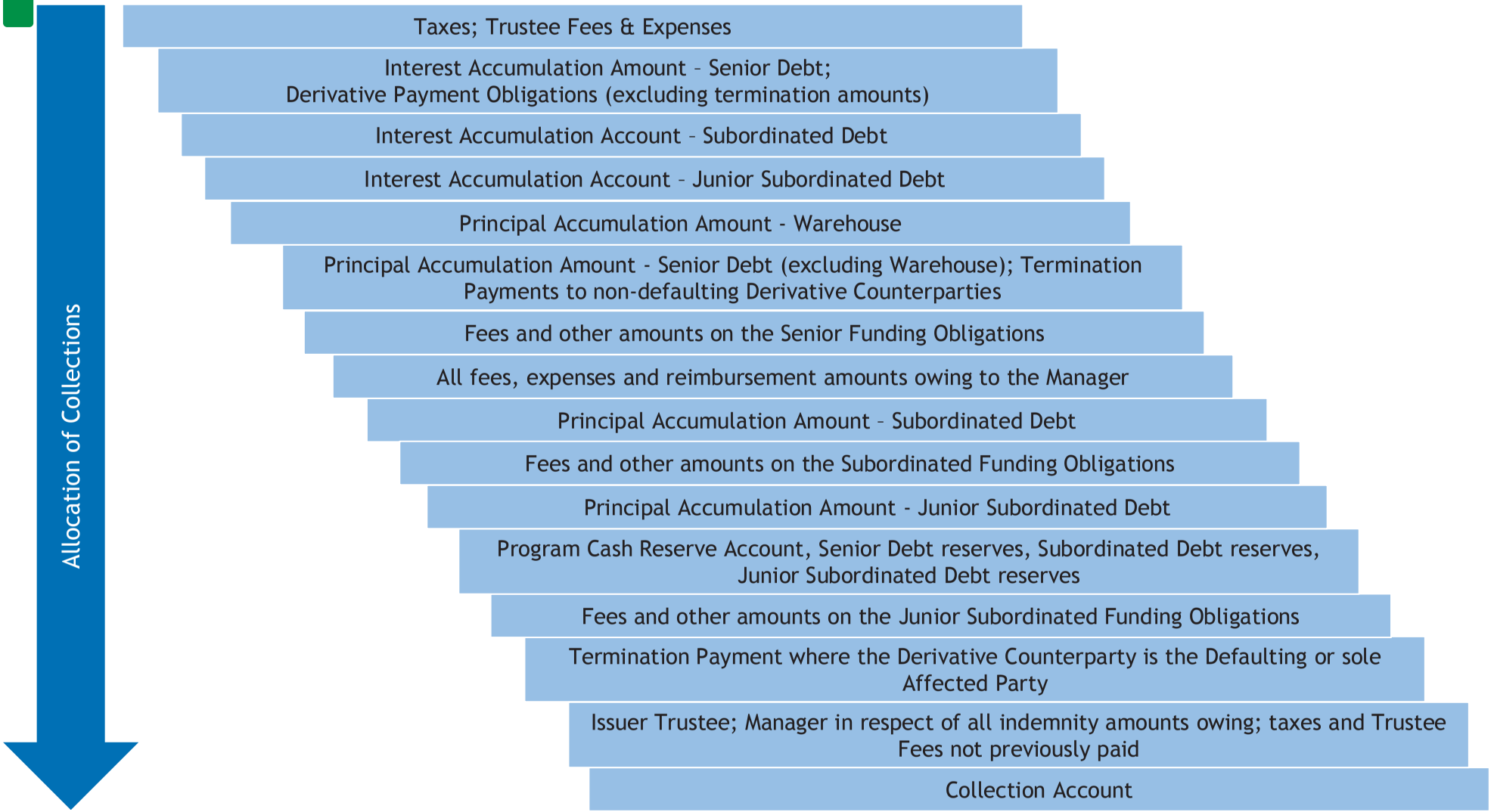
Incurrence of Funding Obligations	• Trust may incur funding obligations under a variety of instruments including: – Note issuances under supplemental indentures – Borrowings under credit agreements – Purchase of notes under note purchase agreements – Letters of Credit/Guarantees under credit enhancement agreements – Liquidity loans under liquidity agreements backing short term notes
Conditions Precedent	• Prior to incurring additional funding obligations, the Trust confirms to the Indenture Trustee and each rating agency that: – the incurrence of such additional obligations will not cause an adverse effect – the incurrence of such additional obligations is materially consistent with the Financing Plan • It will also be a condition precedent that (i) each rating agency confirm that the issuance of such additional funding obligations will not result in a reduction or withdrawal of any existing ratings of outstanding funding obligations and (ii) the Indenture Trustee has received certain assurances as to the applicability of the Change of Law Protection Agreement to such funding obligations

Capital Markets Platform

Master Trust Indenture – Key Terms (cont'd)

Security	• Granted over all assets of the Trust, including the Trust's investment interest, all collections under the MTSA and all accounts
Subordination	• Provides for three different classes of funding obligations – (i) senior – (ii) subordinated – (iii) junior subordinated
Events of Default	• Includes payment and senior defaults, representation and covenant breaches, insolvency and Change of Law Protection Agreement ceasing to be in full force and effect against the Province
Acceleration	• Upon an acceleration, CEAs may be insufficient to repay all amounts becoming due in a period. CEAs for a period will be capped under the Regulation at the otherwise scheduled amounts, plus an additional amount equal to the amounts available under the FAA • However, the amounts received from CEAs after an acceleration will be allocated to pay senior indebtedness before principal amounts owing on subordinated and junior subordinated indebtedness. Accordingly, the subordination of debt across all series of debt should advance the repayment of the principal amount for senior funding obligations • After an acceleration, all Senior Term Notes will be paid pari-passu

Waterfall



Note: This waterfall indicates the priority of payment prior to an Event of Default and acceleration; additional information on the priority of payments after an Event of Default and acceleration can be found in the Offering Memorandum.
Note: After paying interest on the senior debt, no interest payments will be made on the subordinated debt unless there will be sufficient amounts remaining in the Interest Accumulation Account for what should be accumulated for the Senior Notes after making such payments.

VI. Key Risks and Mitigants

Risk Mitigation

Risk	Description of Risk	Mitigants
Political Risk	• Future legislative action to change or challenge/invalidate the Act or the Change of Law Protection Agreement might materially adversely affect a holder's investment in the Notes	• Limited Guarantee provided by the Province of Ontario via the Change of Law Protection Agreement in favour of the Indenture Trustee for lenders/investors in these circumstances
Under Collection	• If the IESO inaccurately forecasts electricity consumption or if OPG uses inaccurate consumer delinquency or write-off data when setting the CEA, there could be a shortfall in collections, which might result in missed or delayed payments of principal and interest on the Notes	• True-up mechanism may result in a delay, but will be corrected in next True-up • Cash reserve and 35%-49% subordination which would first absorb any shortfalls • 6-month reference period • Any shortfall in collections are recoverable from all Specified Consumers
Reliance on IESO and LDCs	• Until July 31, 2021, the Trust is dependent on the IESO to remit payments to the Trust for all Carrying Costs • Receipt of CEAs dependent on the performance of LDCs and IESO • Limited ability to enforce against or replace an LDC	• Highly regulated industry and LDC and IESO are required under law and regulation to perform duties under FHP • IESO has a very strong credit profile and very low losses and grants security over its accounts receivable owed by Electricity Vendors as security during the Moratorium Period • IESO will provide a letter of credit/other security to mitigate commingling risks for CEAs held by non-rated or below investment grade rated LDCs until they are remitted to IESO • LDCs collect security deposits and, when permitted, have the ability to disconnect service for non-payment • $2 billion credit facility from the OFA which can be used by the IESO to pay the Carrying Costs
Size of Charge vs. Bill	• If the charge applied to bills becomes too high, there could be a consumer and/or political backlash	• 20-year repayment period allows for gradual rate increases • Max CEAs as a percent of the total bill over the collection period is forecast to be 10%
Disruptive Technology Risk / Change in Demographics	• Technological developments may result in reduced CEA payments as a result of increased use of alternative energy sources • Population fluctuations may result in fewer Specified Consumers	• True-up mechanism available to offset the reduction in CEAs due to technological advancements or fluctuations in the number of Specified Consumers • Collection shortfalls are allocated among a large base of Specified Consumers

VII. Summary of Offering

Summary of Indicative Terms

Initial Fair Hydro Term Issuance	**Class**	**Issue Amount**	**% of Initial Aggregate Notes**	**Expected Maturity Date**	**Principal Payment Default Date**	**Expected Ratings (DBRS / Moody's)**
	Senior Term Notes	$[●]MM	51%	May 15, 2033	May 15, 2035	AAA (sf) / Aa2 (sf)
	Subordinated Notes	$[●]MM (placed with OPG)	39%	May 15, 2033	May 15, 2035	[●]
	Jr. Subordinated Notes	$[●]MM (placed with OPG)	10%	May 15, 2033	May 15, 2035	[●]
Issuer	Fair Hydro Trust, a single purpose, bankruptcy-remote wholly-owned subsidiary of the Financial Services Manager					
Financial Services Manager	Ontario Power Generation, Inc.					
Servicer	Independent Electricity System Operator					
Source of Repayment	• Moratorium Period: Statutorily mandated remittances (not including principal) from IESO (Up to July 31, 2021) • Post Moratorium Period: Non-bypassable charge from residential and small commercial customers in Ontario (After May 1, 2021)					
Payment Frequency	Semi-annual pay on May 15 and November 15 until the Expected Maturity Date, monthly thereafter if the notes are not repaid on the Expected Maturity Date					
Principal Accumulation	Principal will be accumulated monthly commencing January 2030 to facilitate repayment of notes on the Expected Maturity Date					
Interest Type	Fixed rate					
Senior Note Credit Enhancements	• Subordinated and Junior Subordinated notes initially equal to 49% of the aggregate issuance amount • Program Cash Reserve Account • Semi-annual (or more frequent) True-up mechanism to address any shortfalls in collections					
Program Cash Reserve Account	After the Moratorium Period, an amount equal to 0.50% of the aggregate amount of all outstanding Senior, Subordinated and Junior Subordinated funding obligations					
True-up	Calculated on at least a semi-annual basis post Moratorium Period					
Subordination	Subordinated and Junior Subordinated Notes will be retained by OPG					

VIII. Investment Highlights

Investment Highlights

- Protection against political risk through the Change of Law Protection Agreement
- Irrevocable & non-bypassable ratepayer charge, recoverable from Specified Consumers across the Province of Ontario
- Repayment risk spread across all Specified Consumers. Full cross-collateralization; collection shortfalls allocated among all Specified Consumers
- Robust true-up mechanism
- Credit enhancement for senior debt provided via subordinated debt
- Highly regulated market with experienced operating agents (OPG, IESO, and LDCs)
- Strong ratepayer base in Ontario

Appendix – Key Agreement Summaries

Key Agreements

Change of Law Protection Agreement

Parties	• (1) Province of Ontario and (2) Indenture Trustee as Trustee of the Issuer, on behalf of Specified Creditors[1], and (3) OPG as FSM
Purpose	• Provides assurance to Specified Creditors that upon the occurrence of a Protection Event (see slide 22 for details) the Province of Ontario will pay all Approved Obligations on behalf of the Trust, with limited rights of acceleration
Key Terms	• **Term**: Continues for as long as any protected obligations of the Trust that are secured under the Master Trust Indenture ("MTI") remain outstanding • **Limited Guarantee**: Upon the occurrence of a Protection Event, the Indenture Trustee has the right to require the Province to pay all Approved Obligations when due and payable • **Priority of Payments**: The priority application of guarantee payments is governed by the waterfall provision under the MTI • **Adherence Conditions**: For the Limited Guarantee to apply to an obligation of the Trust, OPG as FSM is required to comply with certain conditions, including the delivery of an Adherence Compliance Certificate, prior to the incurrence of such obligation (such obligation called an "Approved Obligation") • **Suspension Notice**: The Province may deliver a suspension notice upon the occurrence of the acceleration of any indebtedness of the Trust or other Program Breach or a default in performance or misrepresentation by OPG as FSM pursuant to certain internal reporting and other requirements contained in a Change of Law Process Agreement between OPG and the Province. Any new funding obligations that are incurred during a suspension period will not have the benefit of the Limited Guarantee, except that the Change of Law Protection Agreement applies to post-suspension refinancing of previously issued Approved Obligations

[1] **Specified Creditors** refers to any Person that is owed a payment obligation by the Issuer that gives rise to a Finance Amount in respect of the Issuer.

Key Agreements

Master Transfer and Servicing Agreement

Parties	• (1) IESO, as transferor and servicer; (2) Trust
Purpose	• Provides for the transfer, by the IESO to the Trust of specified portions of the Regulatory Asset, and upon such transfers the Trust acquires an Investment Interest; also describes the servicing obligations of IESO
Key Terms	• **Transfer of Regulatory Asset**: The IESO may offer, no more frequently than monthly, to transfer specified portions of the Regulatory Asset to the Trust. The Trust has the right, but not the obligation, to accept IESO's offer • **Servicing Duties:** The IESO will be responsible for servicing the Investment Interest under the Legislation, including receiving CEA amounts from Electricity Vendors and remitting the same to the Trust; other duties of the IESO include: – Establishing a segregated account for collecting CEAs and using commercially reasonable efforts to cause Electricity Vendors to do the same; – Remitting CEAs monthly to the Trust (unless downgraded below investment grade in which case it will remit within two business days); – Preparing monthly servicer reports; and – Providing a forecast of electricity consumption • **Carrying Costs:** During the Moratorium Period (until April 30, 2021) and extending to July 31, 2021, the IESO is required by regulation to fund all Carrying Costs of the Trust. The Carrying Costs incurred by the IESO will be added to its Regulatory Asset variance account pursuant to regulation • **IESO Letter of Credit:** After the Moratorium Period, the IESO will provide the Trust, a letter of credit or other form of security, as security for the commingling risk of CEAs collected by non-rated or non-investment grade rated Electricity Vendors and not yet remitted to the IESO

Key Agreements

Management Agreement

Parties	• (1) Issuer Trustee, on behalf of the Trust, and (2) OPG, as Manager and acknowledged and accepted by the Indenture Trustee, on behalf of specified creditors
Purpose	• Issuer Trustee delegates to the Manager all powers and duties of managing the Trust
Key Terms	• **Duties Include**: – Negotiating and executing program agreements; – Preparing, in accordance with applicable securities laws, any offering documents to be furnished by the Trust to prospective purchasers of funding obligations; – Review or cause to be reviewed, records of electricity vendors on an annual basis with respect to CEAs (or less frequently in certain circumstances); – Preparing monthly portfolio reports; – Preparing financial statements; and – Paying taxes on behalf of the Trust • **Incurrence of Funding Obligations**: Manager will determine how and when to incur funding obligations to acquire Investment Interests • **Standard of Care**: Manager will perform its duties diligently and in conformity with the Trust's obligations under the program agreements • **Resignation/ Termination:** Manager may not resign from its duties or terminate the Management Agreement as long as funding obligations of the Trust are outstanding • **Management Fees:** OPG is entitled to charge the Issuer a fee to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer

Key Agreements

Other Key Agreements

Security Agreement	• As security for the performance of its obligations under the Regulation to pay the Trust's carrying cost during the Moratorium Period, IESO has granted the Trust a first priority security interest in its accounts receivable owing by Electricity Vendors
Acknowledgement and Indemnity Agreement	• IESO, as servicer under the MTSA, acknowledges that a security interest has been granted to the Indenture Trustee thereby assigning as security the rights and benefits of the Issuer under the MTSA to the Indenture Trustee, including the right to enforce the indemnities provided to the issuer with respect to IESO's duties and obligations under the MTSA
Change of Law Process Agreement	• Outlines procedural requirements between the Province and OPG with respect to issuing debt that benefits from the Limited Guarantee under the Change of Law Protection Agreement • Among other things, OPG is required to deliver to the Province a process certificate, outlining the material terms of proposed debt issues and confirm such debt offerings will not cause the protection agreement maximum (as updated from time to time in the Financing Plan) to be exceeded
Declaration of Trust	• Establishes FHT to carry out activities for the exclusive benefit of its unitholders • Specifies the rights and powers of the Issuer Trustee (Computershare) • The Issuer Trustee has delegated all of the powers and duties of managing the Trust to OPG under the Management Agreement

RE_ Fair Hydro Trust - Disclosure Documents.rtf

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All,

For your records, please find attached the final versions of the offering memorandum, indicative term sheet and investor presentation. I have also attached the latest version of the Agenc

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Subject: RE: Fair Hydro Trust - Disclosure Documents
Date: Wednesday, January 17, 2018 19:08:36
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Attachment 3: Blackline Fair Hydro Trust Investor Presentation - Jan 8 v Jan 17.pdf
Attachment 4: Fair Hydro Trust Investor Presentation - Jan 17.pdf

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All,

Please find attached a revised Investor Presentation. The dealers have prepared a blackline, but noted that it was done manually and to refer to the clean in the event of any inconsistencies.

The attached remains subject to further review and comment by OPG, IESO, the dealers and their respective counsel.

Thanks,
Brett

Brett Saulnier

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Subject: RE: Fair Hydro Trust - Disclosure Documents

All,

Please find attached revised versions of the Offering Memorandum and Term Sheet. We have accepted the majority of the Province's comments where appropriate and I have included blacklines of each document against the version circulated by Jon below. The attached also reflect comments received from the IESO and some additional clean-up changes made since the documents were provided to the Province on January 5.

In the interest of time, we are circulating these drafts to all parties concurrently. Accordingly, they remain subject to review and comment by OPG, IESO, the dealers and their respective counsel.

Thanks,

Brett

Brett Saulnier

From: VINER, JON [mailto:JON.VINER@blakes.com]
Sent: January-16-18 10:48 AM
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Subject: Fair Hydro Trust - Disclosure Documents

All,

Please find attached the Province's comments on the offering memorandum, investor presentation and term sheet. We do not have comments on the additional documents circulated on January 5th.

Please let us know if you would like to discuss.

Kind regards,

Jon

Jon Viner

Associate

jon.viner@blakes.com

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Blakes

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TORYS
LLP

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Fair Hydro Trust
Investor Presentation

January [xx], 2018

Denotes Major Change

Disclaimers

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This presentation does not, and does not purport to, contain all information that may be material to an investment decision in respect of the Issuer's Notes. It is only a summary of certain information in respect of the Issuer. Prior to making an investment decision with respect to the Issuer's Notes, prospective investors should carefully review the Confidential Shelf Offering Memorandum, including the related Term Sheet, pursuant to which such Notes are offered (the Offering Memorandum). The information and opinions contained in this presentation are qualified in their entirety by reference to the Offering Memorandum. In particular, reference should be made to the risks of any investment in the Issuer's Notes offered and the statutory rights of rescission or rights to damages available to purchasers of such Notes described in the Offering Memorandum. No representation or warranty, express or implied, is given by or on behalf of the Issuer, the Agents or any other person as to the accuracy or completeness of the information or opinions contained in this presentation.

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The information presented herein is only current as of the date on the cover of this presentation. Except as required by law, neither the Issuer nor Ontario Power Generation (OPG) intends, or assumes any obligation, to revise or update any information in this presentation.

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Presenters

ONTARIO POWER GENERATION

Ken Hartwick
Chief Financial Officer &
Senior Vice President - Finance

John Lee
Vice President, Treasurer

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I. Introduction and Transaction Overview

Introduction

Ontario's Fair Hydro Plan	• The Province of Ontario announced its Fair Hydro Plan (FHP) on March 2, 2017, which proposed to lower the average electricity bill for eligible customers[1] ~~(referred to as Specified Consumers)~~ by 25% (the "Fair Adjustment") • The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax granted by the Ontario government in January 2017 • ~~It is expected that the rate reduction will be in effect until April 30, 2021, with any rate increases until that date limited to the rate of inflation in Ontario~~
Legislation	• On June 1, 2017, the Ontario government passed the *Ontario Fair Hydro Plan Act, 2017* (~~together, with the regulations promulgated thereunder,~~ the "FHPA" or "Act") to give effect to the FHP~~, legislation that reallocates certain electricity costs over time and provides immediate rate relief contemplated by the Fair Hydro Plan to Specified Consumers~~ • The FHPA was enacted to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future Specified Consumers and to provide fairness for Specified Consumers over time • The FHPA is supplemented by regulations related to the implementation of the FHPA (the "Regulations" and together with the FHPA, the "Legislation") • The FHPA imposes an irrevocable and non-bypassable charge recoverable from Specified Consumers and referred to as the Clean Energy Adjustment (CEA); ~~that~~ will be determined by Ontario Power Generation (OPG) in accordance with the Legislation in its role as Financial Services Manager under the Act • The CEA will be determined for each six month reference period and converted by the Ontario Energy Board (OEB) into a $/kWh rate and added to electricity invoices sent to Specified Consumers commencing on May 1, 2021 • From July 1, 2017 to April 30, 2021 (the "Moratorium Period"), no payments in respect of CEA ~~will~~ expected to be collected; during ~~this~~the Moratorium ~~p~~Period the Independent Electricity System Operator (IESO) is obligated to pay all funding and other expenses of the Trust (excluding principal) (referred to as "Carrying Costs") under the ~~Regulations~~Legislation
Fair Hydro Trust	• The implementation of the Fair Hydro Plan will be financed by the Fair Hydro Trust ("FHT", the "Trust" or the "Issuer") through the issuance of senior, subordinated and junior subordinated notes • Structured to be bankruptcy remote and even though consolidated by OPG on an accounting basis is ring fenced from OPG's other creditors • The FHT term notes will be repaid through the CEA payments received from Specified Consumers

[1] ~~Primarily Regulated Price Plan-eligible customers~~ Defined as Specified Consumers under the FHPA.~~.~~

Summary of Indicative Terms

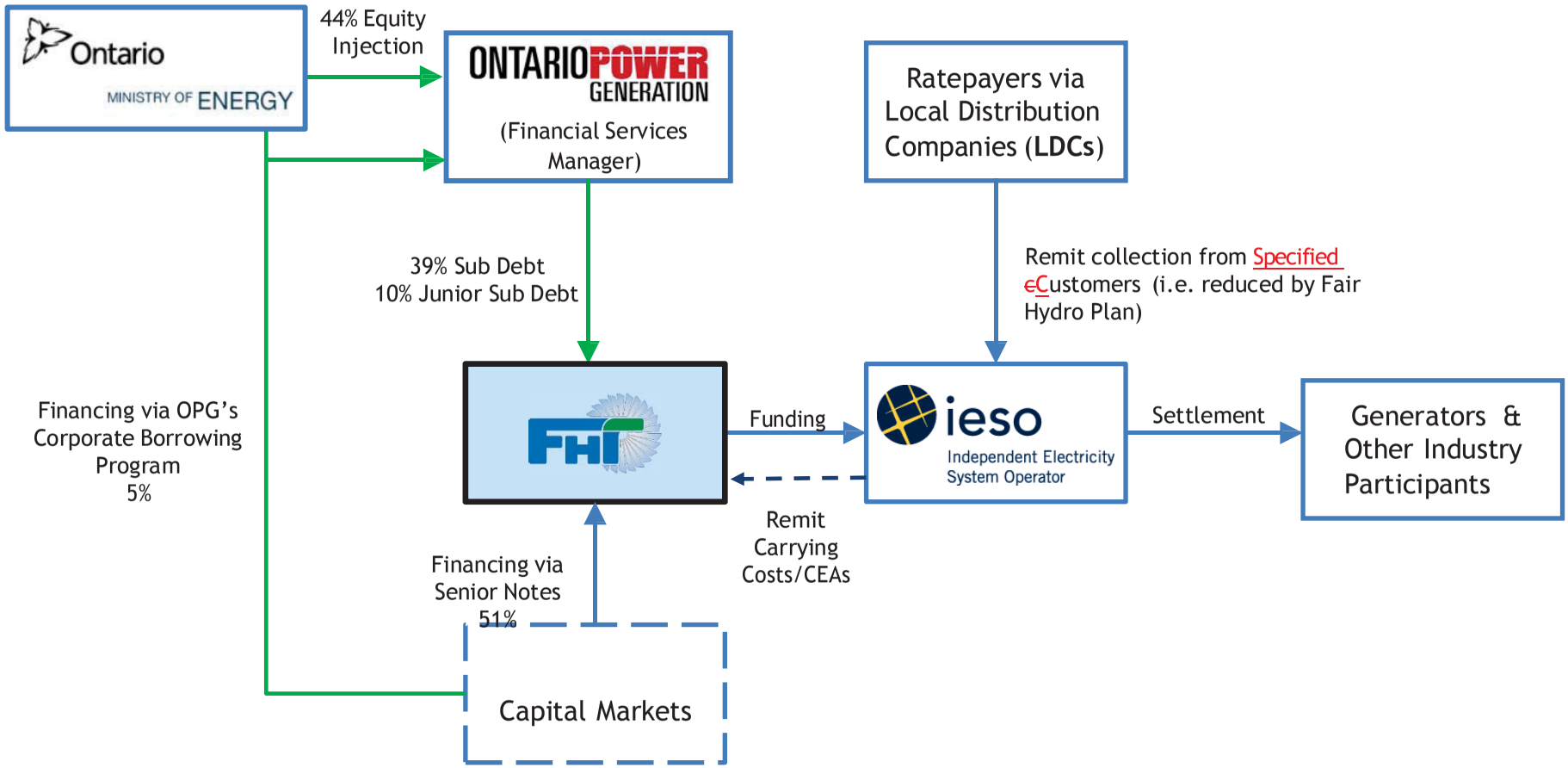
Overview of Notes

Class	Senior	Subordinated	Junior Subordinated
Issue Amount	$[●]MM	● $[●]MM (not offered)	● $[●]MM (not offered)
% of Aggregate Notes	[51%]	[39%]	[10%]
Proposed Ratings (DBRS / Moody's)	[AAA(sf)/AA(sf)]	[●(sf)/●(sf)]	[●(sf)/●(sf)]
Term to Maturity	~[15 years]	~[15 years]	~[15 years]
Expected Maturity Date	May 15, 2033●	May 15, 2033●	May 15, 2033●
Principal Payment Default Date	May 15, 2035●	May 15, 2035●	May 15, 2035●
Par Call Date	November 15, 2032●	November 15, 2032●	November 15, 2032●
Principal Accumulation	Principal will be accumulated monthly commencing January 2030 to facilitate repayment of notes on the expected maturity date		
Interest Type	Fixed		
Day Count	180/360, first payment actual/365		
Payment Dates	~~April~~ May 15 and ~~October~~ November 15 or next business day		
Credit Enhancements	Credit enhancements for the FHT 2018-1 Senior Notes will consist of: • Subordinated and Junior Subordinated notes equal [49%] of the aggregate issuance amount and will be retained by OPG • A segregated trust account with an eligible institution, referred to as a Program Cash Reserve Account, ~~A Program Cash Reserve Account~~ which will begin to be funded from Clean Energy Adjustments following the Moratorium Period until it reaches 0.50% of the aggregate amount of all outstanding senior, subordinated and junior subordinated funding obligations • Change of Law Protection Agreement to address political risk • True-up mechanism to address any shortfalls in collections		
Operating Agents	OPG serving as the Financial Services Manager and the Independent Electricity System Operator as the Servicer		

- ~~The Fair Hydro Trust, Series 2018-1 ("FHT 2018-1") notes are secured by the Trust's right to collect Clean Energy Adjustments~~
- ~~The FHT 2018-1 structure will consist of three classes of sequential pay, fixed rate, semi-annual bullet notes~~
- ~~Principal will be accumulated to facilitate the repayment of notes on the expected maturity date~~

Transaction Structure

- Concurrent with every issuance of senior notes, it is expected that OPG will purchase subordinated debt and junior subordinated debt of the Trust in an aggregate amount not to exceed 49% of all outstanding debt
  - The subordination amount may vary but must at least be equal to or greater than 35% of all outstanding debt

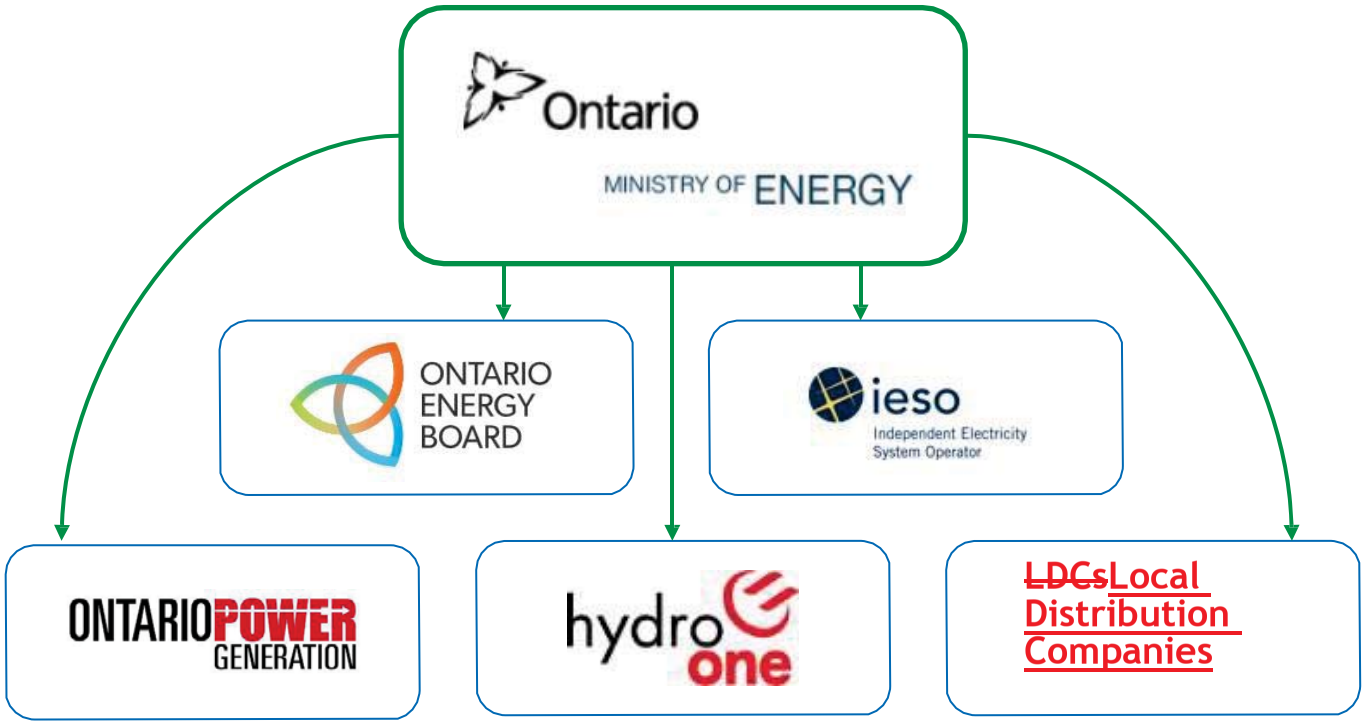


Note: The diagram above is based on subordinated debt of 49% of all outstanding debt
Note: The assets and liabilities of the Trust are deemed, under the *Electricity Act, 1998* to exclude the assets and liabilities of OPG, and vice versa.

II. Ontario Electricity Market

Overview of Ontario's Electricity Market

- Highly regulated electricity market comprised primarily of three components: generation, transmission and distribution; ~$22 billion in average annual cash flows[1]
- Transmission rates, distribution rates, and OPG's regulated rates are set by the OEB
- Rates for the majority of the remaining generation supply are set by the wholesale electricity market and by direct contracts with the IESO (e.g. Bruce Power (nuclear), wind, solar, hydroelectric)



[1] Source: "Ontario Planning Outlook – A technical report on the electricity system prepared by the IESO" dated September 1, 2016. The amount represents the

mathematical average of the system costs on page 44 in the appendix “Data Tables for the OPO Technical Report”.

Key Industry Participants

Participants	Credit Ratings *(DBRS / S&P / Moody's)*	Description
Ontario Ministry of Energy	AA (l) / A+ / Aa2 [1]	• The Province of Ontario through the Ministry of Energy sets ~~the~~ policy for the electricity system
Ontario Energy Board	--	• Independent public regulatory agency established under the *Ontario Energy Board Act, 1998* and has the authority to regulate Ontario's electricity market, including the activities of transmitters and distributors • Sets the regulated price for the commodity cost charged to most residential electricity customers via the Regulated Price Plan (RPP); RPP rates are set twice a year (May and November)
ieso Independent Electricity System Operator	A(h) / -- / Aa2	• Corporation without share capital ~~Not-for-profit corporation~~ established under the *Electricity Act, 1998 (Ontario)* • Manages the operation and reliability of Ontario's bulk power system and administers the wholesale electricity market
Ontario Power Generation	A(l) / BBB+ / --	• Corporation formed under the *Business Corporation Act (Ontario)*, whose sole shareholder is the Province of Ontario • Principal business is the generation and sale of electricity in Ontario and is Ontario's largest clean energy electricity generator, providing approximately half of the province's electricity
hydro one	A(h) / A / A3	• Ontario's largest electricity transmission and distribution company, delivering electricity to over 1.3 million customers across the province, and to large industrial customers and municipal utilities

[1] The credit ratings noted are for the Province of Ontario.

Key Industry Participants – LDC Overview

- As part of the restructuring of Ontario's electricity industry under the *Energy Competition Act, 1998*, the municipal electricity utilities became municipally-owned business corporations~~, including LDCs~~. The majority of LDCs continue to be municipally-owned, while others have been ~~sold to or~~ acquired by Hydro One or private-sector owners
- An LDC is responsible for distributing electricity to customers in its OEB-licensed service territory, and in some cases to other distributors

Select Aggregate Market Stats[1]

Number of LDCs in Ontario	65
~~Residential & Small Commercial[2]~~Total Revenue	$18.89 billion
Residential & Small Commercial[2] Metered Usage (kWh)	52.39 billion
Residential Customers	4.61 million
Small Commercial[2] Usage Customers	0.44 million
Total Residential & Small Commercial[2] Customers	5.05 million

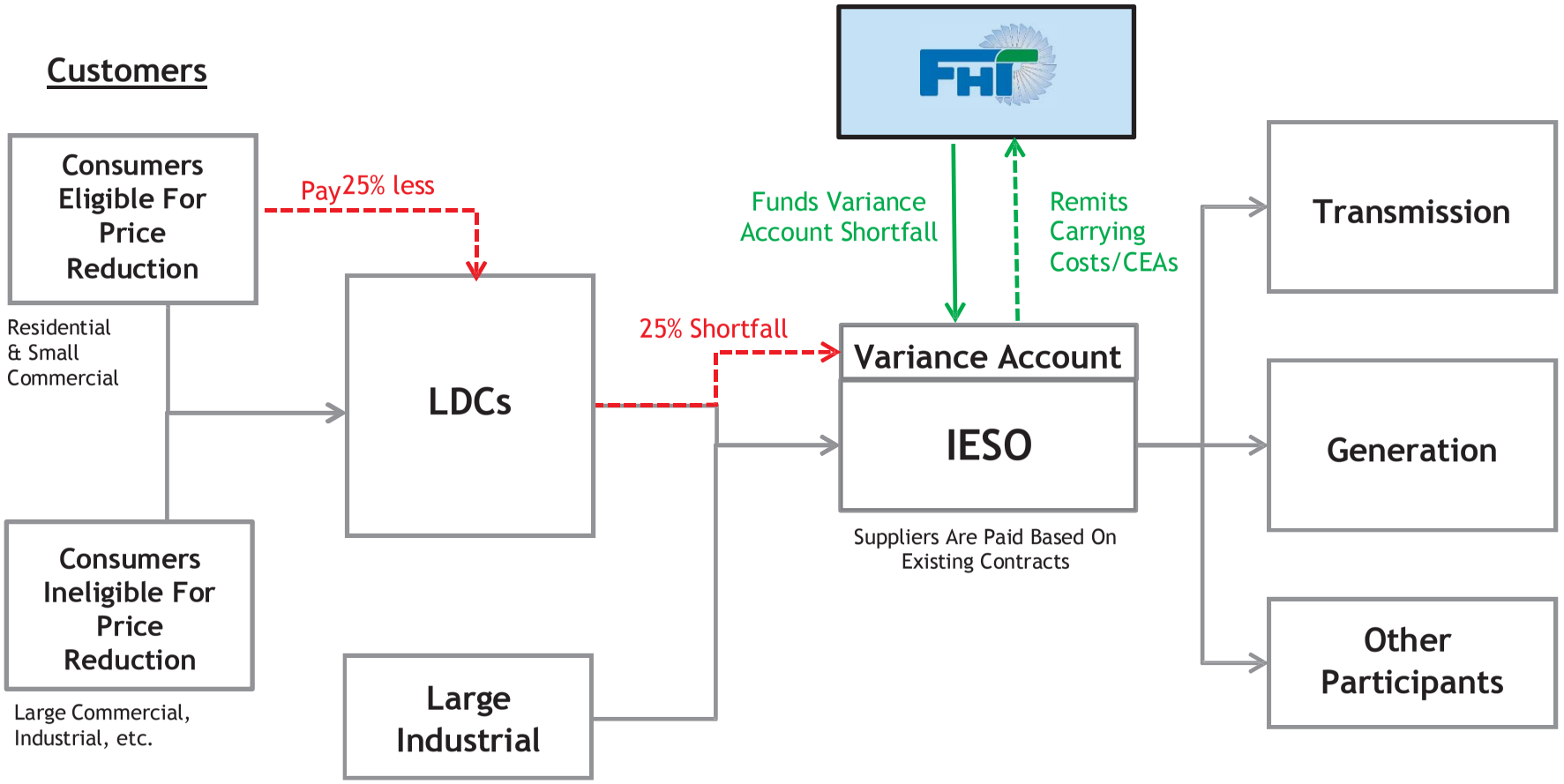
Top 5 LDCs by Customer Base[1]

	Rating[3] *(S&P / DBRS / Moody's)*	Customers[4] *(MM)*	Total Revenue[4]
hydro one	A / A(h) / A3	1.30	$4,533
alectra utilities	A / A / --	0.96	$3,642
TORONTO HYDRO	A / A / --	0.75	$3,886
HydroOttawa	BBB+ / A / --	0.32	$1,130
London Hydro	A / -- / --	0.15	$488
		3.49	**$13,680**
Percentage of Residential & Small Commercial[2]		**69%**	**~~72%~~**

[1] Source: OEB 2016 Yearbook of Electricity Distributors
[2] Small Commercial includes General Service <50kW Customers
[3] Most recent rating reports from S&P, DBRS and Moody's
[4] Residential and Small Commercial customers

Electricity Market with FHT

- Under the FHPA, each month the IESO determines the IESO deferral (the shortfall that results from the Fair Adjustment) and records this amount, together with financing costs and other related, in a variance account
- FHT will finance the shortfall and is entitled to recover its costs and the principal and interest on its debt through CEAs from Specified Consumers



III. Legislative and Regulatory Framework

Legislation Overview

Purpose	• The FHPA was enacted to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future Specified Consumers • Clean energy costs are costs allocated to consumers as a result of Ontario's clean energy initiatives; clean energy benefits are benefits that accrue to both present and future electricity consumers
Specified Consumers	• A category of consumers that generally is comprised of residential consumers, small businesses and farms • Includes consumers with a demand for electricity of 50 kW or less or those that use not more than 250,000 kWh of electricity annually
Rate Reduction Period	• **July 1, 2017 – April 30, 2018** – Specified Consumers charged an invoice amount that is 25%[1] less than the regulated rate that would otherwise have been determined by the OEB; the 25% reduction includes an 8% rebate equivalent to the provincial portion of the HST previously granted by the Ontario government • **May 1, 2018 – April 30, 2019** - regulated rate established in the first year of the Rate Reduction Period anticipated to increase by the rate of inflation in Ontario • **May 1, 2019 – April 30, 2021** - rate reductions will be established by future regulation but anticipated to increase by the rate of inflation in Ontario

[1] Based on a typical Toronto Hydro customer; the amount of the reduction for any given Specified Consumer may vary from this account.

Legislation Overview, cont'd

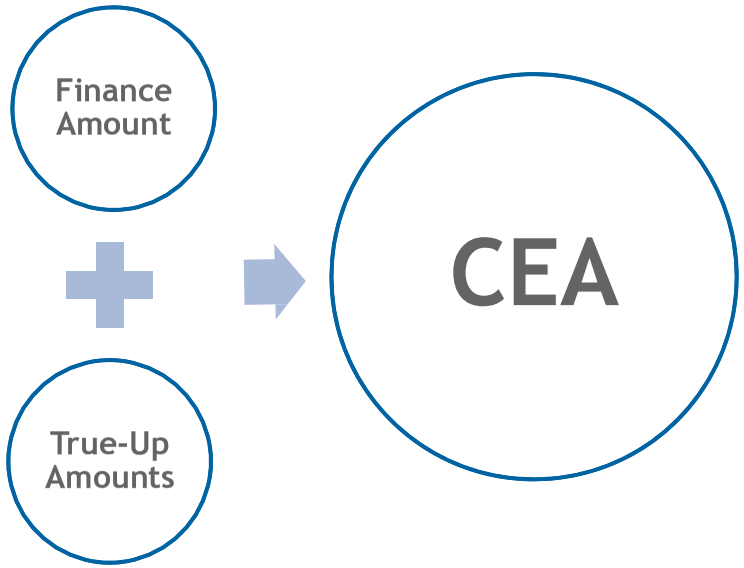
Regulatory Asset	• Each month the IESO determines the IESO deferral (the shortfall that results from the Fair Adjustment) and records this amount, together with the costs of financing the shortfall, in a variance account • The IESO has the right to recover the balance recorded in the variance account from Specified Consumers (such right is the Regulatory Asset) • The IESO may from time to time transfer a specified portion of the Regulatory Asset to the Trust for a cash purchase price equal to the corresponding amount recorded in the
Investment Asset	• The Trust is not obligated to purchase Regulatory Assets from the IESO • If the IESO and the Trust agree to the transfer of a specified portion of the Regulatory Asset, such transfer results in the creation of a current and irrevocable property right that is immediately vested in the Trust (such right is an Investment Interest) • By acquiring an Investment Interest, the Trust will be entitled to recover all of its associated financing costs and acquires the right to ~~impose, invoice,~~ collect, receive and recover CEAs from Specified Consumers in accordance with the Legislation
Moratorium Period *(July 1, 2017 to April 30, 2021)*	• CEAs are not permitted to be collected from Specified Consumers during this period • The IESO is obligated to pay the Trust all Carrying Costs, excluding repayment of principal on any debt obligations, during the Moratorium Period and extending to July 31, 2021. The Carrying Costs incurred by the IESO will be added to its Regulatory Asset variance account pursuant to Regulations • As security for the performance of its obligations, the IESO has granted the Trust a first-priority security interest in ~~all of~~ its accounts receivable owing by Electricity Vendors to the IESO • The IESO has a $2 billion general credit facility from the Ontario Financing Authority (OFA) which can be used among other things to ~~pay~~ fund payments of the Carrying Costs

Clean Energy Adjustments

- Under the FHPA, the CEA is the amount payable by Specified Consumers to cover the cost of the IESO deferral ~~financing the shortfall from the Fair Adjustment~~ and the associated costs of the financing, including payment of principal, operating costs of the Trust and funding of reserve accounts
- CEAs shown on an invoice issued to Specified Consumers represent the amount of the consumers' indebtedness and may not be set off or bypassed

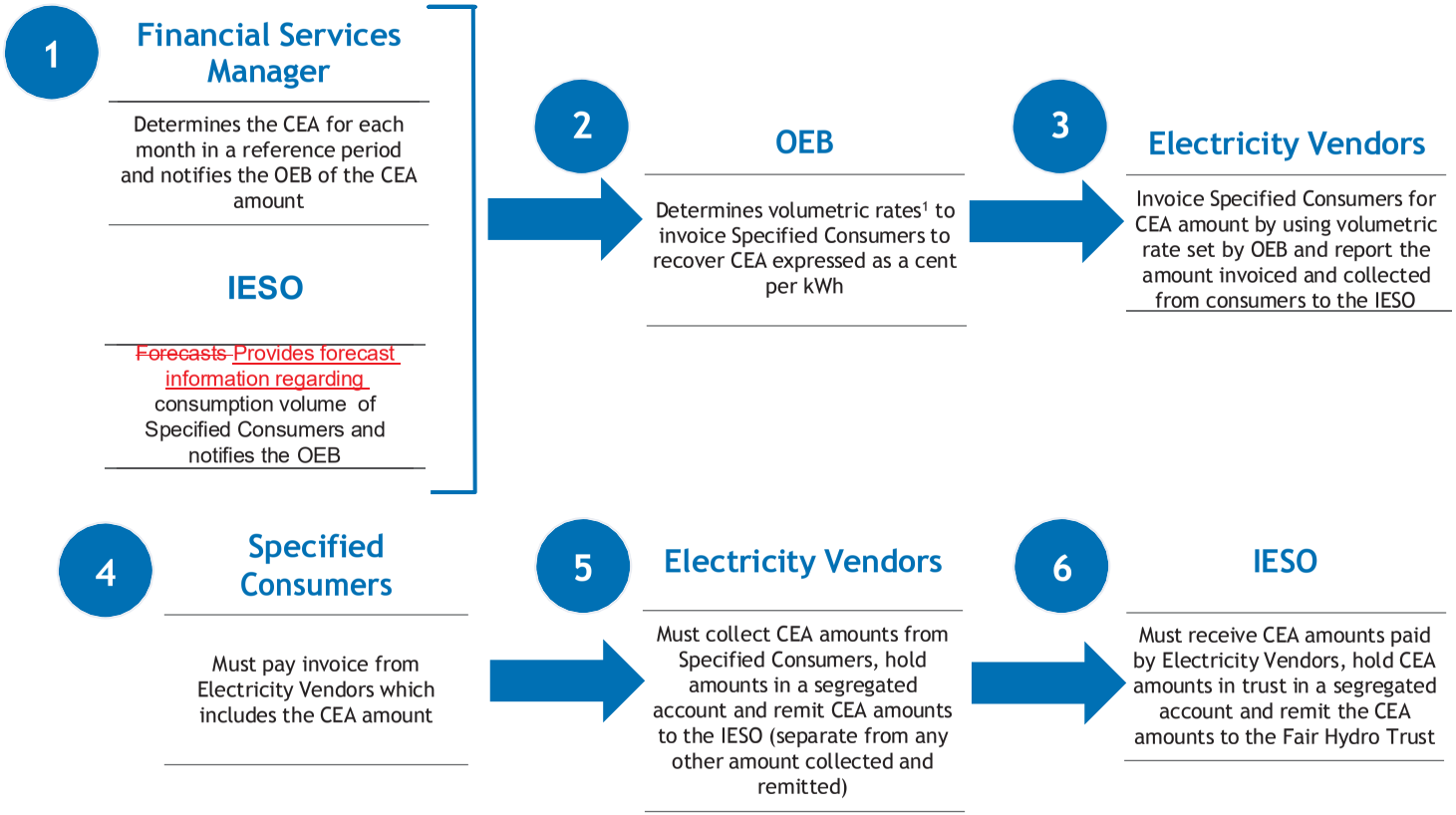
Finance amount is an estimate of the amount payable by the Trust mainly in respect of principal payments, interest costs, Trust expenses and taxes, reserve account deposits and derivative payments

True-up amounts capture the difference between the finance amounts incurred by the Trust and the CEAs collected from Specified Consumers and also include other reasonably foreseeable differences due to various factors (e.g. consumer defaults and delays, billing lags, write-offs and variations in electricity consumption)



Billing and Collection of CEAs

- CEA amounts for billing and collection purposes will be managed outside of the IESO's current settlement processes set out in the Market Rules for electricity invoice amounts
- Collection risk for CEA amounts are mitigated through statutory rights in the FHPA, the ~~collection~~ obligations of the IESO under the Master Transfer & Servicing Agreement ~~(MTSA)~~, and the ability to include amounts in the CEA by means of the ~~into the~~ true up mechanism
- IESO is ~~allowed to commingle~~required to seperate the CEAs during a monthly period before remitting to FHT. If the IESO's credit rating is downgraded below investment grade, ~~it will not be allowed to commingle CEAs and will remit~~the IESO will be required to remit within two business days of receipt

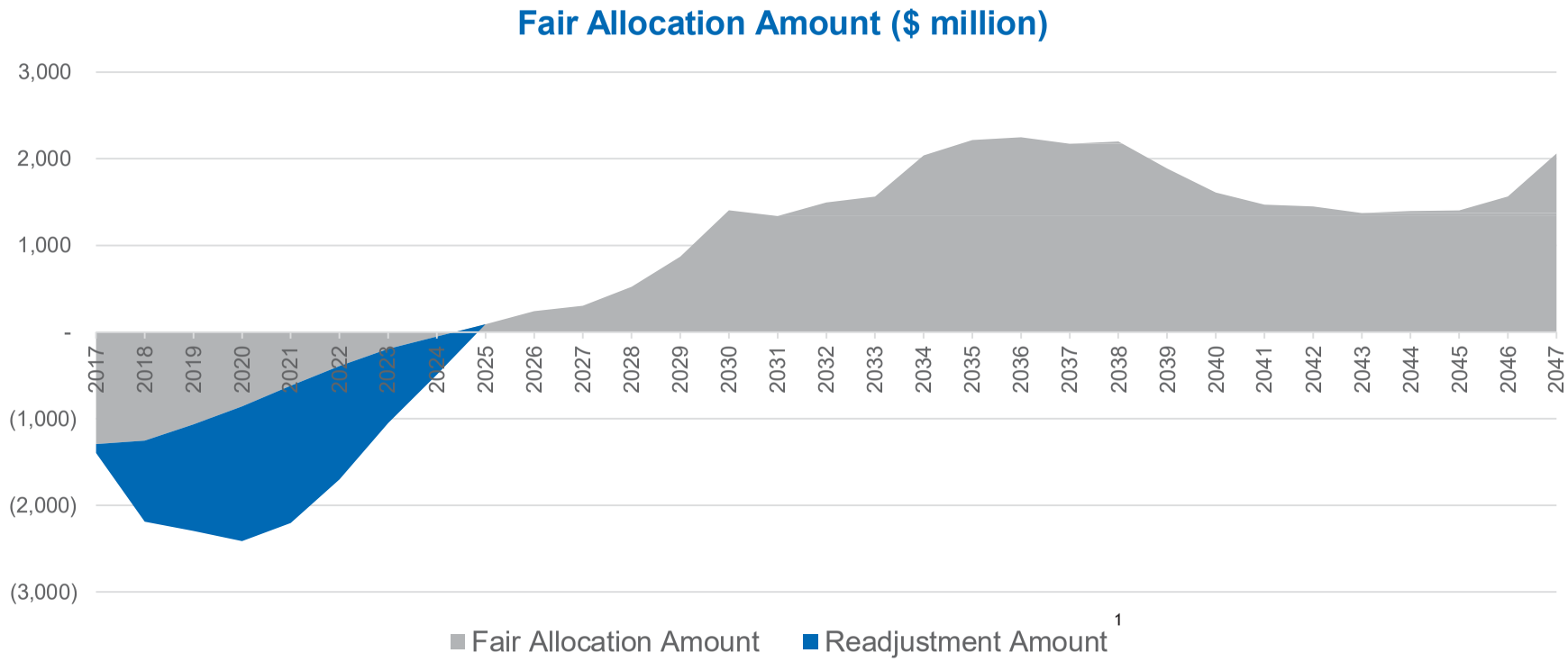


[1] The rates will be determined by dividing the CEA amount by the forecasted energy consumption in the reference period by Specified Consumers.

Fair Allocation Amount

Please refer to the updated Fair Allocation Amount slide in the clean version (slide 19) for updated commentary, graphs and footnote

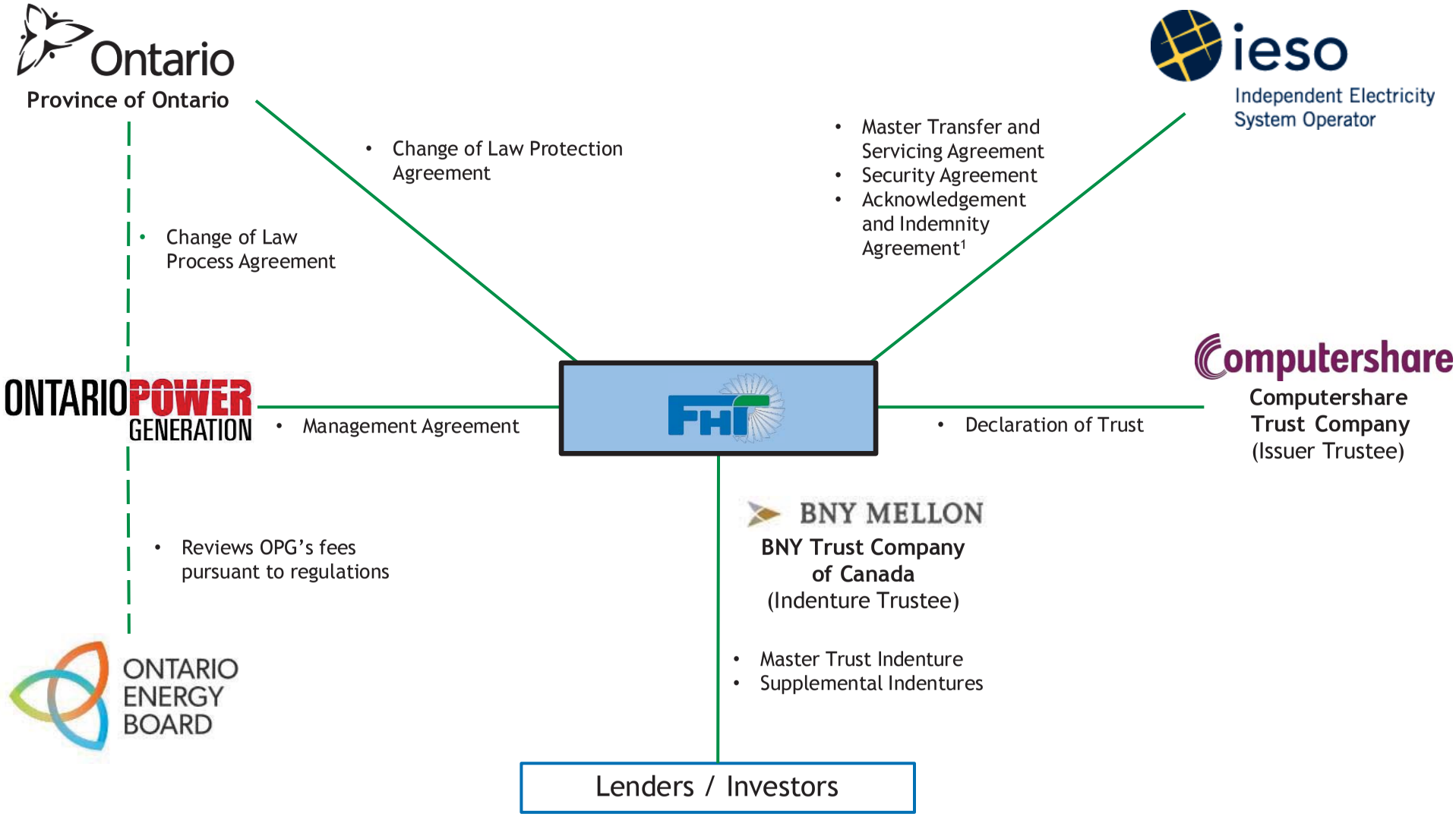
- The Fair Allocation Amount (FAA) is the estimated clean energy cos reallocated on the basis of estimated clean energy benefits to Specified Consumers in respect of each reference period and includes operating and financing costs of the FHT
- If the FAA is negative, this means that the Minister of Energy has determined that current Specified Consumers have borne more than their fair share of clean energy costs (with the consequent rate reduction for current Specified Consumers); the FAA is expected to be negative until at least May 2024
- The Ministry of Energy may provide updated FAAs to OPG from time-to-time



[1] The Readjustment Amount represents the amounts by which Specified Consumers overpaid for clean energy initiatives in the past. It has been incorporated into the FAA to further reduce electricity bills for such consumers.

IV. Contractual Framework

Simplified Contractual Structure



[1] Agreement between IESO and Indenture Trustee.

Key Agreements

Note: Key Agreements were moved into the appendix and a "Contract Summary" slide was added to the clean version

Note: moved to Appendix

Change of Law Protection Agreement

Parties	• (1) Province of Ontario and (2) Indenture Trustee as Trustee of the Issuer, on behalf of Specified Creditors[1], and (3) OPG as Financial Services Manager (FSM)
Purpose	• Provides assurance to Specified Creditors that upon the occurrence of a Protection Event referred to below, the Province of Ontario will pay all Approved Obligations on behalf of the Trust, with limited rights of acceleration
Key Terms	• **Term**: Continues for as long as any protected obligations of the Trust that are secured under the Master Trust Indenture (MTI) remain outstanding • ~~**Mandatory Payment**~~**Limited Guarantee**: Upon the occurrence of a Protection Event, the Indenture Trustee has the right to require the Province to pay all Approved Obligations when due and payable • **Priority of Payments**: The priority application ~~-~~of guarantee payments is governed by the waterfall provision under the MTI • **Adherence Conditions**: For the Limited Guarantee to apply to an obligation of the Trust, OPG as FSM is required to comply with certain conditions, including the delivery of an Adherence Compliance Certificate, prior to the incurrence of such obligation (such obligation called an ~~issuance of debt which is to benefit from the Change of Law Protection Agreement from the Province (such debt called~~ "Approved Obligation~~s~~") • **Suspension Notice**: The Province may deliver a suspension notice upon the occurrence of the acceleration of any indebtedness of the Trust or other Program Breach or a default in performance or misrepresentation by OPG as FSM pursuant to certain internal reporting and other requirements contained in a Change of Law ~~p~~Process ~~A~~agreement between OPG and the Province~~., and A~~any new funding obligations that are incurred during a suspension period will not have the benefit of the ~~Change of Law Protection Agreement~~Limited Guarantee, except that the Change of Law Protection Agreement applies to Post-Suspension Refinancing of previously issued Pre-Approved Refinancing

[1] **Specified Creditors** are any other Person that is owed a payment obligation by the Issuer that gives rise to a Finance Amount in respect of the Issuer.

Key Agreements

Note: moved to Appendix

Change of Law Protection Agreement (cont'd)

Protection Events

The occurrence of any of the following events:

(1)

- The Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof
- The Legislature enacts or amends any other statute
- The Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof
- The Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "Regulation" (as defined in Part III of the Legislation Act, 2006) as in effect on the date hereof
- The implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province

in each case that adversely affects the ability of the Trust to pay its obligations when due and payable, taking into account any funds available in reserve accounts, any credit enhancement available and any reasonably expected potential effect of a true-up amount

(2)

- A court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, is *ultra vires* or invalid in a way that adversely affects the ability of the Trust to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable

Key Agreements (cont'd)

Note: moved to Appendix

Master Transfer and Servicing Agreement

Parties	• (1) IESO, as transferor and servicer; (2) Trust
Purpose	• Provides for the transfer, by the IESO to the Trust of the Regulatory Asset, and upon such transfer the Trust acquires an Investment Interest and describes the servicing obligations of IESO
Key Terms	• **Transfer of Regulatory Asset**: The IESO may offer, no more frequently than monthly, to transfer the specified portions of the Regulatory Asset to the Trust. The Trust has the right, but not the obligation, to accept IESO's offer • **Servicing Duties:** The IESO will be responsible for servicing the Investment Interest under the legislation ~~regulations~~, including ~~collecting~~ receiving CEA amounts from Electricity Vendors and remitting the same to the Trust~~, including:~~; other duties of the IESO include: – Establishing a segregated account for collecting CEAs and using commercially reasonable efforts to cause Electricity Vendors to do the same; – ~~Collecting~~ Receiving CEAs from Electricity Vendors; – Remitting CEAs monthly to the Trust (unless downgraded below investment grade in which case it will remit daily); – Preparing monthly servicer reports; and – Providing a ~~F~~forecast~~ing~~ of electricity consumption of Specified Consumers • **Moratorium Period:** During the Moratorium Period (until April 30, 2021) and extending to July 31, 2021, the IESO is required by regulation to fund all Carrying Costs of the Trust. The Carrying Costs incurred by the IESO will be added to its Regulatory Asset variance account pursuant to regulation. • **IESO Letter of Credit:** After the Moratorium Period, the IESO will provide the Trust, a letter of credit or other form of security, as security for the commingling risk of CEAs collected by non-rated or non-investment grade rated Electricity Vendors and not yet remitted to the IESO

Key Agreements (cont'd)

Note: moved to Appendix

Management Agreement

Parties	• (1) Issuer Trustee, on behalf of the Trust, and (2) OPG, as Manager and acknowledged and accepted by the Indenture Trustee, on behalf of specified creditors
Purpose	• Issuer Trustee delegates to the Manager all powers and duties of managing the Trust

Key Terms	• **Duties Include**:
	  - Negotiating and executing program agreements;
	  - Preparing, in accordance with applicable securities laws, any offering documents to be furnished by the Trust to prospective purchasers of funding obligations;
	  - Review or cause to be reviewed, records of electricity vendors on an annual basis with respect to CEAs (or less frequently in certain circumstances);
	  - Preparing monthly portfolio reports;
	  - Preparing financial statements; and
	  - Paying taxes on behalf of the Trust
	• **Incurrence of Funding Obligations**: Manager will determine how and when to incur funding obligations to acquire Investment Interests
	• **Standard of Care**: Manager will perform its duties diligently and in conformity with the Trust's obligations under the program agreements
	• **Resignation/ Termination:** Manager may not resign from its duties or terminate the Management Agreement as long as funding obligations of the Trust are outstanding
	• **Management Fees:** OPG is entitled to charge the Issuer a fee to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer

Key Agreements (cont'd)

Other Key Agreements

Security Agreement	• As security for the performance of its obligations under the Regulation to pay the Trust's carrying cost during the Moratorium Period, IESO has granted the Trust a first priority security interest in all of its accounts receivable owing by Electricity Vendors
Acknowledgement and Indemnity Agreement (IESO)	• IESO, as servicer under the MTSA, acknowledges that a security interest has been granted to the Indenture Trustee thereby assigning as security the rights and benefits of the Issuer under the MTSA to the Indenture Trustee, including the right to enforce the indemnities provided to the issuer with respect to IESO's duties and obligations under the MTSA
Change of Law Process Agreement	• Outlines procedural requirements between the Province and OPG with respect to issuing debt that benefits from the Limited Guarantee under the Change of Law Protection Agreement • Among other things, OPG is required to deliver to the Province a process certificate, outlining the material terms of proposed debt issues and confirm such debt offerings will not cause the protection agreement maximum (as
Declaration of Trust	• Establishes FHT to carry out activities for the exclusive benefit of its unitholders • Specifies the rights and powers of the Issuer Trustee (Computershare) • The Issuer Trustee has delegated all of the powers and duties of managing the Trust to OPG under the Management Agreement

Allocation of Servicing Role and Responsibilities

- The shared responsibilities of servicing and management roles are summarized below

	OPG	IESO	LDC
Review Records of LDCs with Respect to CEAs (annually or less frequently in certain circumstances)	✔		
Determination of CEA for a Reference Period, including the True-Up Amount	✔		
Ongoing Reporting for Trust and Reporting to the Rating Agencies	✔		
Management of Ongoing Debt Issuances	✔		
Cash Management	✔	✔	
Preparation of Monthly Servicer Reports		✔	
Remittance of CEA to IESO and to the Trust		✔	✔
Responding to inquiries by customers if practicable, or forwarding such inquiries to OPG		✔	✔
Customer Billing			✔
Customer Collections			✔
Customer Meter Reading			✔

V. Financing Program

Financing Plan / Strategy

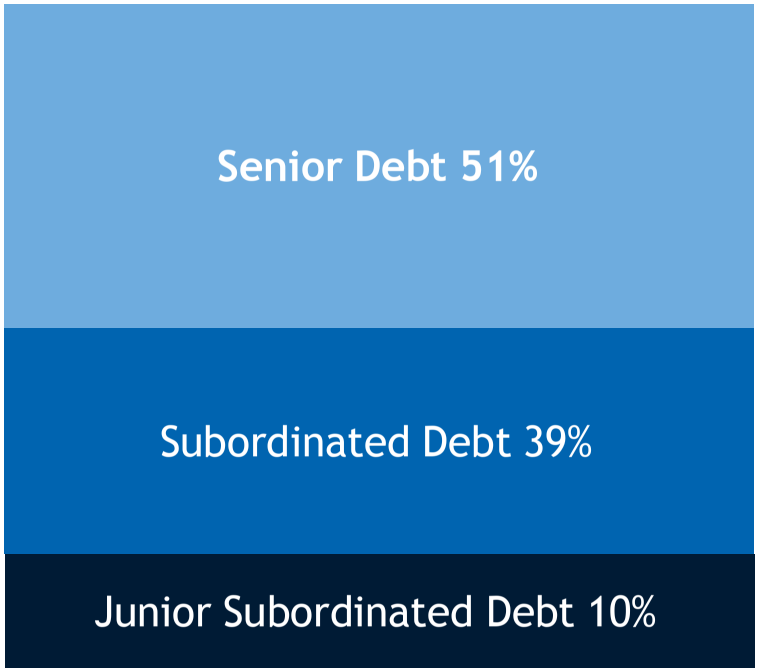
- OPG is responsible for administering the FHT financing program
- Given the size (~$20 billion) and longevity (~10 years) of the FHT financing program, the funding strategy has been designed to provide flexibility
- Warehouse financing (ABCP conduit and bank funded senior debt) and ~~subordinated~~ subordinated warehouse debt and junior subordinated warehouse debt funded by OPG will be used to fund monthly Regulatory Asset purchases from the IESO
  - Periodically refinance the warehouse facility through the issuance of term debt (likely access the market 2-3 times per year)
- Term debt can take the form of bullet bonds or could be issued as amortizing bonds

Warehouse Financing	• ABCP conduit and bank funded senior debt with subordinated debt funded by OPG will be used by the Trust to fund monthly Regulatory Asset purchases from the IESO
Term Debt	• Term debt issuances will be used to refinance warehouse financing and the subordinated debt and junior subordinated debt funded by OPG • Both Canadian term debt and U.S. term debt market will be considered • Maturity profiles will be structured to ensure reasonable alignment with the FAA (bullet bonds with sinking funds or amortizing bonds) • FHT may issue debt that may be refinanced in the future
Subordinated Debt	• Subordinated debt provides credit enhancement for senior debt (ranks behind senior debt in cash flow waterfall)

V. Financing Program

Financing Structure

- The Trust will fund Regulatory Asset purchases through the issuance of senior, subordinated and junior subordinated secured debt
- Senior debt (51%) will be sourced monthly from committed warehouse facilities, and the periodic issuance of term debt
- Subordinated debt (49% anticipated; minimum of 35% required[1]) will be purchased by OPG, primarily funded by equity injections from the Province (44% of 49%) and the remaining portion from OPG (5% of 49%)



Senior Notes
Warehouse facilities and term debt issuances (in Canada and/or the U.S.)

Subordinated Notes
Provided to Trust by OPG via equity injection from the Province

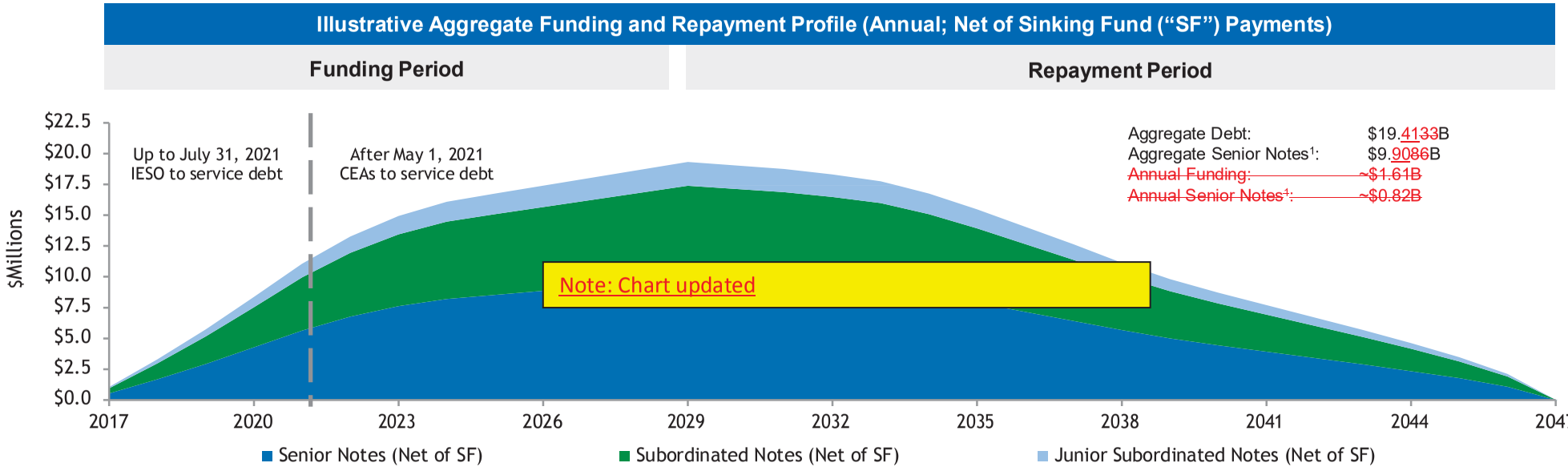
Junior Subordinated Debt
- OPG equity injection (5%) via its corporate borrowing program
- Provided to Trust by OPG via the Province (5%)

[1] Under the MTI, FHT is required at all times to ensure that all outstanding subordinated and junior subordinated debt be not less than 35% of all outstanding debt.
Note: Assumes 49% Subordinated Debt.

Aggregate Financing Program

Illustrative Debt Summary - Funding & Repayment Period (Annual)

- Based on the Fair Allocation Amount and the Province's electricity bill reduction targets, the following debt profile for the program is expected, peaking at just under $20 billion by 2029
- Various tranches of debt will be issued periodically during the period of 2018 - 2028, which are expected to mature over a period after 2029



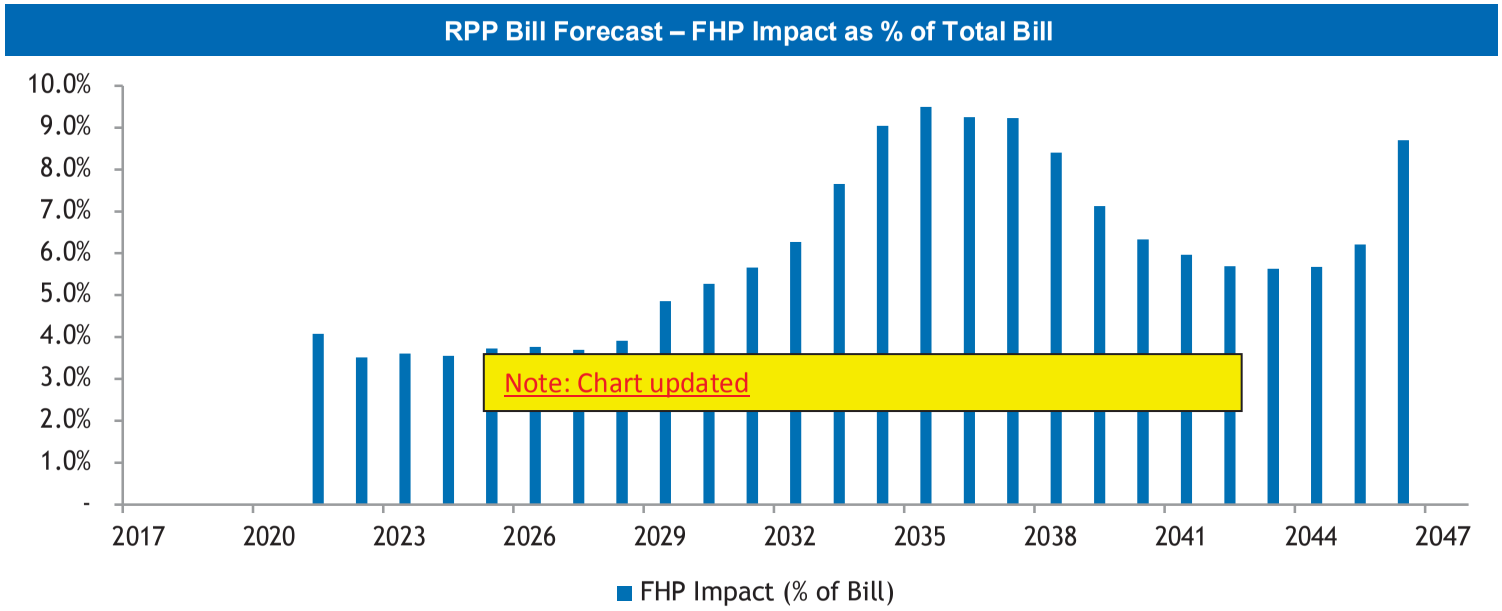
[1] Assumes 51% Senior Notes

Note: During the Moratorium Period and extending three additional months to July 31, 2021, the IESO is required under the Regulations to pay all Carrying Costs. The additional three month period is intended to cover the billing and collection lag from the introduction of Clean Energy Adjustments in May 2021.

Consumer Bill Forecast with FHP

RPP Bill Forecast - FHP Impact % of Total Bill (C$ per Month)

- Over the duration of the Fair Hydro Program, the CEA for the average residential customer is anticipated to remain below 10% of the total electricity bill
- Max CEA as a percent of the total bill is forecast to be 10.01%
- Average CEA as a percent of the total bill is forecast to be 6.9%



Capital Markets Platform

Master Trust Indenture

Parties	• (1) Computershare Trust Company (Issuer Trustee), on behalf of the Trust, acting through OPG as the Manager; (2) BNY Trust Company (Indenture Trustee) on behalf of Specified Creditors
Purpose	• Governs the terms of the debt issued by FHT and cash flow waterfall and collateral structure for all Trust obligations to all Specified Creditors

Key Terms

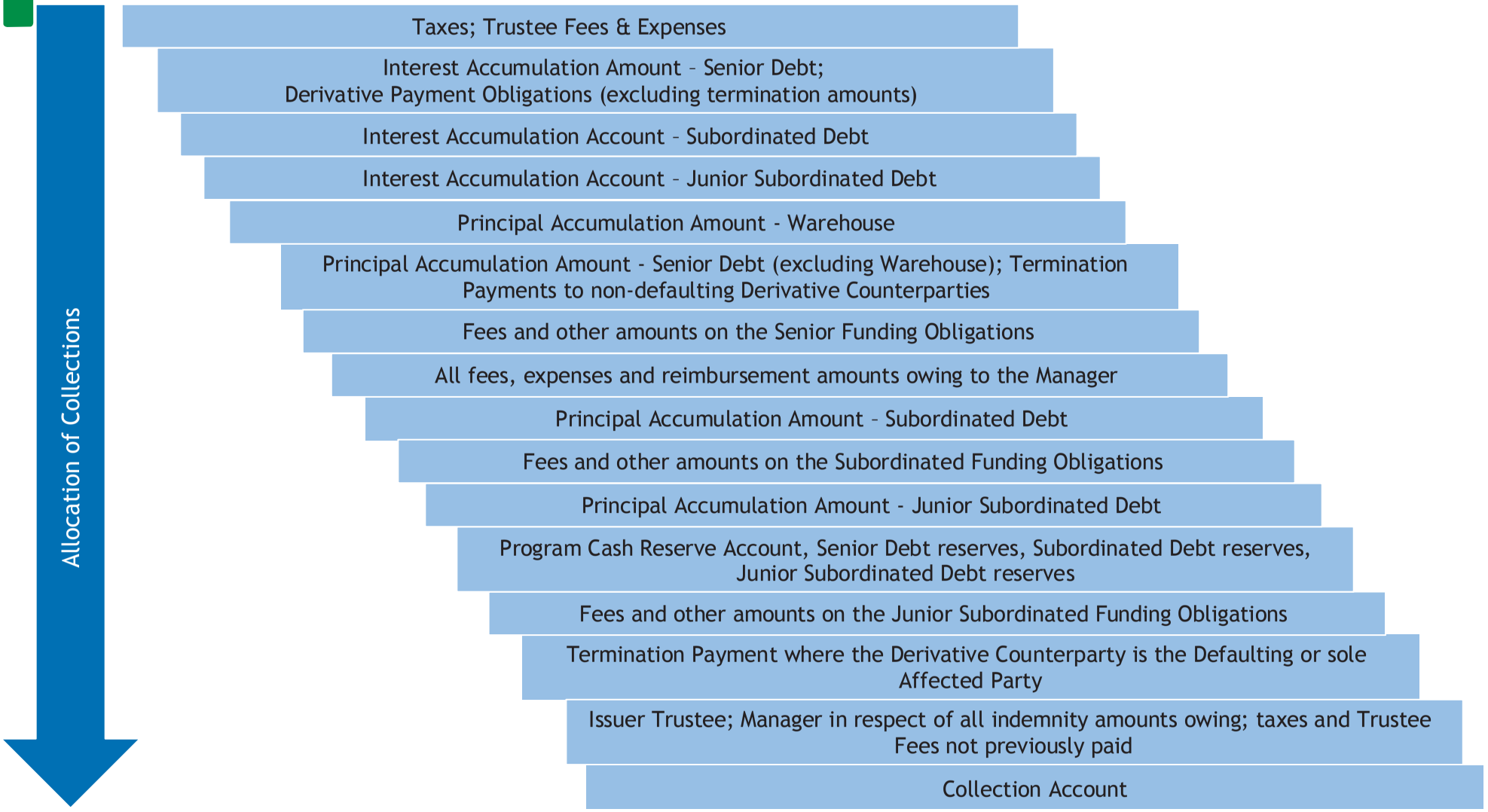
Incurrence of Funding Obligations	• Trust may incur funding obligations under a variety of instruments including: - Note issuances under supplemental indentures - Borrowings under credit agreements - Purchase of notes under note purchase agreements - Letters of Credit/Guarantees under credit enhancement agreements - Liquidity loans under liquidity agreements backing short term notes
Conditions Precedent	• Prior to incurring additional funding obligations, the Trust confirms to the Indenture Trustee and each rating agency that: - the incurrence of such additional obligations will not cause an adverse effect - the incurrence of such additional obligations is materially consistent with the Financing Plan • It will also be a condition precedent that (i) each rating agency confirm that the issuance of such additional funding obligations will not result in a reduction or withdrawal of any existing ratings of outstanding funding obligations and (ii) the Indenture Trustee has received certain assurances as to the applicability of the Change of Law Protection Agreement to such funding obligations

Capital Markets Platform

Master Trust Indenture – Key Terms (cont'd)

Security	• Granted over all assets of the Trust, including the Trust's investment interest, all collections under the MTSA and all accounts
Subordination	• Provides for three different classes of funding obligations - (i) senior - (ii) subordinated - (iii) junior subordinated
Events of Default	• Include payment defaults, representation and covenant breaches, insolvency and Change of Law Protection Agreement ceasing to be in full force and effect against the Province
Acceleration	• •Upon an acceleration, CEAs may be insufficient to repay all amounts becoming due in a period. CEAs for a period will be capped ~~CEAs cannot be increased to the level required to immediately repay all outstanding principal following acceleration. The increase in CEAs is limited~~ under the Regulation at the otherwise scheduled amounts, plus an additional amount if the aggregate of those otherwise scheduled amounts would be less than ~~to the amount available per~~ the FAA for the period • However, the amounts received from CEAs after an acceleration will be allocated to pay senior indebtedness before principal amounts owing on subordinated and junior subordinated indebtedness.~~CEAs are allocated to paying the senior indebtedness first.~~ Accordingly, the subordination of debt across all series of debt ~~would~~ should advance the repayment of the principal amount for senior funding obligations • After an acceleration, all Senior Term Notes will be paid parri-passu

Waterfall



Note: This waterfall indicates the priority of payment prior to an Event of Default and acceleration; additional information on the priority of payments after an Event of Default and acceleration can be found in the Offering Memorandum.
Note: After paying interest on the senior debt, no interest payments will be made on the subordinated debt unless there will be sufficient amounts remaining in the Interest Accumulation Account for what should be accumulated for the Senior Notes after making such payments.

VI. Summary of Offering

Summary of Indicative Terms

Note: Please refer to the updated summary in the clean version (slide 36) due to formatting issue with the blackline. Moved after Risk Mitigants.

Initial Fair Hydro Term Issuance	**Class**			**Maturity**	**Principal Payment Default Date**	**Rating (DBRS / Moody's)**
	Senior Term Notes	$[ ] mm	[ ]%	[ ]	[ ]	AAA (sf) / Aa2 (sf)
	Subordinated Notes	$[ ] mm (Not Offered)	[ ]%	[ ]	[ ]	[ ]
	Jr. Subordinated Notes	$[ ] mm (Not Offered)	[ ]%	[ ]	[ ]	[ ]

Issuer	Fair Hydro Trust, a single purpose, bankruptcy-remote wholly-owned subsidiary of the Financial Services Manager
Financial Services Manager	Ontario Power Generation, Inc.
Servicer	Independent Electricity System Operator
Source of Repayment	• Moratorium Period: Statutorily mandated remittances from IESO (Up to July 31, 2021) • Post Moratorium Period: Non-bypassable charge from residential and commercial customers in Ontario, related collections and reserve accounts (After May 1, 2021)
~~**Principal Accumulation Date(s) and Principal Accumulation Amount(s):**~~	~~Principal Accumulation Date~~ ~~●, 20●~~ ~~Principal Accumulation Amount~~ ~~$●~~
Payment Frequency	Semi-annual
Interest	Fixed rate
Senior Note Credit Enhancements	• Semi-annual (or more frequent) True-up • Reserve Account • Subordination
Program Cash Reserve Account	After Moratorium period, an amount equal to 0.50% of the aggregate amount of all outstanding Senior, Subordinated and Junior Subordinated funding obligations
True-up	Calculated on at least a semi-annual basis post-moratorium period
Subordination	Subordinated and Junior Subordinated Notes will be retained by OPG
Additional Issuance	Master Trust Indenture allows for the issuance of additional notes subject to satisfaction of Rating Agency Condition

VII. Key Risks and Mitigants

Risk Mitigation

Risk	Description of Risk	Mitigants
Political Risk	• Future legislative action to change or challenge/invalidate the Act or the Change of Law Protection Agreement might materially adversely affect a holder's investment in the Notes	• Limited Guarantee provided by the Province of Ontario via the Change of Law Protection Agreement in favour of the Indenture Trustee for lenders/investors in these circumstances
Under Collection	• If the IESO inaccurately forecasts electricity consumption or if OPG uses inaccurate consumer delinquency or write-off data when setting the CEA, there could be a shortfall in collections, which might result in missed or delayed payments of principal and interest on the Notes	• True up mechanism may result in a delay, but will be corrected in next True up • Cash reserve and 35%-49% subordination which would first absorb any shortfalls • 6-month reference period • Any shortfall in collections are recoverable from all Specified Consumers
Reliance on IESO and LDCs	• During the Moratorium Period, the Trust is dependent on the IESO to remit payments to the Trust for all Carrying Costs~~to pay for all Carrying Costs~~ • Receipt of CEAs dependent on the performance of LDCs and IESO • Limited ability to enforce against or replace an~~on~~ LDC	• Highly regulated industry and LDC and IESO are required under law and regulation to perform duties under FHP • IESO has a very strong credit profile and very low losses and grants security over ~~all of~~ its accounts receivable~~s~~ owed by Electricity Vendors as security during the Moratorium Period • IESO will provide a letter of credit/other security to mitigate commingling risks for CEAs held~~for the commingling of CEAs~~ by non-rated or below investment grade rated LDCs until they are remitted to IESO • LDCs collect security deposits and, when permitted, have the ability to disconnect service for non-payment • $2 billion ~~general~~ credit facility from the OFA which can be used by the IESO to pay the Carrying Costs
Size of Charge vs. Bill	• If the charge applied to bills becomes too high, there could be a consumer and/or political backlash	• 20-year repayment period allows for gradual rate increases • Max CEAs as a percent of the total bill over collection period is forecast to be ~10%
Disruptive Technology Risk / Change in Demographics	• Technological developments may result in reduced CEA payments as a result of increased use of alternative energy sources • Population fluctuations may result in fewer Specified Consumers	• True-up mechanism available to offset the reduction in CEAs due to technological advancements or fluctuations in the number of Specified Consumers • Collection shortfalls are allocated among a large base of Specified Consumers

VIII. Investment Highlights

Investment Highlights

- Protection against political risk through the Change of Law Protection Agreement
- Irrevocable & non-bypassable rate payer charge, recoverable from Specified Consumers across the Province of Ontario
- Repayment risk spread across all Specified Consumers. Full cross-collateralization; collection shortfalls allocated among all Specified Consumers ~~(Joint and Several Liability)~~
- ~~Enhanced~~ Robust true-up mechanism
- Credit enhancement for senior debt provided via subordinated debt
- Highly regulated market with experienced operating agents (OPG, IESO, and LDCs)
- Strong ratepayer base in Ontario~~service territory~~
- ~~No large user industrial risk exposure~~

Fair Hydro Trust Investor Presentation - Jan 17.pdf

Fair Hydro Trust
Investor Presentation

January [xx], 2018

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Presenters

ONTARIO POWER GENERATION

Ken Hartwick
Chief Financial Officer &
Senior Vice President – Finance

John Lee
Vice President, Treasurer

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VIII. Investment Highlights

Appendix – Key Agreement Summaries

I. Introduction and Transaction Overview

Introduction

Ontario's Fair Hydro Plan	• The Province of Ontario announced its Fair Hydro Plan (FHP) on March 2, 2017, which proposed to lower the average electricity bill for eligible customers[1] by 25% (the "Fair Adjustment") • The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax granted by the Ontario government in January 2017
Legislation	• On June 1, 2017, the Ontario Legislature passed the *Ontario Fair Hydro Plan Act, 2017* (the "FHPA or the "Act") to give effect to the FHP • The FHPA was enacted to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future Specified Consumers and to provide fairness for Specified Consumers over time • The FHPA is supplemented by regulations related to the implementation of the FHPA (the "Regulations" and together with the FHPA, the "Legislation") • The FHPA imposes an irrevocable and non-bypassable charge recoverable from Specified Consumers and referred to as the Clean Energy Adjustment (CEA); will be determined by Ontario Power Generation (OPG) in accordance with the Legislation in its role as Financial Services Manager under the Act • The CEA will be determined for each six month reference period and converted by the Ontario Energy Board ("OEB") into a $/kWh rate and added to electricity invoices sent to Specified Consumers commencing on May 1, 2021 • From July 1, 2017 to April 30, 2021 (the "Moratorium Period"), no payments in respect of CEA are expected to be collected; during the Moratorium Period and extending to July 31, 2021, the Independent Electricity System Operator (IESO) is obligated to pay all funding and other expenses of the Trust (excluding principal) (referred to as "Carrying Costs") under the Legislation
Fair Hydro Trust	• The implementation of the Fair Hydro Plan will be financed by the Fair Hydro Trust ("FHT", the "Trust" or the "Issuer") through the issuance of senior, subordinated and junior subordinated notes • Structured to be bankruptcy remote and even though consolidated by OPG on an accounting basis, is ring fenced from OPG's other creditors • The FHT term notes will be repaid through the CEA payments received from Specified Consumers

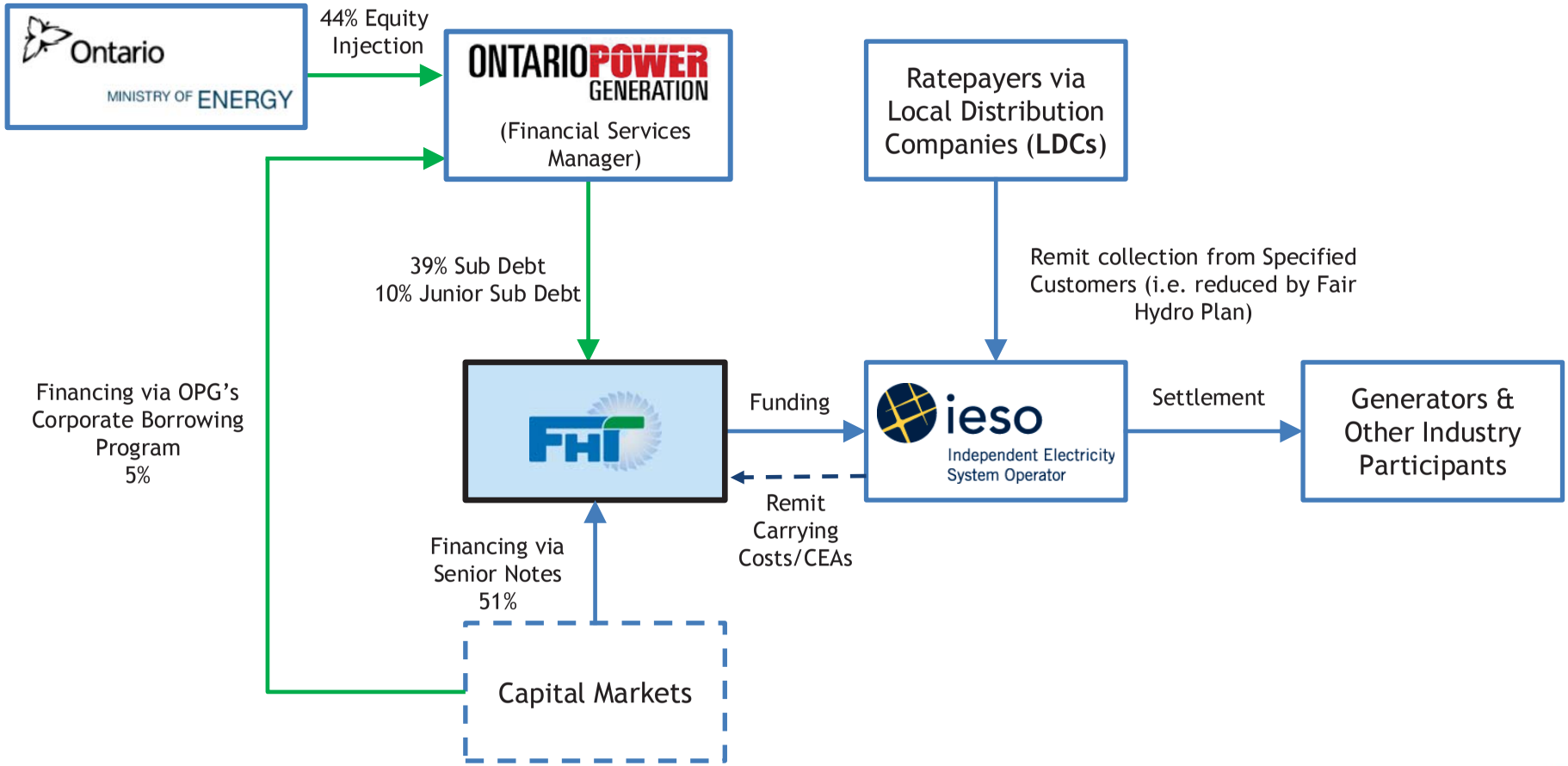
[1] Defined as Specified Consumers under the FHPA.

Summary of Indicative Terms

Overview of Notes			
Class	**Senior**	**Subordinated**	**Junior Subordinated**
Issue Amount	$[●]MM	$[●]MM (not offered)	$[●]MM (not offered)
% of Aggregate Notes	51%	39%	10%
Expected Ratings (DBRS / Moody's)	[AAA(sf)/AA(sf)]	[●(sf)/●(sf)]	[●(sf)/●(sf)]
Term to Maturity	~15 years	~15 years	~15 years
Expected Maturity Date	May 15, 2033	May 15, 2033	May 15, 2033
Principal Payment Default Date	May 15, 2035	May 15, 2035	May 15, 2035
Par Call Date	November 15, 2032	November 15, 2032	November 15, 2032
Principal Accumulation	Principal will be accumulated monthly commencing January 2030 to facilitate repayment of notes on the expected maturity date		
Interest Type	Fixed		
Day Count	180/360, first payment actual/365		
Payment Dates	May 15 and November 15 or next business day		
Credit Enhancements	Credit enhancements for the FHT 2018-1 Senior Notes will consist of: • Subordinated and Junior Subordinated notes equal 49% of the aggregate issuance amount and will be retained by OPG • A segregated trust account with an eligible institution, referred to as a Program Cash Reserve Account, which will begin to be funded from Clean Energy Adjustments following the Moratorium Period until it reaches 0.50% of the aggregate amount of all outstanding senior, subordinated and junior subordinated funding obligations • Change of Law Protection Agreement to address political risk • True-up mechanism to address any shortfalls in collections		
Operating Agents	OPG serving as the Financial Services Manager and the Independent Electricity System Operator as the Servicer		

Transaction Structure

- Concurrent with every issuance of senior notes, it is expected that OPG will purchase subordinated debt and junior subordinated debt of the Trust in an aggregate amount not to exceed 49% of all outstanding debt
  - The subordination amount may vary but must at least be equal to or greater than 35% of all outstanding debt

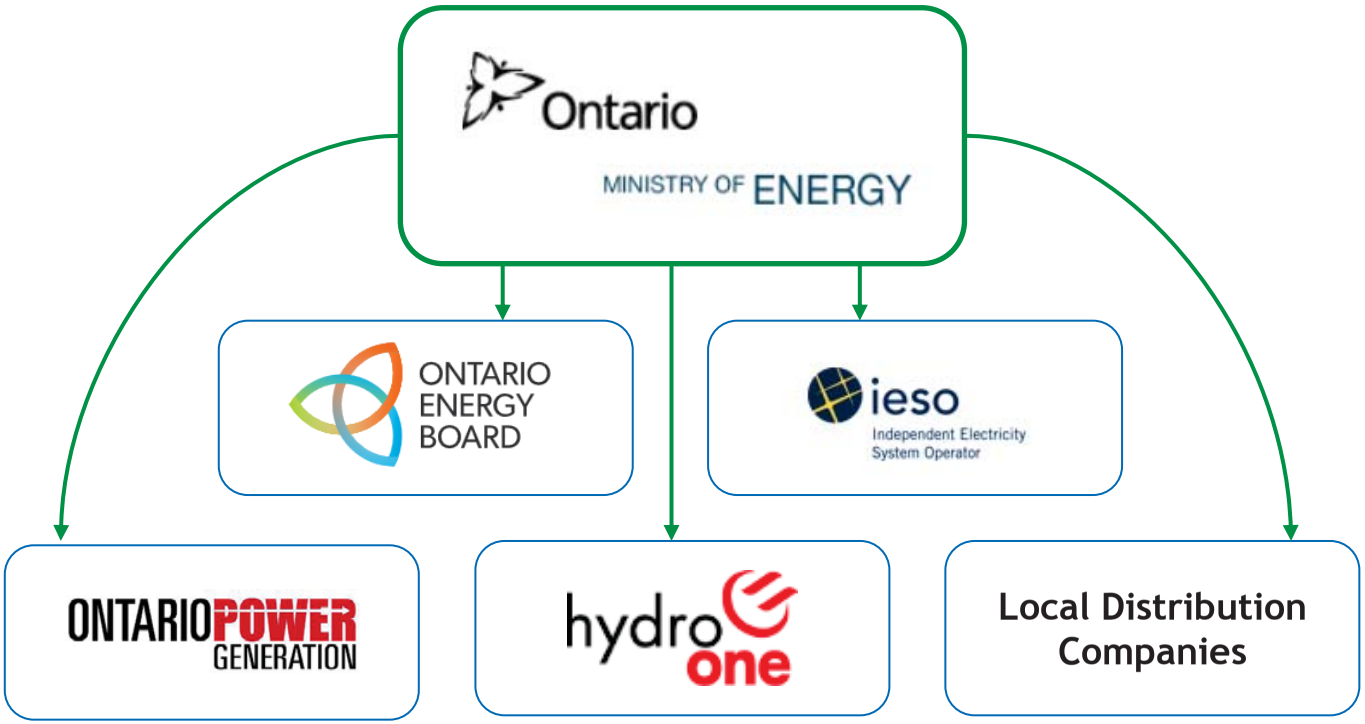


Note: The diagram above is based on subordinated debt of 49% of all outstanding debt
Note: The assets and liabilities of the Trust are deemed, under the *Electricity Act, 1998* to exclude the assets and liabilities of OPG, and vice versa.

II. Ontario Electricity Market

Overview of Ontario's Electricity Market

- Highly regulated electricity market comprised primarily of three components: generation, transmission and distribution; ~$22 billion in average annual cash flows[1]
- Transmission rates, distribution rates, and OPG's regulated rates are set by the OEB
- Rates for the majority of the remaining generation supply are set by the wholesale electricity market and by direct contracts with the IESO (e.g. Bruce Power (nuclear), wind, solar, hydroelectric)



[1] Source: "Ontario Planning Outlook – A technical report on the electricity system prepared by the IESO" dated September 1, 2016. The amount represents the mathematical average of the system costs on page 44 in the appendix "Data Tables for the OPO Technical Report".

Key Industry Participants

Participants	Credit Ratings *(DBRS / S&P / Moody's)*	Description
Ontario Ministry of Energy	**AA (l) / A+ / Aa2** [1]	• The Province of Ontario through the Ministry of Energy sets policy for the electricity system
Ontario Energy Board	--	• Independent public regulatory agency established under the *Ontario Energy Board Act, 1998* and has the authority to regulate Ontario's electricity market, including the activities of transmitters and distributors • Sets the regulated price for the commodity cost charged to most residential electricity customers via the Regulated Price Plan (RPP); RPP rates are set twice a year (May and November)
ieso Independent Electricity System Operator	**A(h) / -- / Aa2**	• Corporation without share capital established under the *Electricity Act, 1998 (Ontario)* • Manages the operation and reliability of Ontario's bulk power system and administers the wholesale electricity market
Ontario Power Generation	**A(l) / BBB+ / --**	• Corporation formed under the *Business Corporation Act (Ontario)*, whose sole shareholder is the Province of Ontario • Principal business is the generation and sale of electricity in Ontario and is Ontario's largest clean energy electricity generator, providing approximately half of the province's electricity
Hydro One	**A(h) / A / A3**	• Ontario's largest electricity transmission and distribution company, delivering electricity to over 1.3 million customers across the province, and to large industrial customers and municipal utilities

[1] The credit ratings noted are for the Province of Ontario.

Key Industry Participants – LDC Overview

- As part of the restructuring of Ontario's electricity industry under the *Energy Competition Act, 1998*, the municipal electricity utilities became municipally-owned business corporations. The majority of LDCs continue to be municipally-owned, while others have been acquired by Hydro One or private-sector owners
- An LDC, referenced as an Electricity Vendor in the FHPA, is responsible for distributing electricity to customers in its OEB-licensed service territory, and in some cases to other distributors

Select Aggregate Market Stats[1]

Number of LDCs in Ontario	65
Total Revenue	$18.89 billion
Residential & Small Commercial[2] Metered Usage (kWh)	52.39 billion
Residential Customers	4.61 million
Small Commercial[2] Usage Customers	0.44 million
Total Residential & Small Commercial[2] Customers	5.05 million

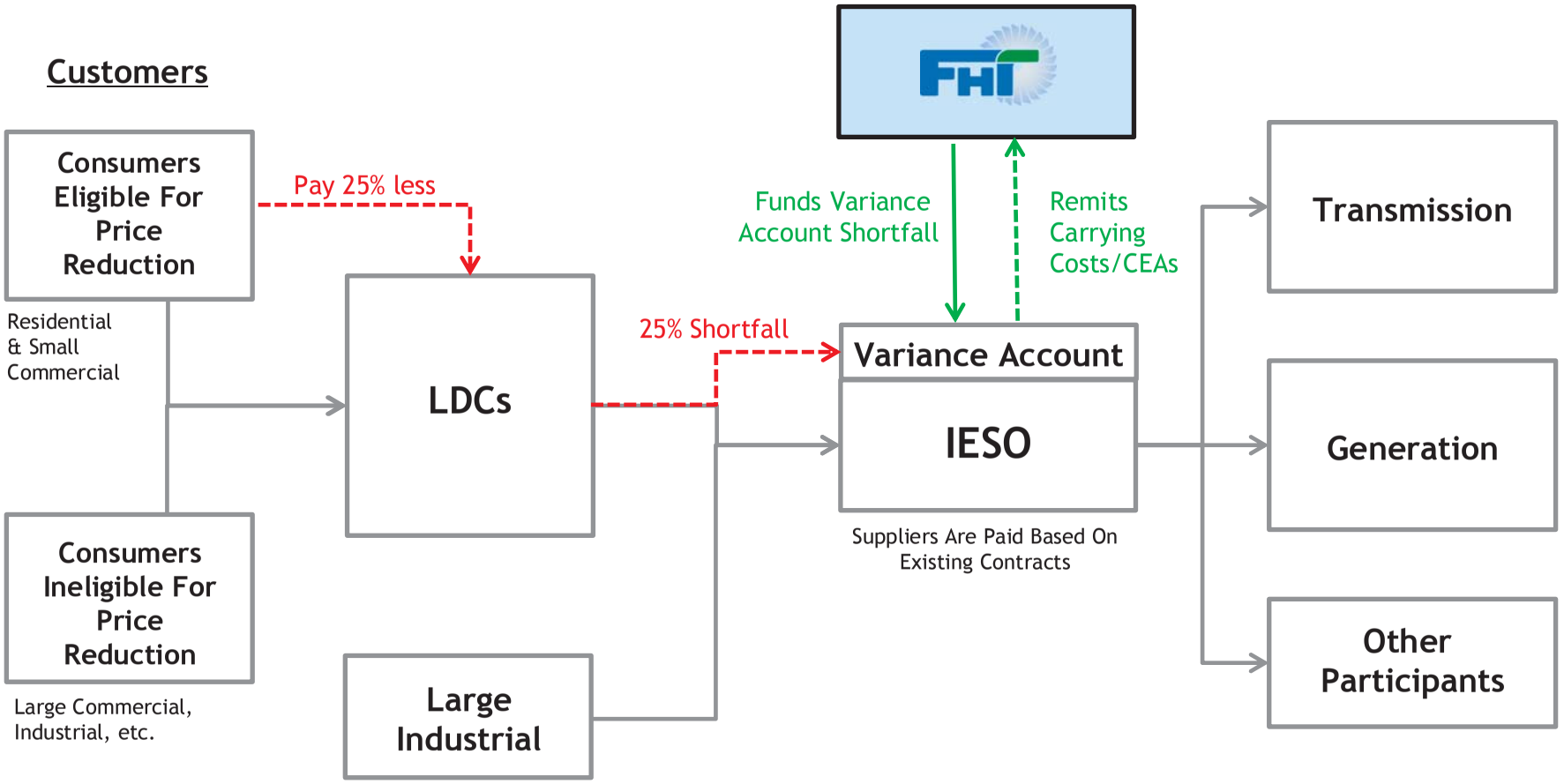
Top 5 LDCs by Customer Base[1]

	Rating[3] *(S&P/DBRS/Moody's)*	Customers[4] *(MM)*	Total Revenue *(C$MM)*
hydro one	A / A(h) / A3	1.30	$4,533
alectra utilities	A / A / --	0.96	$3,642
TORONTO HYDRO	A / A / --	0.75	$3,886
HydroOttawa	BBB+ / A / --	0.32	$1,130
London Hydro	A / -- / --	0.15	$488
		3.49	**$13,680**
Percentage of Residential & Small Commercial[2]		**69%**	

[1] Source: OEB 2016 Yearbook of Electricity Distributors
[2] Small Commercial includes General Service <50kW Customers
[3] Most recent rating reports from S&P, DBRS and Moody's
[4] Residential and Small Commercial customers

Electricity Market with FHT

- Under the FHPA, each month the IESO determines the IESO deferral (the shortfall that results from the Fair Adjustment) and records this amount, together with financing and other related costs, in a variance account
- FHT will finance the shortfall and is entitled to recover its costs and the principal and interest on its debt through CEAs from Specified Consumers



III. Legislative and Regulatory Framework

Legislation Overview

Purpose	• The FHPA was enacted to ensure that clean energy costs and clean energy benefits are fairly allocated among present and future Specified Consumers • Clean energy costs are costs allocated to consumers as a result of Ontario's clean energy initiatives; clean energy benefits are benefits that accrue to both present and future electricity consumers
Specified Consumers	• A category of consumers that generally is comprised of residential consumers, small businesses and farms • Includes consumers with a demand for electricity of 50 kW or less or those that use not more than 250,000 kWh of electricity annually
Rate Reduction Period	• **July 1, 2017 – April 30, 2018** – Specified Consumers charged an invoice amount that is 25%[1] less than the regulated rate that would otherwise have been determined by the OEB; the 25% reduction includes an 8% rebate equivalent to the provincial portion of the HST previously granted by the Ontario government • **May 1, 2018 – April 30, 2019** - regulated rate established in the first year of the Rate Reduction Period anticipated to increase by the rate of inflation in Ontario • **May 1, 2019 – April 30, 2021** - rate reductions will be established by future regulation but anticipated to increase by the rate of inflation in Ontario

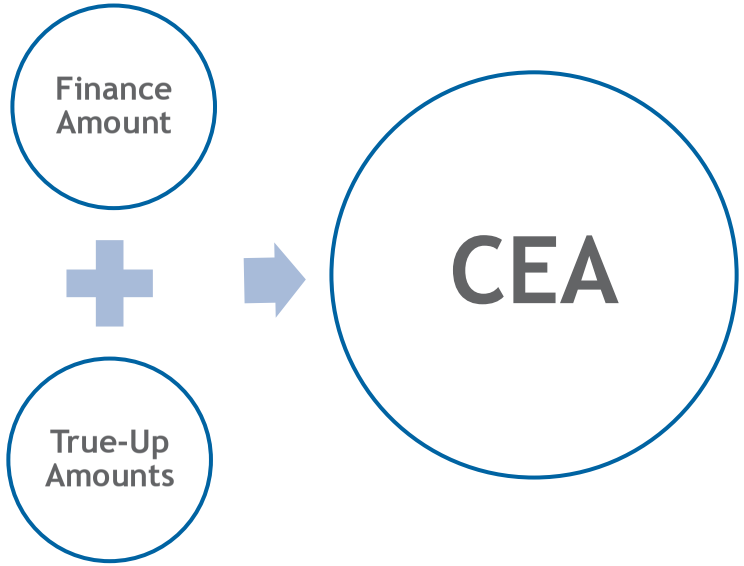
[1] Based on a typical Toronto Hydro customer; the amount of the reduction for any given Specified Consumer may vary from this account.

Legislation Overview, cont'd

Regulatory Asset	• Each month the IESO determines the IESO deferral (the shortfall that results from the Fair Adjustment) and records this amount, together with the costs of financing the shortfall, in a variance account • The IESO has the right to recover the balance recorded in the variance account from Specified Consumers (such right is the Regulatory Asset) • The IESO may from time to time transfer a specified portion of the Regulatory Asset to the Trust for a cash purchase price equal to the corresponding amount recorded in the variance account
Investment Asset	• The Trust is not obligated to purchase Regulatory Assets from the IESO • If the IESO and the Trust agree to the transfer of a specified portion of the Regulatory Asset, such transfer results in the creation of a current and irrevocable property right that is immediately vested in the Trust (such right is an "Investment Interest") • By acquiring an Investment Interest, the Trust will be entitled to recover all of its associated financing costs and acquires the right to collect, receive and recover CEAs from Specified Consumers in accordance with the Act
Moratorium Period *(July 1, 2017 to April 30, 2021)*	• CEAs are not permitted to be collected from Specified Consumers during this period • The IESO is obligated to pay the Trust all Carrying Costs, excluding repayment of principal on any debt obligations, during the Moratorium Period and extending to July 31, 2021. The Carrying Costs incurred by the IESO will be added to its Regulatory Asset variance account pursuant to Regulations • As security for the performance of its obligations, the IESO has granted the Trust a first-priority security interest in its accounts receivable owing by Electricity Vendors to the IESO • The IESO has a $2 billion credit facility from the Ontario Financing Authority (OFA) which can be used, among other things, to fund payments of the Carrying Costs

Clean Energy Adjustments

- Under the FHPA, the CEA is the amount payable by Specified Consumers to cover the cost of the IESO deferral and the associated costs of the financing, including payment of principal, operating costs of the Trust and funding of reserve accounts
- CEAs shown on an invoice issued to Specified Consumers represent the amount of the consumers' indebtedness and may not be set off or bypassed

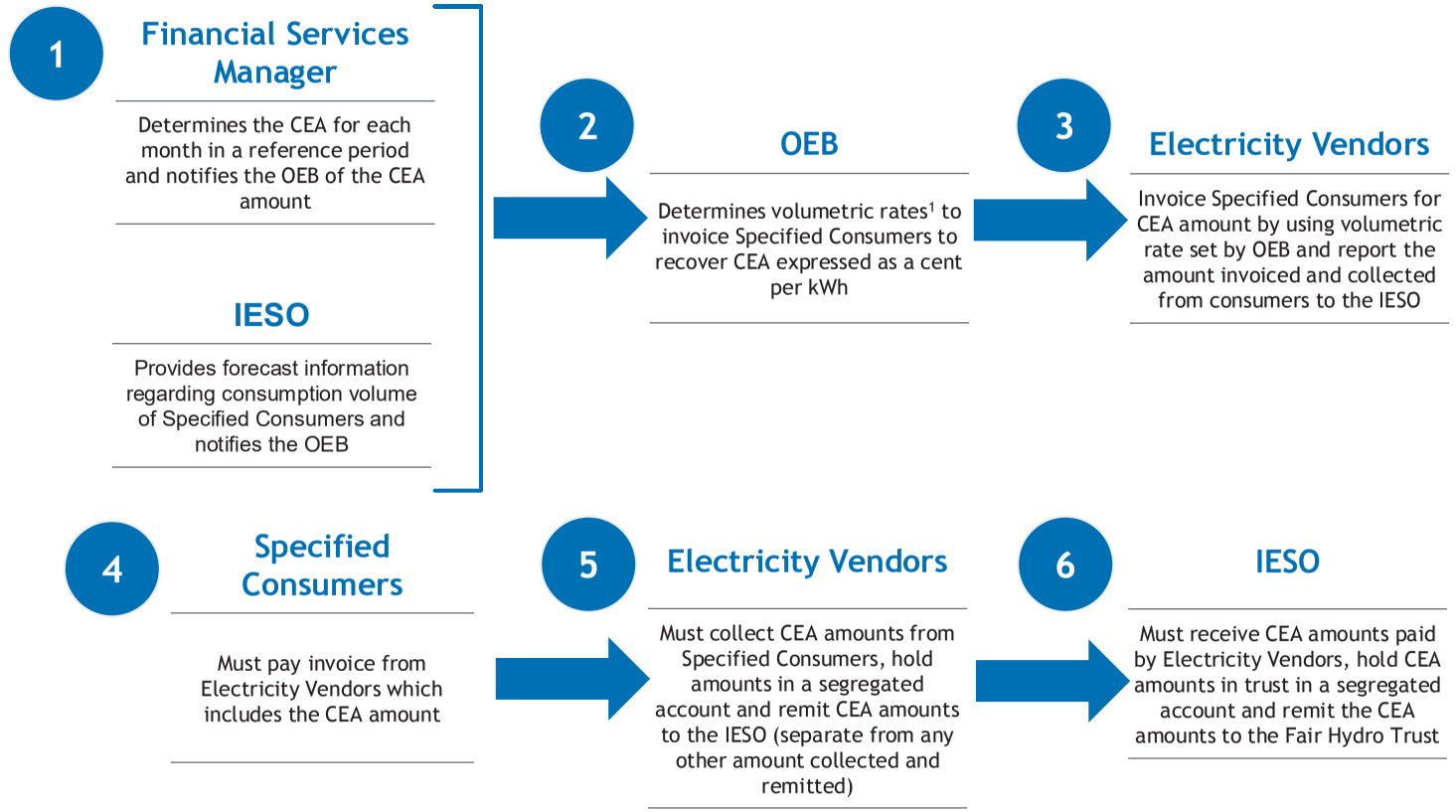


Finance amount is an estimate of the amount payable by the Trust mainly in respect of principal payments, interest costs, Trust expenses and taxes, reserve account deposits and derivative payments

True-up amounts capture the difference between the finance amounts incurred by the Trust and the CEAs collected from Specified Consumers and also include other reasonably foreseeable differences due to various factors (e.g. consumer defaults and delays, billing lags, write-offs and variations in electricity consumption)

Billing and Collection of CEAs

- CEA amounts for billing and collection purposes will be managed outside of the IESO's current settlement processes set out in the Market Rules for electricity invoice amounts
- Collection risk for CEA amounts are mitigated through statutory rights in the FHPA, the obligations of the IESO under the Master Transfer & Servicing Agreement, and the ability to include amounts in the CEA by means of the true up mechanism
- IESO is required to separate the CEAs during a monthly period before remitting to FHT. If the IESO's credit rating is downgraded below investment grade, the IESO will be required to remit within two business days of receipt

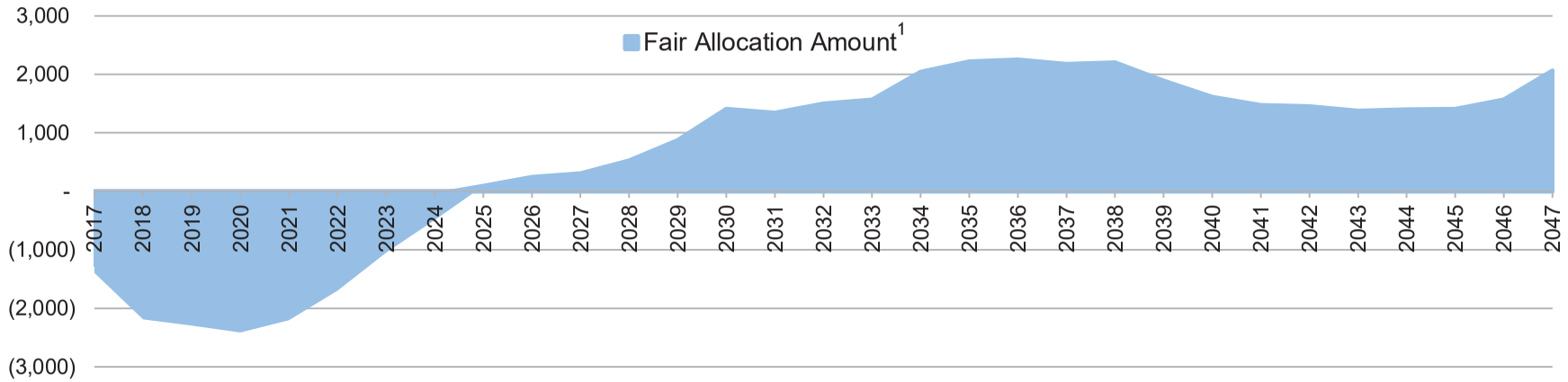


[1] The rates will be determined by dividing the CEA amount by the forecasted energy consumption in the reference period by Specified Consumers.

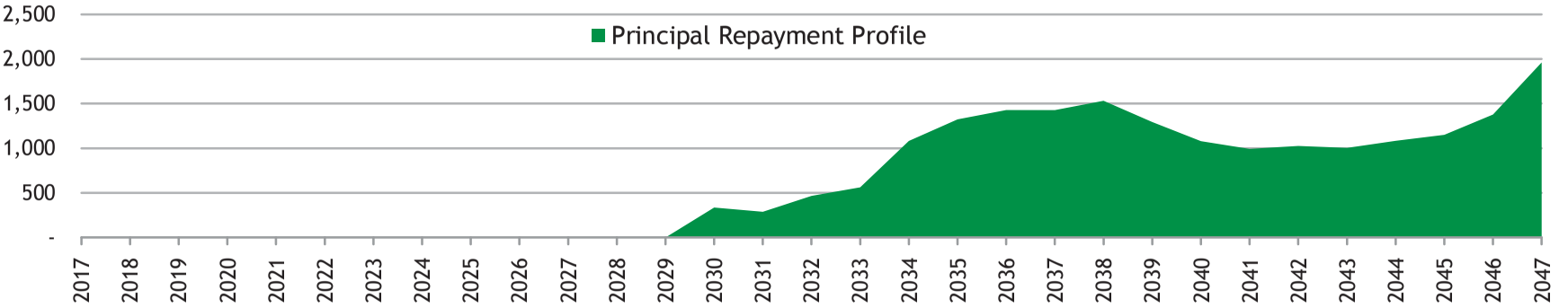
Fair Allocation Amount

- The Fair Allocation Amount ("FAA") is an amount calculated under the FHPA by the Minister of Energy in respect of each reference period that, among other things, allocates the estimated value of clean energy costs in proportion to the relative attribution of the value of clean energy benefits among Specified Consumers

Fair Allocation Amount ($ million)



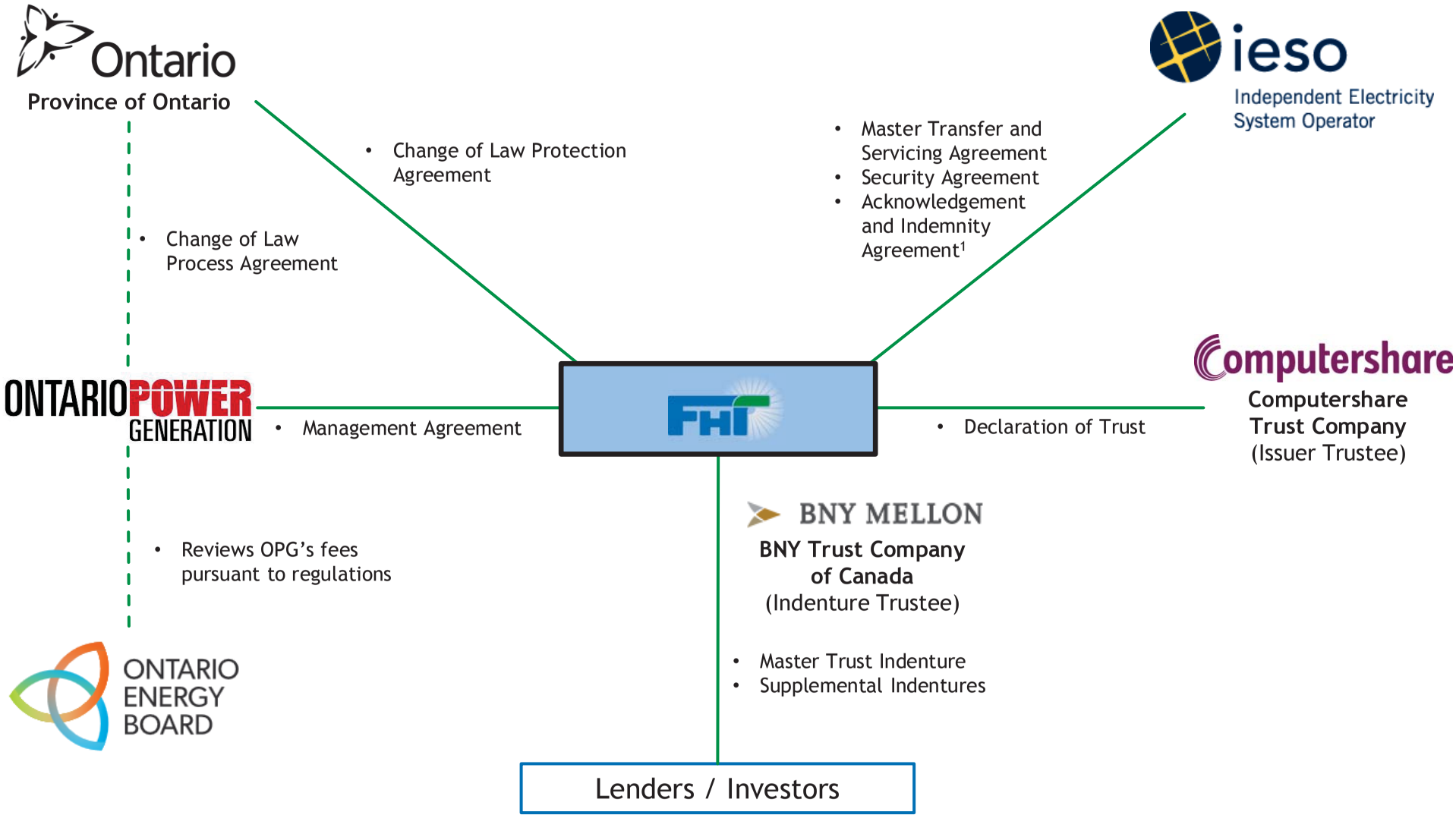
Principal Repayment Profile (derived from the FAA)



[1] Prior to 2025, the above graph of the FAA incorporates the Readjustment Amount. The Readjustment Amount represents the estimated amounts by which Specified Consumers overpaid for clean energy initiatives in the past. It has been incorporated into the FAA to further reduce electricity bills for such consumers.

IV. Contractual Framework

Simplified Contractual Structure



[1] Agreement between IESO and Indenture Trustee.

Contract Highlights

Key Agreements

Change of Law Protection Agreement	• Provides assurance to Specified Creditors[1] that upon the occurrence of a Protection Event that adversely affects the ability of the Trust to pay its obligations when due and payable, the Province of Ontario is required to make payments in respect of all Approved Obligations • OPG as FSM is required to comply with certain conditions prior to the issuance of debt which is to benefit from the Change of Law Protection Agreement
Master Transfer and Servicing Agreement	• Provides for the transfer, by the IESO to the Trust of the Regulatory Asset, and upon such transfer the Trust acquires an Investment Interest • The IESO will be responsible to for servicing the Investment Interest, including receiving CEA amounts from Electricity Vendors and remitting to the Trust
Management Agreement	• Issuer Trustee delegates to OPG, as Manager under the Management Agreement, all powers and duties of managing the Trust • The Manager will determine how and when to incur funding obligations to acquire Investment Interests

Note: Additional information on these key agreements can be found in the Appendix.

[1] **Specified Creditors** are any other Person that is owed a payment obligation by the Issuer that gives rise to a Finance Amount in respect of the Issuer.

Contract Highlights

Other Key Agreements

Security Agreement	• As security for the performance of its obligations under the Regulation to pay the Trust's carrying cost during the Moratorium Period, IESO has granted the Trust a first priority security interest in its accounts receivable owing by Electricity Vendors
Acknowledgement and Indemnity Agreement (IESO)	• IESO, as servicer under the MTSA, acknowledges that a security interest has been granted to the Indenture Trustee thereby assigning as security the rights and benefits of the Issuer under the MTSA to the Indenture Trustee, including the right to enforce the indemnities provided to the issuer with respect to IESO's duties and obligations under the MTSA
Change of Law Process Agreement	• Outlines procedural requirements between the Province and OPG with respect to issuing debt that benefits from the Limited Guarantee under the Change of Law Protection Agreement • Among other things, OPG is required to deliver to the Province a process certificate, outlining the material terms of proposed debt issues and confirm such debt offerings will not cause the protection agreement maximum (as updated from time to time in the Financing Plan) to be exceeded
Declaration of Trust	• Establishes FHT to carry out activities for the exclusive benefit of its unitholders • Specifies the rights and powers of the Issuer Trustee (Computershare) • The Issuer Trustee has delegated all of the powers and duties of managing the Trust to OPG under the Management Agreement

Allocation of Servicing Role and Responsibilities

- The shared responsibilities of servicing and management roles are summarized below

	OPG	IESO	LDC
Review Records of LDCs with Respect to CEAs (annually or less frequently in certain circumstances)	✔		
Determination of CEA for a Reference Period, including the True-Up Amount	✔		
Ongoing Reporting for Trust and Reporting to the Rating Agencies	✔		
Management of Ongoing Debt Issuances	✔		
Cash Management	✔	✔	
Preparation of Monthly Servicer Reports		✔	
Remittance of CEA to IESO and to the Trust		✔	✔
Responding to inquiries by customers if practicable, or forwarding such inquiries to OPG		✔	✔
Customer Billing			✔
Customer Collections			✔
Customer Meter Reading			✔

V. Financing Program

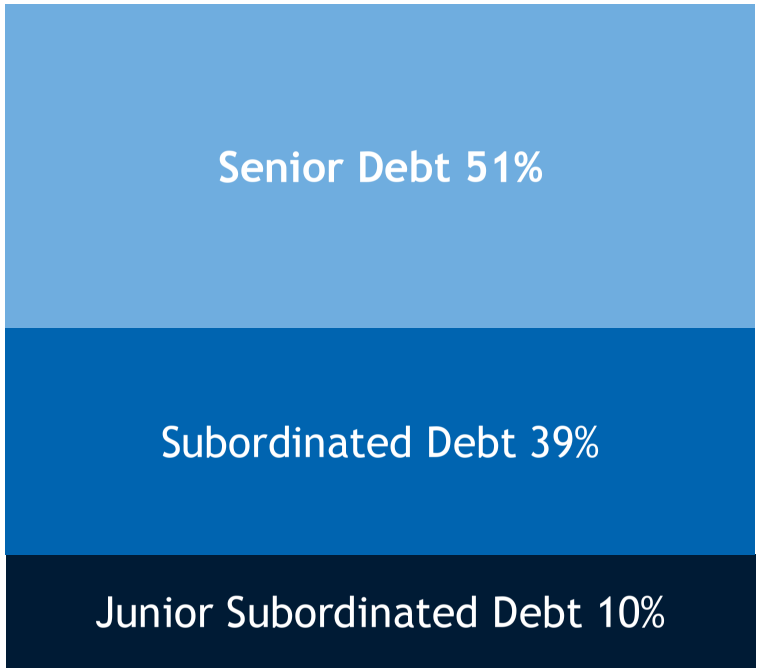
Financing Plan / Strategy

- OPG is responsible for administering the FHT financing program
- Given the size (~$20 billion) and longevity (~10 years) of the FHT financing program, the funding strategy has been designed to provide flexibility
- Warehouse financing (ABCP conduit and bank funded senior debt) and subordinated warehouse debt and junior subordinated warehouse debt funded by OPG will be used to fund monthly Regulatory Asset purchases from the IESO
  - Periodically refinance the warehouse facility through the issuance of term debt (likely access the market 2-3 times per year)
- Term debt can take the form of bullet bonds or could be issued as amortizing bonds

Warehouse Financing	• ABCP conduit and bank funded senior debt with subordinated debt funded by OPG will be used by the Trust to fund monthly Regulatory Asset purchases from the IESO
Term Debt	• Term debt issuances will be used to refinance warehouse financing and the subordinated debt and junior subordinated debt funded by OPG • Both Canadian term debt and U.S. term debt market will be considered • Maturity profiles will be structured to ensure reasonable alignment with the FAA (bullet bonds with sinking funds or amortizing bonds) • FHT may issue debt that may be refinanced in the future
Subordinated Debt	• Subordinated debt provides credit enhancement for senior debt (ranks behind senior debt in cash flow waterfall)

Financing Structure

- The Trust will fund Regulatory Asset purchases through the issuance of senior, subordinated and junior subordinated secured debt
- Senior debt (51%) will be sourced monthly from committed warehouse facilities, and the periodic issuance of term debt
- Subordinated debt (49% anticipated; minimum of 35% required[1]) will be purchased by OPG, primarily funded by equity injections from the Province (44% of 49%) and the remaining portion from OPG (5% of 49%)



Senior Notes
Warehouse facilities and term debt issuances (in Canada and/or the U.S.)

Subordinated Notes
Provided to Trust by OPG via equity injection from the Province

Junior Subordinated Debt
- OPG equity injection (5%) via its corporate borrowing program
- Provided to Trust by OPG via the Province (5%)

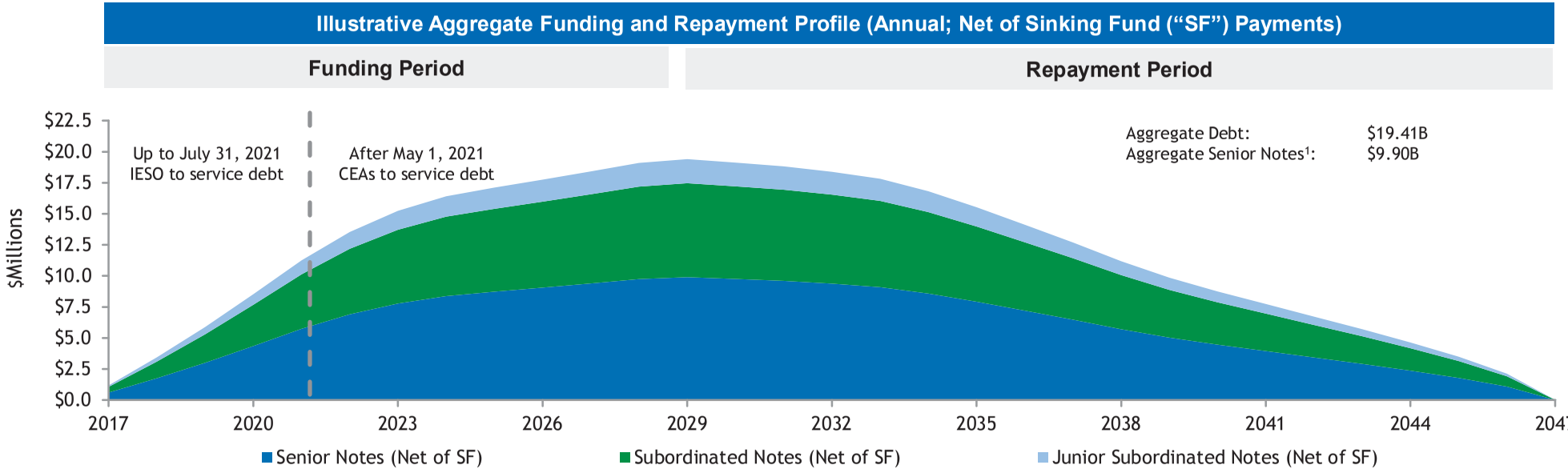
Note: Assumes 49% subordinated debt.

[1] Under the MTI, FHT is required at all times to ensure that all outstanding subordinated and junior subordinated debt be not less than 35% of all outstanding debt.

Aggregate Financing Program

Illustrative Debt Summary - Funding & Repayment Period (Annual)

- Based on the Fair Allocation Amount and the Province's electricity bill reduction targets, the following debt profile for the program is expected, peaking at just under $20 billion by 2029
- Various tranches of debt will be issued periodically during the period of 2018 - 2028, which are expected to mature over a period after 2029



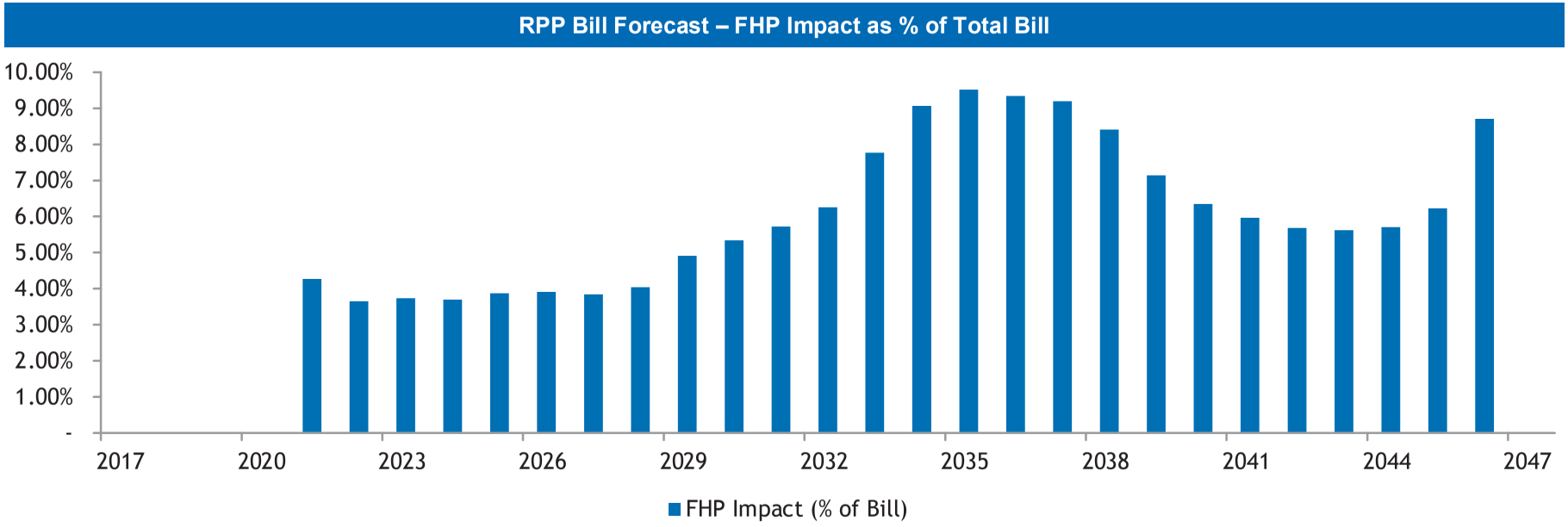
[1] Assumes 51% Senior Notes

Note: During the Moratorium Period and extending three additional months to July 31, 2021, the IESO is required under the Regulations to pay all Carrying Costs. The additional three month period is intended to cover the billing and collection lag from the introduction of Clean Energy Adjustments in May 2021.

Consumer Bill Forecast with FHP

RPP Bill Forecast - FHP Impact % of Total Bill (C$ per Month)

- Over the duration of the Fair Hydro Program, the CEA for the average residential customer is anticipated to remain below 10% of the total electricity bill
- Max CEA as a percent of the total bill is forecast to be 10.0%
- Average CEA as a percent of the total bill is forecast to be 6.9%



Capital Markets Platform

Master Trust Indenture

Parties	• (1) Computershare Trust Company (Issuer Trustee), on behalf of the Trust, acting through OPG as the Manager; (2) BNY Trust Company (Indenture Trustee) on behalf of Specified Creditors
Purpose	• Governs the terms of the debt issued by FHT and cash flow waterfall and collateral structure for all Trust obligations to all Specified Creditors

Key Terms

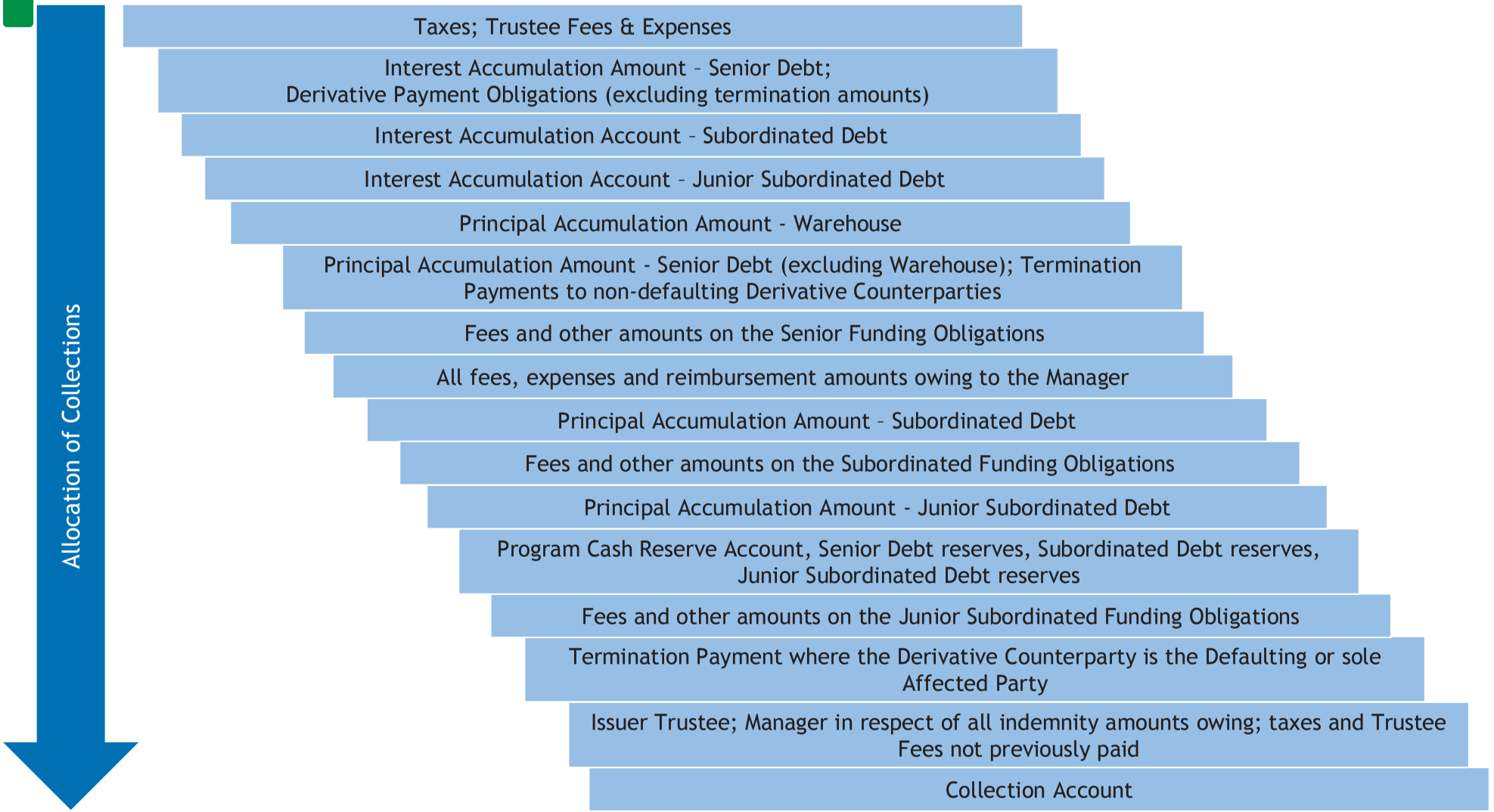
Incurrence of Funding Obligations	• Trust may incur funding obligations under a variety of instruments including: – Note issuances under supplemental indentures – Borrowings under credit agreements – Purchase of notes under note purchase agreements – Letters of Credit/Guarantees under credit enhancement agreements – Liquidity loans under liquidity agreements backing short term notes
Conditions Precedent	• Prior to incurring additional funding obligations, the Trust confirms to the Indenture Trustee and each rating agency that: – the incurrence of such additional obligations will not cause an adverse effect – the incurrence of such additional obligations is materially consistent with the Financing Plan • It will also be a condition precedent that (i) each rating agency confirm that the issuance of such additional funding obligations will not result in a reduction or withdrawal of any existing ratings of outstanding funding obligations and (ii) the Indenture Trustee has received certain assurances as to the applicability of the Change of Law Protection Agreement to such funding obligations

Capital Markets Platform

Master Trust Indenture – Key Terms (cont'd)

Security	• Granted over all assets of the Trust, including the Trust's investment interest, all collections under the MTSA and all accounts
Subordination	• Provides for three different classes of funding obligations – (i) senior – (ii) subordinated – (iii) junior subordinated
Events of Default	• Includes payment and senior defaults, representation and covenant breaches, insolvency and Change of Law Protection Agreement ceasing to be in full force and effect against the Province
Acceleration	• Upon an acceleration, CEAs may be insufficient to repay all amounts becoming due in a period. CEAs for a period will be capped under the Regulation at the otherwise scheduled amounts, plus an additional amount if the aggregate of those otherwise scheduled amounts would be less than the FAA for the period • However, the amounts received from CEAs after an acceleration will be allocated to pay senior indebtedness before principal amounts owing on subordinated and junior subordinated indebtedness. Accordingly, the subordination of debt across all series of debt should advance the repayment of the principal amount for senior funding obligations • After an acceleration, all Senior Term Notes will be paid pari-passu

Waterfall



Note: This waterfall indicates the priority of payment prior to an Event of Default and acceleration; additional information on the priority of payments after an Event of Default and acceleration can be found in the Offering Memorandum.
Note: After paying interest on the senior debt, no interest payments will be made on the subordinated debt unless there will be sufficient amounts remaining in the Interest Accumulation Account for what should be accumulated for the Senior Notes after making such payments.

VI. Key Risks and Mitigants

Risk Mitigation

Risk	Description of Risk	Mitigants
Political Risk	• Future legislative action to change or challenge/invalidate the Act or the Change of Law Protection Agreement might materially adversely affect a holder's investment in the Notes	• Limited Guarantee provided by the Province of Ontario via the Change of Law Protection Agreement in favour of the Indenture Trustee for lenders/investors in these circumstances
Under Collection	• If the IESO inaccurately forecasts electricity consumption or if OPG uses inaccurate consumer delinquency or write-off data when setting the CEA, there could be a shortfall in collections, which might result in missed or delayed payments of principal and interest on the Notes	• True up mechanism may result in a delay, but will be corrected in next True up • Cash reserve and 35%-49% subordination which would first absorb any shortfalls • 6-month reference period • Any shortfall in collections are recoverable from all Specified Consumers
Reliance on IESO and LDCs	• During the Moratorium Period, the Trust is dependent on the IESO to remit payments to the Trust for all Carrying Costs • Receipt of CEAs dependent on the performance of LDCs and IESO • Limited ability to enforce against or replace an LDC	• Highly regulated industry and LDC and IESO are required under law and regulation to perform duties under FHP • IESO has a very strong credit profile and very low losses and grants security over its accounts receivable owed by Electricity Vendors as security during the Moratorium Period • IESO will provide a letter of credit/other security to mitigate commingling risks for CEAs held by non-rated or below investment grade rated LDCs until they are remitted to IESO • LDCs collect security deposits and, when permitted, have the ability to disconnect service for non-payment • $2 billion credit facility from the OFA which can be used by the IESO to pay the Carrying Costs
Size of Charge vs. Bill	• If the charge applied to bills becomes too high, there could be a consumer and/or political backlash	• 20-year repayment period allows for gradual rate increases • Max CEAs as a percent of the total bill over the collection period is forecast to be 10%
Disruptive Technology Risk / Change in Demographics	• Technological developments may result in reduced CEA payments as a result of increased use of alternative energy sources • Population fluctuations may result in fewer Specified Consumers	• True-up mechanism available to offset the reduction in CEAs due to technological advancements or fluctuations in the number of Specified Consumers • Collection shortfalls are allocated among a large base of Specified Consumers

VII. Summary of Offering

Summary of Indicative Terms

Initial Fair Hydro Term Issuance	**Class**	**Size**	**% of Trust**	**Expected Maturity**	**Principal Payment Default Date**	**Rating (DBRS / Moody's)**
	Senior Term Notes	$[●]MM	51%	May 15, 2033	May 15, 2035	AAA (sf) / Aa2 (sf)
	Subordinated Notes	$[●]MM (Not Offered)	39%	May 15, 2033	May 15, 2035	[●]
	Jr. Subordinated Notes	$[●]MM (Not Offered)	10%	May 15, 2033	May 15, 2035	[●]
Issuer	Fair Hydro Trust, a single purpose, bankruptcy-remote wholly-owned subsidiary of the Financial Services Manager					
Financial Services Manager	Ontario Power Generation, Inc.					
Servicer	Independent Electricity System Operator					
Source of Repayment	• Moratorium Period: Statutorily mandated remittances (not including principal) from IESO (Up to July 31, 2021) • Post Moratorium Period: Non-bypassable charge from residential and small commercial customers in Ontario, related collections and reserve accounts (After May 1, 2021)					
Payment Frequency	Semi-annual					
Principal Accumulation	Principal will be accumulated monthly commencing January 2030 to facilitate repayment of notes on the expected maturity date					
Interest	Fixed rate					
Senior Note Credit Enhancements	• Semi-annual (or more frequent) True-up • Reserve Account • Subordination					
Program Cash Reserve Account	After Moratorium period, an amount equal to 0.50% of the aggregate amount of all outstanding Senior, Subordinated and Junior Subordinated funding obligations					
True-up	Calculated on at least a semi-annual basis post-moratorium period					
Subordination	Subordinated and Junior Subordinated Notes will be retained by OPG					
Additional Issuance	Master Trust Indenture allows for the issuance of additional notes subject to satisfaction of Rating Agency Condition					

VIII. Investment Highlights

Investment Highlights

- Protection against political risk through the Change of Law Protection Agreement
- Irrevocable & non-bypassable rate payer charge, recoverable from Specified Consumers across the Province of Ontario
- Repayment risk spread across all Specified Consumers. Full cross-collateralization; collection shortfalls allocated among all Specified Consumers
- Robust true-up mechanism
- Credit enhancement for senior debt provided via subordinated debt
- Highly regulated market with experienced operating agents (OPG, IESO, and LDCs)
- Strong ratepayer base in Ontario

Appendix – Key Agreement Summaries

Key Agreements

Change of Law Protection Agreement

Parties	• (1) Province of Ontario and (2) Indenture Trustee as Trustee of the Issuer, on behalf of Specified Creditors[1], and (3) OPG as Financial Services Manager (FSM)
Purpose	• Provides assurance to Specified Creditors that upon the occurrence of a Protection Event referred to below, the Province of Ontario will pay all Approved Obligations on behalf of the Trust, with limited rights of acceleration
Key Terms	• **Term**: Continues for as long as any protected obligations of the Trust that are secured under the Master Trust Indenture (MTI) remain outstanding • **Mandatory Payment**: Upon the occurrence of a Protection Event, the Indenture Trustee has the right to require the Province to pay all Approved Obligations when due and payable • **Priority of Payments**: The priority application of guarantee payments is governed by the waterfall provision under the MTI • **Adherence Conditions**: For the Limited Guarantee to apply to an obligation of the Trust, OPG as FSM is required to comply with certain conditions, including the delivery of an Adherence Compliance Certificate, prior to the incurrence of such obligation (such obligation called an "Approved Obligation") • **Suspension Notice**: The Province may deliver a suspension notice upon the occurrence of the acceleration of any indebtedness of the Trust or other Program Breach or a default in performance or misrepresentation by OPG as FSM pursuant to certain internal reporting and other requirements contained in a Change of Law Process Agreement between OPG and the Province. Any new funding obligations that are incurred during a suspension period will not have the benefit of the Limited Guarantee, except that the Change of Law Protection Agreement applies to post-suspension refinancing of previously issued Approved Obligations

[1] **Specified Creditors** are any other Person that is owed a payment obligation by the Issuer that gives rise to a Finance Amount in respect of the Issuer.

Key Agreements

Change of Law Protection Agreement (cont'd)

Protection Events

The occurrence of any of the following events:

(1)

- The Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof as in effect on the date hereof
- The Legislature enacts or amends any other statute
- The Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) the regulations made under the Act or any portion thereof as in effect on the date hereof
- The Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "Regulation" (as defined in Part III of the Legislation Act, 2006) as in effect on the date hereof
- The implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province

in each case that adversely affects the ability of the Trust to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable, taking into account any funds available in reserve accounts, any credit enhancement available and any reasonably expected potential effect of a true-up amount; or

(2)

- A court of competent jurisdiction determines that all or a portion of the Act or the regulations made under the Act, is *ultra vires* or invalid in a way that adversely affects the ability of the Trust to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable

Key Agreements

Master Transfer and Servicing Agreement

Parties	• (1) IESO, as transferor and servicer; (2) Trust
Purpose	• Provides for the transfer, by the IESO to the Trust of the Regulatory Asset, and upon such transfer the Trust acquires an Investment Interest and describes the servicing obligations of IESO
Key Terms	• **Transfer of Regulatory Asset**: The IESO may offer, no more frequently than monthly, to transfer the specified portions of the Regulatory Asset to the Trust. The Trust has the right, but not the obligation, to accept IESO's offer • **Servicing Duties:** The IESO will be responsible for servicing the Investment Interest under the legislation, including receiving CEA amounts from Electricity Vendors and remitting the same to the Trust; other duties of the IESO include: – Establishing a segregated account for collecting CEAs and using commerciably reasonable efforts to cause Electricity Vendors to do the same; – Receiving CEAs from Electricity Vendors; – Remitting CEAs monthly to the Trust (unless downgraded below investment grade in which case it will remit daily); – Preparing monthly servicer reports; and – Providing a forecast of electricity consumption of Specified Consumers • **Moratorium Period:** During the Moratorium Period (until April 30, 2021) and extending to July 31, 2021, the IESO is required by regulation to fund all Carrying Costs of the Trust. The Carrying Costs incurred by the IESO will be added to its Regulatory Asset variance account pursuant to regulation. • **IESO Letter of Credit:** After the Moratorium Period, the IESO will provide the Trust, a letter of credit or other form of security, as security for the commingling risk of CEAs collected by non-rated or non-investment grade rated Electricity Vendors and not yet remitted to the IESO

Key Agreements

Management Agreement

Parties	• (1) Issuer Trustee, on behalf of the Trust, and (2) OPG, as Manager and acknowledged and accepted by the Indenture Trustee, on behalf of specified creditors
Purpose	• Issuer Trustee delegates to the Manager all powers and duties of managing the Trust
Key Terms	• **Duties Include**: – Negotiating and executing program agreements; – Preparing, in accordance with applicable securities laws, any offering documents to be furnished by the Trust to prospective purchasers of funding obligations; – Review or cause to be reviewed, records of electricity vendors on an annual basis with respect to CEAs (or less frequently in certain circumstances); – Preparing monthly portfolio reports; – Preparing financial statements; and – Paying taxes on behalf of the Trust • **Incurrence of Funding Obligations**: Manager will determine how and when to incur funding obligations to acquire Investment Interests • **Standard of Care**: Manager will perform its duties diligently and in conformity with the Trust's obligations under the program agreements • **Resignation/ Termination:** Manager may not resign from its duties or terminate the Management Agreement as long as funding obligations of the Trust are outstanding • **Management Fees:** OPG is entitled to charge the Issuer a fee to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer

RE_ Fair Hydro Trust - Disclosure Documents.rtf

From: Saulnier, Brett [bsaulnier@torys.com]
To: VINER, JON [JON.VINER@blakes.com]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Huang, Jackson (MEDG/MRIS) [Jackson.Huang@ontario.ca]; Sawwaf, Khareem (ENERGY) [Khareem.Sawwaf@ontario.ca]; Lightbody, Ava (ENERGY) [Ava.Lightbody@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]
CC: LEE John -TREASURY [john.s.lee@opg.com]; 'ken.ryfa@opg.com' [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; LADAK Lubna -TREASURY [lubna.ladak@opg.com]; Mansoori, Nina [nmansoori@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Feldman, Michael [mfeldman@torys.com]
Subject: RE: Fair Hydro Trust - Disclosure Documents
Date: Wednesday, January 17, 2018 19:08:36
Attachment 1: @

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https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201802209090048~201801172309590000~Z~01592B9228A5DE0C74791C0580FBD651View the original item

All,

Please find attached a revised Investor Presentation. The dealers have prepared a blackline, but noted that it was done manually and to refer to the clean in the event of any inconsistenc

Attachments:

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https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201802209090048~201801172309590000~Z~01592B9228A5DE0C74791C0580FBD651&AttachmentId=2image40a675.JPG

Blackline Fair Hydro Trust Investor Presentation - Jan 8 v Jan 17.pdf (1.0 MB)
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RE_ Fair Hydro Trust - Disclosure Documents.rtf

From: Saulnier, Brett [bsaulnier@torys.com]
To: VINER, JON [JON.VINER@blakes.com]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Huang, Jackson (MEDG/MRIS) [Jackson.Huang@ontario.ca]; Sawwaf, Khareem (ENERGY) [Khareem.Sawwaf@ontario.ca]; Lightbody, Ava (ENERGY) [Ava.Lightbody@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]
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Subject: RE: Fair Hydro Trust - Disclosure Documents
Date: Wednesday, January 17, 2018 02:31:07
Attachment 1: image001.gif
Attachment 2: image166bf5.JPG
Attachment 3: Series 2018-1 Senior Notes Term Sheet (Fair Hydro Trust).docx
Attachment 4: Blackline_Series 2018-1 Senior Notes Term Sheet (Fair Hydro Trust).pdf
Attachment 5: Fair Hydro Trust - Confidential Offering Memorandum.docx
Attachment 6: Blackline_Fair Hydro Trust - Confidential Offering Memorandum.pdf

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All,

Please find attached revised versions of the Offering Memorandum and Term Sheet. We have accepted the majority of the Province's comments where appropriate and I have included blacklines of each document against the version circulated by Jon below. The attached also reflect comments received from the IESO and some additional clean-up changes made since the documents were provided to the Province on January 5.

In the interest of time, we are circulating these drafts to all parties concurrently. Accordingly, they remain subject to review and comment by OPG, IESO, the dealers and their respective counsel.

Thanks,
Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679

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http://www.torys.com/

From: VINER, JON [mailto:JON.VINER@blakes.com]
Sent: January-16-18 10:48 AM
To: LEE John -TREASURY <john.s.lee@opg.com>; 'ken.ryfa@opg.com' <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Cayley, Daniel (ENERGY) <Daniel.Cayley@ontario.ca>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Huang, Jackson (MEDG/MRIS) <Jackson.Huang@ontario.ca>; Sawwaf, Khareem (ENERGY) <Khareem.Sawwaf@ontario.ca>; Lightbody, Ava (ENERGY) <Ava.Lightbody@ontario.ca>; James Rehob (ENERGY) <James.Rehob@ontario.ca>; Gadi Mayman (Gadi.Mayman@ofina.on.ca) <Gadi.Mayman@ofina.on.ca>
Subject: Fair Hydro Trust - Disclosure Documents

All,

Please find attached the Province's comments on the offering memorandum, investor presentation and term sheet. We do not have comments on the additional documents circulated on January 5th.

Please let us know if you would like to discuss.

Kind regards,

Jon

Jon Viner

Associate

jon.viner@blakes.com

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TORYS
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Series 2018-1 Senior Notes Term Sheet (Fair Hydro Trust).pdf

DRAFT: January 17, 2018

This indicative term sheet accompanies, is incorporated by reference in and forms part of the confidential shelf offering memorandum (the "confidential shelf offering memorandum") dated January ●, 2018 of Fair Hydro Trust (the "Issuer") and is subject to all of the restrictions, conditions and limitations set out in the confidential shelf offering memorandum. This term sheet and the confidential shelf offering memorandum constitute an offering of these securities only in those jurisdictions and to those persons where and to whom they may be lawfully offered for sale. The Issuer is not obligated to accept an offer to purchase the securities described herein.

The summary below describes the principal terms of the Series 2018-1 Senior Notes (as defined below). Certain of the terms summarized below are subject to important limitations and exceptions. The following is not intended to be complete. Prospective investors should review the "Capital Markets Platform" and "Description of Notes" sections of the confidential shelf offering memorandum which contain a more detailed description of certain terms of the Series 2018-1 Senior Notes and the trust indenture (the "Master Trust Indenture") between the Issuer and BNY Trust Company of Canada, acting as trustee, dated December 21, 2017 (and to which the Series 2018-1 Senior Notes will be subject), as supplemented by the term senior series 2018-1 supplemental indenture to the Master Trust Indenture (the "Series 2018-1 Senior Supplemental Indenture") pursuant to which the Series 2018-1 Senior Notes will be issued (together with the Master Trust Indenture, the "Indenture"). In the event of any inconsistency between this indicative term sheet and the confidential shelf offering memorandum, the terms of this indicative term sheet apply. Certain capitalized terms used and not otherwise defined in the summary below have the meanings given thereto in the confidential shelf offering memorandum.

New Issue by Way of Private Placement *January ●, 2018*

FAIR HYDRO TRUST

●% SENIOR NOTES DUE ●, Series 2018-1

Indicative Term Sheet

Issuer:	Fair Hydro Trust, a special purpose trust established under the laws of the Province of Ontario.
Issue:	●% Senior Notes due ●, Series 2018-1 (the "**Series 2018-1 Senior Notes**").
Expected Credit Ratings:	DBRS: ● (●) Moody's: ● (●)
Principal Amount:	$●[(1)]
Term:	● years
Launch Date:	●, 2018
Pricing Date:	●, 2018
Settlement Date:	●, 2018 (T+3)
Interest Rate:	●% per annum (the "**Series 2018-1 Interest Rate**")
Issue Spread:	+● bps (+/-● bps) versus Government of Canada curve interpolated between CAN ●% due ● and CAN ●% due ● +● bps curve adjustment and +● bps curve delay adjustment, both versus the CAN ●% due ● (priced at $● to yield ●%)

(1) The Issuer may offer and sell Series 2018-1 Senior Notes having a principal amount greater than the amount shown above. In that event, the Principal Accumulation Amounts, the principal amounts of the Series 2018-1 Subordinated Notes and the Series 2018-1 Junior Subordinated Notes and the use of proceeds amount will be increased proportionately.

Issue Yield:	●%
Issue Price:	$● per $1,000 principal amount of Series 2018-1 Senior Notes.
Agents Commission:	$● per $1,000 principal amount of Series 2018-1 Senior Notes sold (payable from existing cash resources of the Issuer)
Interest Payment Dates:	The Interest Payment Dates for the Series 2018-1 Senior Notes are as follows: (i) prior to the occurrence of an Amortization Event, interest on the Series 2018-1 Senior Notes shall be payable in equal (except the first interest payment) semi-annual instalments in arrears on April 15 and October 15 of each year, commencing April 15, 2018 (short first coupon); and (ii) following the occurrence of an Amortization Event, interest will be payable in arrears on the outstanding principal amount of the Series 2018-1 Senior Notes on each Payment Date thereafter at a rate equal to the monthly equivalent of the Series 2018-1 Interest Rate; that is, the interest rate that, when compounded monthly for six months on a stated outstanding principal amount, yields interest in an amount equal to the Series 2018-1 Interest Rate, multiplied by such outstanding principal amount and divided by two. The first interest payment on the Series 2018-1 Senior Notes will include accrued and unpaid interest for the period from, and including, the closing date of this Offering (the "**Series 2018-1 Senior Notes Offering**") to, but excluding, the first Interest Payment Date. Subject to the occurrence of an Acceleration Event, the first interest payment will be in an amount equal to $● per $1,000 principal amount of Series 2018-1 Senior Notes. If an Interest Payment Date is not a business day in Toronto, then the payment will be made on the next business day with no adjustment. For any period less than a full semi-annual interest period, interest will be calculated on an actual/365 basis. The record date for each Interest Payment Date is the last day of the calendar month preceding such Interest Payment Date. "**Amortization Event**" means either (i) an Acceleration Event has occurred with respect to the Series 2018-1 Senior Notes, or (ii) the outstanding principal amount of the Series 2018-1 Senior Notes has not been paid in full on the Expected Principal Payment Date (as defined below). An "**Acceleration Event**" means either (i) all Issuer Funding Obligations are declared due and payable in accordance with the provisions of the Master Trust Indenture, or (ii) the outstanding principal amount of the Series 2018-1 Senior Notes and all interest thereon is declared due and payable in accordance with the Indenture as a result of the occurrence of a Series 2018-1 Event of Default (as defined below).
Principal Payment Dates and Principal Payment Amount:	Subject to the occurrence of an Acceleration Event, the outstanding principal amount of the Series 2018-1 Senior Notes shall be due and payable on ● 15, 20● (such Payment Date, the "**Expected Principal Payment Date**"). Following the occurrence of an Amortization Event, each Payment Date thereafter shall be a Principal Payment Date in respect of the Series 2018-1 Senior Notes and the then outstanding principal amount of the Series 2018-1 Senior Notes shall be due and payable on each such Payment Date.
Principal Payment Default Date:	●, 20●

Principal Accumulation Amounts: Subject to the occurrence of an Amortization Event, the Series 2018-1 Senior Notes shall have the following Principal Accumulation Amounts on the Payment Dates set out below:

Payment Date	Principal Accumulation Amounts
●, 20●	$●
●, 20●	$●
●, 20●	$●
●, 20●	$●

Following the occurrence of an Amortization Event, the Principal Accumulation Amount with respect to each Payment Date thereafter shall be an amount equal to the outstanding principal amount of the Series 2018-1 Senior Notes.

Subordination: Concurrent with the issuance of the Series 2018-1 Senior Notes, OPG will subscribe for (i) **$●** of ●% subordinated notes due ●, Series 2018-1 (the "**Series 2018-1 Subordinated Notes**"); and (ii) $● of ●% junior subordinated notes due ●, Series 2018-1 (the "**Series 2018-1 Junior Subordinated Notes**"). The Series 2018-1 Subordinated Notes shall be subordinated to the Series 2018-1 Senior Notes (and all other Senior Funding Obligations), and the Series 2018-1 Junior Subordinated Notes shall be subordinated to the Series 2018-1 Senior Notes (and all other Senior Funding Obligations) and the Series 2018-1 Subordinated Notes (and all other Subordinated Funding Obligations), in each case in the manner described in the confidential shelf offering memorandum under the heading "*Capital Markets Platform – Subordination Provisions*".

Optional Redemption: The Series 2018-1 Senior Notes will be redeemable at the option of the Issuer, in whole or in part, at any time and from time to time, on not less than 15 nor more than 60 days' notice at the redemption price specified below. At any time prior to the Par Call Date, the redemption price will be equal to the greater of (i) the Series 2018-1 Canada Yield Price and (ii) par, plus, in each case, accrued and unpaid interest to, but not including, the date of redemption. On or after the Par Call Date, the redemption price will be equal to par, plus accrued and unpaid interest to, but not including, the date of redemption.

"**Par Call Date**" means ●, 20●.

"**Series 2018-1 Canada Yield Price**" means a price equal to the price of the Series 2018-1 Senior Notes calculated to provide a yield to the Par Call Date, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third business day preceding the date of redemption, plus ●% per annum.

"**Government of Canada Yield**" on any date means, in respect of the Series 2018-1 Senior Notes being redeemed, the yield from the redemption date to the Par Call Date compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in Canadian dollars in Canada at 100% of its principal amount on such date with a term to maturity equal to the remaining term to the Par Call Date (calculated from the date of redemption),

	such yield being the average of the yields provided by two major Canadian investment dealers specified by the Issuer.
Limited Recourse:	The Series 2018-1 Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Series 2018-1 Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Series 2018-1 Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Series 2018-1 Senior Notes following the occurrence of certain events. See the confidential shelf offering memorandum under *"Change of Law Protection Agreement"*. The Series 2018-1 Senior Notes will be limited recourse obligations, secured only by the collateral described in the confidential shelf offering memorandum. See the confidential shelf offering memorandum under *"Capital Markets Platform — Acceleration and Remedies — Limited Recourse"* and *"Risk Factors"*.
Use of Proceeds:	The proceeds from the Series 2018-1 Senior Notes Offering will be used to refinance $● of indebtedness of the Issuer previously incurred to purchase an Investment Interest from the IESO pursuant to the Master Transfer and Servicing Agreement. See *"Consolidated Capitalization"*.
Ranking:	Subject to the applicable payment waterfalls in the Master Trust Indenture, the Series 2018-1 Senior Notes will be direct, secured and unsubordinated obligations of the Issuer, and will at all times rank equally and proportionately with each other and all other Senior Funding Obligations issued by the Issuer from time to time pursuant to the Indenture, without discrimination or preference.
Change of Law Protection Agreement:	The Series 2018-1 Senior Notes are Approved Obligations under the Change of Law Protection Agreement.
Series 2018-1 Events of Default:	In addition to the Events of Default contained in the Master Trust Indenture and described in the confidential shelf offering memorandum, each of the following events constitute a "**Series 2018-1 Events of Default**": (a) failure to pay interest on the Series 2018-1 Senior Notes when due, subject to a 5-day cure period; (b) failure to pay principal on the Principal Payment Default Date for the Series 2018-1 Senior Notes; (c) breach of representation or warranty in the Series 2018-1 Senior Supplemental Indenture applicable to the Series 2018-1 Senior Notes, subject to materiality requirements and a 60-day cure period; (d) breach of a covenant in the Series 2018-1 Senior Supplemental Indenture, subject to materiality requirements and a 60-day cure period; and (e) an event occurs and as a result thereof, all or any portion of the principal amount of any other Senior Funding Obligation has been accelerated.

Acceleration upon a Series 2018-1 Event of Default:	Upon the occurrence of a Series 2018-1 Event of Default, the holders of Series 2018-1 Senior Notes may, by Ordinary Resolution, declare the outstanding principal and all accrued and unpaid interest on the Series 2018-1 Senior Notes to be immediately due and payable, whether or not all Issuer Funding Obligations have been accelerated pursuant to the Master Trust Indenture. For a discussion of the consequences of such declaration, see the confidential shelf offering memorandum "*Capital Markets Platform – Acceleration and Remedies*" and "*Risk Factors – If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected*".
Rating Agency Condition:	"**Rating Agency Condition**" means with respect to any action in respect of the Series 2018-1 Senior Notes subject to such condition, the Issuer shall deliver written notice of the proposed action to such Rating Agency or Rating Agencies at least 10 business days prior to the effective date of such action (or if 10 business days prior notice is impractical, such advance notice as is practicable) and (i) the Rating Agencies shall not have informed the Issuer prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to the Series 2018-1 Senior Notes immediately before the taking of such action, or (ii) in the case of DBRS, or any successor thereto, DBRS shall have informed the Issuer in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating in effect with respect to the Series 2018-1 Senior Notes immediately before the taking of such action.
Additional Security:	No Series Account will be established for the Series 2018-1 Senior Notes. No credit enhancement agreement or liquidity agreement has been entered into for the benefit of the Series 2018-1 Noteholders.
Currency:	Canadian dollars.
Minimum Subscription:	Minimum principal amount of $150,000.
Form and Denomination:	Book entry only through participants in CDS. The Series 2018-1 Senior Notes will be issued in multiples of $1,000.
CUSIP/ISIN:	CUSIP – ● ISIN – ●
Agents:	**[CIBC World Markets Inc., Goldman Sachs Canada Inc., RBC Dominion Securities Inc. (as co-leads and co-bookrunners)]**, ●, ●, and ●.

Any statement contained in the confidential shelf offering memorandum or in any document incorporated or deemed to be incorporated by reference in the confidential shelf offering memorandum shall be deemed to be modified or superseded, to the extent that a statement contained herein or in any other subsequent document which is or is deemed to be incorporated by reference in the confidential shelf offering memorandum, modifies or supersedes such prior statement. The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information set forth in the document which it modifies or supersedes. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. Any statement so modified or superseded shall not constitute a part of the confidential shelf offering memorandum, except as so modified or superseded.

CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. are each, directly or indirectly, a wholly-owned or majority-owned subsidiary or affiliate of a financial institution which is a

lender to the Issuer and to which the Issuer is currently indebted under the terms of the Warehouse Facilities (as described herein). The Issuer may use a portion of the net proceeds of the Series 2018-1 Senior Notes Offering to repay certain indebtedness under the Warehouse Facilities. Consequently, the Issuer may be considered to be a "connected issuer" of certain of the Agents for the purposes of securities regulations in certain provinces. See "Relationship between the Issuer and the Agents".

CAPITALIZATION

On December 21, 2017, the Issuer entered into the following supplemental indentures under the Master Trust Indenture for the provision of an aggregate of approximately $1.56 billion in short term indebtedness (collectively, the "**Warehouse Facilities**"), of which a total of $1.179 billion is drawn as of the date hereof:

(i) a warehouse senior series 2017-1 supplemental indenture with, among others, Royal Bank of Canada, as administrative agent for certain commercial paper conduit purchasers and financial institutions named therein, for the provision of an aggregate maximum principal amount of $800,000,000 floating rate variable funding Senior Notes, Series 2017-1 ("**Senior Notes, Series 2017-1**"), of which $601,290,000 is drawn. See "*Relationship between the Issuer and the Agents*";

(ii) a warehouse subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $611,764,705.88 floating rate variable funding Subordinated Notes, Series 2017-1 ("**Subordinated Notes, Series 2017-1**"), of which $459,810,000 is drawn; and

(iii) a warehouse junior subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $156,862,745.10 floating rate variable funding Junior Subordinated Notes, Series 2017-1 ("**Junior Subordinated Notes, Series 2017-1**"), of which $117,900,000 is drawn.

The issuance of Senior Notes, Series 2017-1, Subordinated Notes, Series 2017-1 and Junior Subordinated Notes, Series 2017-1 under the Warehouse Facilities described above were used to acquire a $1.179 billion Investment Interest from the IESO on December 21, 2017. ***[NTD: If there are subsequent draws on the warehouse before the launch of the Series 2018-1 Senior Notes Offering, this section to be updated.]***

Concurrently with the issuance of the Series 2018-1 Senior Notes, OPG will also subscribe for the Series 2018-1 Subordinated Notes and the Series 2018-1 Junior Subordinated Notes.

The following table summarizes the capitalization of the Issuer as at the dates indicated before and after completion of the Series 2018-1 Senior Notes Offering.

	As at December 31, 2017 before giving effect to the Series 2018-1 Senior Notes Offering	**As at December 31, 2017 after giving effect to the Series 2018-1 Senior Notes Offering**
Cash and Cash Equivalents……..	Nil	$●
Debt		
Long-term debt, including current portion…….	Nil	$●
Short-term debt……...	$1,179,000,000.00[(2)]	$●
Bank indebtedness……..	Nil	$●
Total Debt……	$1,179,000,000.00[(2)]	$●
Equity		
Equity……	$10,000.01	$10,000.01
Total Capitalization……	$1,179,010,000.01[(2)]	$●

(2) Representing Notes outstanding as of the date hereof under the Warehouse Facilities as follows: (i) $601,290,000, or 51% of all short term debt, represented by Senior Notes, Series 2017-1; (ii) $459,810,000, or 39% of all short term debt, represented by Subordinated Notes, Series 2017-1 held by OPG; and (iii) $117,900,000, or 10% of all short term debt, represented by Junior Subordinated Notes, Series 2017-1 held by OPG.

CERTAIN CANADIAN FEDERAL INCOME TAX CONSIDERATIONS

In the opinion of Torys LLP and Osler, Hoskin & Harcourt LLP, the following summary describes the principal Canadian federal income tax considerations generally applicable under the Income Tax Act (Canada) (the "**Tax Act**") to a holder who acquires Series 2018-1 Senior Notes as beneficial owner pursuant to the Series 2018-1 Senior Notes Offering and who, for purposes of the Tax Act and at all relevant times, deals at arm's length and is not affiliated with the Issuer, and holds Series 2018-1 Senior Notes as capital property (a "**Holder**"). Generally, the Series 2018-1 Senior Notes will be capital property to a Holder provided that the Holder does not acquire or hold the Series 2018-1 Senior Notes in the course of carrying on a business or as part of an adventure or concern in the nature of trade. Certain holders who might not otherwise be considered to hold their Series 2018-1 Senior Notes as capital property may, in certain circumstances, be entitled to treat their Series 2018-1 Senior Notes and any other "Canadian security" (as defined in the Tax Act) owned by them in the taxation year of the election and all subsequent taxation years as capital property by making the irrevocable election permitted by subsection 39(4) of the Tax Act. Such holders are advised to consult their own tax advisors to determine whether such an election is available and desirable in their particular circumstances.

This summary is not applicable to a holder: (i) that is a "financial institution" (as defined in the Tax Act for purposes of the "mark to market property" and "specified debt obligation" rules); (ii) an interest in which is a "tax shelter investment" (as defined in the Tax Act); (iii) that reports its "Canadian tax results" (as defined in the Tax Act) in a currency other than Canadian dollars; or (iv) that has entered into or will enter into a "derivative forward agreement" as defined in the Tax Act in respect of the Series 2018-1 Senior Notes. Any such holders should consult their own tax advisors with respect to an investment in the Series 2018-1 Senior Notes. In addition, this summary does not address the deductibility of interest by a holder who has borrowed money to acquire Series 2018-1 Senior Notes.

On July 18, 2017, the Minister of Finance (Canada) released a consultation paper that included an announcement of its intention to amend the Tax Act to increase the amount of tax applicable to passive investment income earned through a private corporation. No specific amendments to the Tax Act were proposed in connection with this announcement and this summary does not consider the implications of this announcement. On October 18, 2017, the Minister of Finance (Canada) announced that the government intends to move forward with the planned amendments subject to further developments to address concerns of business owners the details of which are not yet available. Holders that are private corporations should consult their own tax advisors regarding the implications of these announcements with respect to their particular circumstances.

This summary is based upon the facts set out in the confidential shelf offering memorandum, the current provisions of the Tax Act and the regulations thereunder (the "**Regulations**"), all specific proposals to amend the Tax Act and the Regulations publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date hereof (the "**Tax Proposals**") and counsel's understanding of the current published administrative policies and practices of the Canada Revenue Agency. There can be no assurance that any Tax Proposals will be implemented in their current form or at all. This summary does not otherwise take into account or anticipate any changes in law or administrative policies and practices, whether by legislative, administrative or judicial action nor does it take into account provincial, territorial or foreign tax legislation or considerations, which may differ significantly from those discussed herein.

This summary is not exhaustive of all possible Canadian federal income tax considerations applicable to an investment in the Series 2018-1 Senior Notes. Moreover, the income and other tax consequences of acquiring, holding or disposing of the Series 2018-1 Senior Notes will vary depending on the Holder's particular circumstances, including the province or territory, or provinces or territories, in which the Holder resides or carries on business. Accordingly, this summary is of a general nature only and is not intended to be legal or tax advice to any particular Holder, and no representations with respect to the income tax consequences to any Holder are made. Investors should consult their own tax advisors for advice with respect to the tax consequences of an investment in the Series 2018-1 Senior Notes based on their particular circumstances. This summary does not address any tax considerations applicable to persons other than Holders and such persons should consult their own tax advisors regarding the consequences of acquiring, holding and disposing of Series 2018-1 Senior Notes under the Tax Act and any jurisdiction in which they may be subject to tax.

Foreign Exchange

For purposes of the Tax Act, all amounts relating to the acquisition, holding or disposition of Series 2018-1 Senior Notes must be expressed in Canadian dollars, including any interest, adjusted cost base and proceeds of disposition. For purposes of the Tax Act, amounts denominated in a currency other than the Canadian dollar generally must be converted into Canadian dollars in accordance with the Tax Act on the date such amounts first arose. A Holder may realize a capital gain or a capital loss on the disposition or deemed disposition of a Series 2018-1 Senior Note by virtue of fluctuations in the value of the U.S. dollar relative to the Canadian dollar. The amount of interest or other amounts required to be included in computing the Holder's income for a taxation year will also be affected by fluctuations in the U.S. dollar relative to the Canadian dollar.

Interest on Series 2018-1 Senior Notes

A Holder that is a corporation, partnership, unit trust or any trust of which a corporation or partnership is a beneficiary will be required to include in computing its income for a taxation year all interest on the Series 2018-1 Senior Notes that accrues or is deemed to accrue to such Holder to the end of the particular taxation year or that becomes receivable or is received by the Holder before the end of that taxation year, including on a redemption or repayment on maturity, except to the extent that such interest was included in computing the Holder's income for a preceding taxation year.

Any other Holder, including an individual, will be required to include in computing its income for a taxation year all interest on the Series 2018-1 Senior Notes that is received or receivable by the Holder in that taxation year (depending upon the method regularly followed by the Holder in computing income), including on a redemption, purchase for cancellation, or repayment on maturity, except to the extent that the interest was included in the Holder's income for a preceding taxation year.

Any premium paid by the Issuer to a Holder on the redemption of a Series 2018-1 Senior Note or a purchase for cancellation of a Series 2018-1 Senior Note (other than in the open market in the manner any such obligation would normally be purchased in the open market by any member of the public), will generally be deemed to be interest received at the time by the Holder to the extent that such premium can reasonably be considered to relate to, and does not exceed the value at the time of the redemption of or purchase for cancellation of, the interest that, would have been paid or payable by the Issuer on the Series 2018-1 Senior Note for a taxation year ending after the redemption or purchase for cancellation, and to the extent such premium was not otherwise included in computing the Holder's income for that taxation year or a previous taxation year.

Where a Holder is required to include in income interest on a Series 2018-1 Senior Note that accrued before such Series 2018-1 Senior Note was acquired by the Holder, the Holder will be entitled to a deduction in computing income of an equivalent amount. The adjusted cost base to the Holder of the Series 2018-1 Senior Note will be reduced by the amount which is so deductible.

If a Series 2018-1 Senior Note is purchased by a Holder at a discount from its face value, the Holder may be required to include an amount equal to such discount in computing income, either in accordance with the deemed interest accrual rules contained in the Tax Act and Regulations or in the taxation year in which an amount in respect of the discount is received or receivable by the Holder. Holders should consult their own tax advisors in these circumstances as the treatment of the discount may vary with the facts and circumstances giving rise to the discount.

Disposition of Series 2018-1 Senior Notes

On a disposition or deemed disposition of a Series 2018-1 Senior Note (including a redemption, purchase for cancellation or repayment at maturity), a Holder will generally be required to include in income any premium deemed to be interest and the amount of interest accrued, or deemed to have accrued, on the Series 2018-1 Senior Note from the date of the last interest payment to the date of disposition to the extent that such amount has not otherwise been included in the Holder's income for the taxation year or a previous taxation year.

A disposition or deemed disposition by a Holder of a Series 2018-1 Senior Note will generally result in the Holder realizing a capital gain (or capital loss) equal to the amount by which the proceeds of disposition, net of any accrued interest or any amount deemed to be interest, exceed (or are exceeded by) the aggregate of the Holder's adjusted cost base thereof and any reasonable costs of disposition.

One half of any capital gain (a "**taxable capital gain**") generally must be included in the Holder's income for the taxation year of the disposition, and one half of any capital loss (an "**allowable capital loss**") realized in a taxation year must be deducted from taxable capital gains realized in that year. Allowable capital losses in excess of taxable capital gains realized in a taxation year may be deducted from net taxable capital gains realized in the three preceding taxation years or any subsequent taxation year, subject to detailed rules contained in the Tax Act in this regard. A capital gain realized by an individual (other than certain specified trusts) may give rise to a liability for alternative minimum tax.

Eligibility for Investment

The Series 2018-1 Senior Notes would, if acquired on the date hereof and if they (i) are issued as part of a single issue of debt of at least $25 million and (ii) have an investment grade rating with certain rating agencies prescribed under the Tax Act, be qualified investments under the Tax Act for a trust governed by a registered retirement savings plan ("**RRSP**"), registered retirement income fund ("**RRIF**"), registered education savings plan ("**RESP**"), registered disability savings plan ("**RDSP**"), tax free savings account ("**TFSA**") and deferred profit sharing plan ("**DPSP**") (except for a trust governed by a DPSP to which the Issuer has made a contribution).

Even if the Series 2018-1 Senior Notes may be qualified investments for a trust governed by an RRSP, RRIF, RESP, RDSP or TFSA, if the Series 2018-1 Senior Notes are "prohibited investments" (as defined in section 207.01 of the Tax Act) for an RRSP, RRIF, RESP, RDSP or TFSA, then a holder of the TFSA or RDSP, a subscriber of the RESP or an annuitant of the RRSP or RRIF, as the case may be, will be subject to a penalty tax as set out in the Tax Act. The Series 2018-1 Senior Notes would not be prohibited investments on the date hereof, provided (i) the holder of the TFSA or RDSP, the subscriber of the RESP or the annuitant of the RRSP or RRIF, as the case may be, deals at arm's length with the Issuer within the meaning of the Tax Act, and (ii) does not have a "significant interest" within the meaning of subsection 207.01(4) of the Tax Act in the Issuer. Investors intending to hold the Series 2018-1 Senior Notes in a TFSA, RRSP, RRIF, RESP or RDSP should consult their own advisors as to whether the Series 2018-1 Senior Notes would be a prohibited investment in their particular circumstances.

RELATIONSHIP BETWEEN THE ISSUER AND THE AGENTS

CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. are each, directly or indirectly, a wholly-owned or majority-owned subsidiary or affiliate of a financial institution which is a lender to the Issuer and to which the Issuer is currently indebted under the terms of the Warehouse Facilities. The Issuer may use a portion of the net proceeds of the Series 2018-1 Senior Notes Offering to repay certain indebtedness under the Warehouse Facilities. Consequently, the Issuer may be considered to be a "connected issuer" of certain of the Agents under applicable Canadian securities legislation. As of the date of this Term Sheet, the Issuer is in compliance with the terms of its indebtedness under the Warehouse Facilities. Since the indebtedness under the Warehouse Facilities was incurred, the financial position of the Issuer has not materially changed. As of ●, 2018, the Issuer had approximately $● outstanding under the Warehouse Facilities. CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. have each advised that the decision to act as Agents for the Series 2018-1 Senior Notes Offering was made independently of the lenders under the Warehouse Facilities and the lenders had no influence as to the determination of the terms of the distribution. None of CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. will receive any benefit in connection with the Series 2018-1 Senior Notes Offering other than its respective portion of the Agents' commission payable by the Issuer.

LEGAL MATTERS

Certain Canadian legal matters in connection with the Series 2018-1 Senior Notes Offering will be passed upon by Torys LLP on behalf of the Issuer and by Osler, Hoskin & Harcourt LLP on behalf of the Agents.

Blackline_Series 2018-1 Senior Notes Term Sheet (Fair Hydro Trust).pdf

This indicative term sheet accompanies, is incorporated by reference in and forms part of the confidential shelf offering memorandum (the "confidential shelf offering memorandum") dated January ●, 2018 of Fair Hydro Trust (the "Issuer") and is subject to all of the restrictions, conditions and limitations set out in the confidential shelf offering memorandum. This term sheet and the confidential shelf offering memorandum constitute an offering of these securities only in those jurisdictions and to those persons where and to whom they may be lawfully offered for sale. The Issuer is not obligated to accept an offer to purchase the securities described herein.

The summary below describes the principal terms of the Series 2018-1 Senior Notes (as defined below). Certain of the terms summarized below are subject to important limitations and exceptions. The following is not intended to be complete. Prospective investors should review the ***"Capital Markets Platform" and*** *"Description of Notes"* ~~*section*~~***sections*** *of the confidential shelf offering memorandum which* ~~*contains*~~***contain*** *a more detailed description of certain terms of the Series 2018-1 Senior Notes and the* ~~*master*~~ *trust indenture (the "Master Trust Indenture") between the Issuer and BNY Trust Company of Canada, acting as trustee, dated December 21, 2017 (and to which the Series 2018-1 Senior Notes will be subject), as supplemented by the term senior series 2018-1 supplemental indenture to the Master Trust Indenture* ***(the "Series 2018-1 Senior Supplemental Indenture")*** *pursuant to which the Series 2018-1 Senior Notes will be issued (together with the Master Trust Indenture, the "Indenture"). In the event of any inconsistency between this indicative term sheet and the confidential shelf offering memorandum, the terms of this indicative term sheet apply. Certain capitalized terms used and not otherwise defined in the summary below have the meanings given thereto in the confidential shelf offering memorandum.*

New Issue by Way of Private Placement *January ●, 2018*

FAIR HYDRO TRUST

●% SENIOR NOTES DUE ●, Series 2018-1

Indicative Term Sheet

Issuer:	Fair Hydro Trust, a special purpose trust ~~governed by~~**established under** the laws of the Province of Ontario.
Issue:	●% Senior Notes due ●, Series 2018-1 (the "**Series 2018-1 Senior Notes**").
Expected Credit Ratings:	DBRS: ● (●) Moody's: ● (●)
Principal Amount:	$● **(1)**
Term:	● years[1]
Launch Date:	●, 2018
Pricing Date:	●, 2018

[1] ~~Please confirm if a single principal payment date is contemplated. Does this need to be reconciled with the "legal final maturity date" concept?~~

Settlement Date:	●, 2018 (T+3)
Interest Rate:	●% **per annum (the "Series 2018-1 Interest Rate")**
Issue Spread:	+● bps (+/-● bps) versus Government of Canada curve interpolated between CAN ●% due ● and CAN ●% due ● +~~● bps (including a~~ ● bps curve adjustment~~)~~ **and +● bps curve delay adjustment, both** versus the CAN ●% due ● (priced at $● to yield ●%)

(1) The Issuer may offer and sell Series 2018-1 Senior Notes having a principal amount greater than the amount shown above. In that event, the Principal Accumulation Amounts, the principal amounts of the Series 2018-1 Subordinated Notes and the Series 2018-1 Junior Subordinated Notes and the use of proceeds amount will be increased proportionately.

Issue Yield:	●%
Issue Price:	$● ~~for each~~**per** $1,000 principal amount of Series 2018-1 Senior Notes~~ sold~~.
Agents Commission:	$● **per $1,000 principal amount of Series 2018-1 Senior Notes sold (payable from existing cash resources of the Issuer)**
~~**Net Proceeds:**~~	~~$●~~
Interest Payment Dates:	~~Interest~~**The Interest Payment Dates** for the Series 2018-1 Senior Notes **are as follows: (i) prior to the occurrence of an Amortization Event, interest** on the Series 2018-1 Senior Notes shall be payable in equal (except the ~~initial~~**first** interest payment) semi-annual instalments in arrears on April 15 and October 15 of each year, commencing April 15, 2018 (short first coupon)**; and (ii) following the occurrence of an Amortization Event, interest will be payable in arrears on the outstanding principal amount of the Series 2018-1 Senior Notes on each Payment Date thereafter at a rate equal to the monthly equivalent of the Series 2018-1 Interest Rate; that is, the interest rate that, when compounded monthly for six months on a stated outstanding principal amount, yields interest in an amount equal to the Series 2018-1 Interest Rate, multiplied by such outstanding principal amount and divided by two**. The first interest payment on the Series 2018-1 Senior Notes will include accrued and unpaid interest for the period from, and including, the closing date of this Offering (the "**Series 2018-1 Senior Notes Offering**") to, but excluding, the first ~~interest payment date for the Series 2018-1 Senior Notes.~~ ~~The~~**Interest Payment Date. Subject to the occurrence of an Acceleration Event, the** first interest payment will be in an amount equal to $● per $1,000 principal amount of Series 2018-1 Senior Notes. If an ~~interest payment date~~**Interest Payment Date** is not a business day in

Toronto, then the payment will be made on the next business day with no adjustment. For any period less than a full semi-annual interest period, interest will be calculated on an actual/365 basis. The record date for each Interest Payment Date is the last day of the calendar month preceding such Interest Payment Date.

"Amortization Event" means either (i) an Acceleration Event has occurred with respect to the Series 2018-1 Senior Notes, or (ii) the outstanding principal amount of the Series 2018-1 Senior Notes has not been paid in full on the Expected Principal Payment Date (as defined below). An "Acceleration Event" means either (i) all Issuer Funding Obligations are declared due and payable in accordance with the provisions of the Master Trust Indenture, or (ii) the outstanding principal amount of the Series 2018-1 Senior Notes and all interest thereon is declared due and payable in accordance with the Indenture as a result of the occurrence of a Series 2018-1 Event of Default (as defined below).

~~Principal Accumulation Date(s) and Principal Accumulation Amount(s):~~

~~Principal Accumulation Dates~~	~~Principal Accumulation Amounts~~
~~●, 20●~~	~~$●~~

Principal Payment ~~Date(s)~~Dates and Principal Payment Amount~~(s)~~:

~~Principal Payment Date~~	~~Principal Payment Amount~~
~~●, 20●~~	~~$●~~

Subject to the occurrence of an Acceleration Event, the outstanding principal amount of the Series 2018-1 Senior Notes shall be due and payable on ● 15, 20● (such Payment Date, the "Expected Principal Payment Date"). Following the occurrence of an Amortization Event, each Payment Date thereafter shall be a Principal Payment Date in respect of the Series 2018-1 Senior Notes and the then outstanding principal amount of the Series 2018-1 Senior Notes shall be due and payable on each such Payment Date.

Principal Payment Default Date: ●, 20●

Principal Accumulation Amounts: Subject to the occurrence of an Amortization Event, the Series 2018-1 Senior Notes shall have the following Principal Accumulation Amounts on the Payment Dates set out below:

Payment Date	Principal Accumulation Amounts
●, 20●	$●
●, 20●	$●
●, 20●	$●
●, 20●	$●

Following the occurrence of an Amortization Event, the Principal Accumulation Amount with respect to each Payment Date thereafter shall be an amount equal to the outstanding principal amount of the Series 2018-1 Senior Notes.

Subordination:	**Concurrent with the issuance of the Series 2018-1 Senior Notes, OPG will subscribe for (i) $● of ●% subordinated notes due ●, Series 2018-1 (the "Series 2018-1 Subordinated Notes"); and (ii) $● of ●% junior subordinated notes due ●, Series 2018-1 (the "Series 2018-1 Junior Subordinated Notes"). The Series 2018-1 Subordinated Notes shall be subordinated to the Series 2018-1 Senior Notes (and all other Senior Funding Obligations), and the Series 2018-1 Junior Subordinated Notes shall be subordinated to the Series 2018-1 Senior Notes (and all other Senior Funding Obligations) and the Series 2018-1 Subordinated Notes (and all other Subordinated Funding Obligations), in each case in the manner described in the confidential shelf offering memorandum under the heading "*Capital Markets Platform – Subordination Provisions*".**
Optional Redemption:	The Series 2018-1 Senior Notes will be redeemable at the option of the Issuer, in whole or in part, at any time and from time to time, on not less than 15 nor more than 60 days' notice at the redemption price specified below. At any time prior to the Par Call Date, the redemption price will be equal to the greater of (i) the Series 2018-1 Canada Yield Price and (ii) par, plus, in each case, accrued and unpaid interest to, but not including, the date of redemption. On or after the Par Call Date, the redemption price will be equal to par, plus accrued and unpaid interest to, but not including, the date of redemption. "**Par Call Date**" means ●, 20●. "**Series 2018-1 Canada Yield Price**" means a price equal to the price of the Series 2018-1 Senior Notes calculated to provide a yield to the Par Call Date, compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, equal to the Government of Canada Yield calculated at 10:00 a.m. (Toronto time) on the third ~~Business Day~~**business day** preceding the date of redemption, plus ●% per annum. "**Government of Canada Yield**" on any date means, in respect of the Series 2018-1 Senior Notes being redeemed, the yield from the redemption date to the Par Call Date compounded semi-annually and calculated in accordance with generally accepted Canadian financial practice, which a non-callable Government of Canada bond would carry if issued in Canadian dollars in Canada at 100% of its principal amount on such date with a term to maturity equal to~~, or if no Government of Canada bond having an equal term to maturity exists, as close as possible to,~~ **the remaining term to** the Par Call Date (calculated from the date of redemption), such yield being ~~expressed as a per annum rate equal to~~ the average of the ~~per annum~~ yields provided by two major Canadian investment dealers specified by the Issuer.
Limited Recourse:	The Series 2018-1 Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Series 2018-1 Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Series 2018-1 Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to

	provide a limited guarantee in respect of the Series 2018-1 Senior Notes following the occurrence of certain events. See the confidential shelf offering memorandum under *"Change of Law Protection Agreement"*. The Series 2018-1 Senior Notes will be limited recourse obligations, secured only by the collateral described in the confidential shelf offering memorandum. See the confidential shelf offering memorandum under *"Capital Markets Platform — Acceleration and Remedies — Limited Recourse"* and *"Risk Factors"*.
Use of Proceeds:	The ~~net~~ proceeds from the Series 2018-1 Senior Notes Offering will be used ~~as follows: [(i)~~ to refinance $● of indebtedness of the Issuer ~~originally~~previously incurred to purchase an Investment Interest from the IESO pursuant to the Master Transfer and Servicing Agreement~~ and (ii) to pay the Series 2018-1 Senior Notes Offering and related costs of the Issuer in an approximate amount of $●~~. See *"Consolidated Capitalization"*.~~]~~
Ranking:	Subject to the applicable payment waterfalls in the Master Trust Indenture, the Series 2018-1 Senior Notes will be direct, secured and unsubordinated obligations of the Issuer, and will at all times rank equally and proportionately with each other and all other ~~senior indebtedness~~Senior Funding Obligations issued by the Issuer from time to time pursuant to the Indenture, without discrimination or preference.
Change of Law Protection Agreement:	The Series 2018-1 Senior Notes are Approved Obligations under the Change of Law Protection Agreement.
Series 2018-1 Events of Default:	In addition to the Events of Default contained in the Master Trust Indenture and described in the confidential shelf offering memorandum, each of the following events constitute a "Series 2018-1 Events of Default": (a) failure to pay interest on the Series 2018-1 Senior Notes when due, subject to a 5-day cure period; (b) failure to pay principal on the Principal Payment Default Date for the Series 2018-1 Senior Notes; (c) breach of representation or warranty in the Series 2018-1 Senior Supplemental Indenture applicable to the Series 2018-1 Senior Notes, subject to materiality requirements and a 60-day cure period; (d) breach of a covenant in the Series 2018-1 Senior Supplemental Indenture, subject to materiality requirements and a 60-day cure period; and (e) an event occurs and as a result thereof, all or any portion of the principal amount of any other Senior Funding Obligation has been accelerated.
Acceleration upon a Series 2018-1 Event of Default:	Upon the occurrence of a Series 2018-1 Event of Default, the holders of Series 2018-1 Senior Notes may, by Ordinary Resolution, declare the outstanding principal and all accrued and unpaid interest on the Series 2018-1 Senior Notes to be immediately due and payable, whether or not all Issuer Funding Obligations have been accelerated pursuant to the Master

	Trust Indenture. For a discussion of the consequences of such declaration, see the confidential shelf offering memorandum "*Capital Markets Platform – Acceleration and Remedies*" and "*Risk Factors – If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected*".
Rating Agency Condition:	**"Rating Agency Condition" means with respect to any action in respect of the Series 2018-1 Senior Notes subject to such condition, the Issuer shall deliver written notice of the proposed action to such Rating Agency or Rating Agencies at least 10 business days prior to the effective date of such action (or if 10 business days prior notice is impractical, such advance notice as is practicable) and (i) the Rating Agencies shall not have informed the Issuer prior to the effective date of such action that such action will result in the reduction or withdrawal of the rating in effect with respect to the Series 2018-1 Senior Notes immediately before the taking of such action, or (ii) in the case of DBRS, or any successor thereto, DBRS shall have informed the Issuer in writing prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating in effect with respect to the Series 2018-1 Senior Notes immediately before the taking of such action.**
Additional Security:	No Series Account will be established for the Series 2018-1 Senior Notes. No credit enhancement agreement or liquidity agreement has been entered into for the benefit of the Series 2018-1 Noteholders.
Currency:	Canadian dollars.
Minimum Subscription:	Minimum principal amount of $150,000.
Form and Denomination:	Book entry only through participants in CDS. The Series 2018-1 Senior Notes will be issued in multiples of $1,000.
CUSIP/ISIN:	CUSIP – ● ISIN – ●
Agents:	**[CIBC World Markets Inc., Goldman Sachs Canada Inc., RBC Dominion Securities Inc. (as co-leads and co-bookrunners)]**, ●, ●, and ●.

Any statement contained in the confidential shelf offering memorandum or in any document incorporated or deemed to be incorporated by reference in the confidential shelf offering memorandum shall be deemed to be modified or superseded, to the extent that a statement contained herein or in any other subsequent document which is or is deemed to be incorporated by reference in the confidential shelf offering memorandum, modifies or supersedes such prior statement. The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information set forth in the document which it modifies or supersedes. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading

in light of the circumstances in which it was made. Any statement so modified or superseded shall not constitute a part of the confidential shelf offering memorandum, except as so modified or superseded.

CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. are each, directly or indirectly, a wholly-owned or majority-owned subsidiary or affiliate of a financial institution which is a lender to the Issuer and to which the Issuer is currently indebted under the terms of the Warehouse Facilities (as described herein). The Issuer may use a portion of the net proceeds of the Series 2018-1 Senior Notes Offering to repay certain indebtedness under the Warehouse Facilities. Consequently, the Issuer may be considered to be a "connected issuer"~~,~~ of certain of the Agents for the purposes of securities regulations in certain provinces. See "Relationship between the Issuer and the Agents".

CAPITALIZATION

On December 21, 2017, the Issuer entered into the following supplemental indentures under the Master Trust Indenture for the provision of an aggregate of approximately $1.56 billion in short term indebtedness (collectively, the "**Warehouse Facilities**"), of which a total of $1.179 billion is drawn as of the date hereof:

(i) a warehouse senior series 2017-1 supplemental indenture with, among others, Royal Bank of Canada, as administrative agent for certain commercial paper conduit purchasers and financial institutions named therein, for the provision of an aggregate maximum principal amount of $800,000,000 floating rate variable funding Senior Notes, Series 2017-1 ("**Senior Notes, Series 2017-1**"), of which $601,290,000 is drawn. See "*Relationship between the Issuer and the Agents*";

(ii) a warehouse subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $611,764,705.88 floating rate variable funding Subordinated Notes, Series 2017-1 ("**Subordinated Notes, Series 2017-1**"), of which $459,810,000 is drawn; and

(iii) a warehouse junior subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $156,862,745.10 floating rate variable funding Junior Subordinated Notes, Series 2017-1 ("**Junior Subordinated Notes, Series 2017-1**"), of which $117,900,000 is drawn.

The issuance of Senior Notes, Series 2017-1, Subordinated Notes, Series 2017-1 and Junior Subordinated Notes, Series 2017-1 under the Warehouse Facilities described above were used to acquire a $1.179 billion Investment Interest from the IESO on December 21, 2017. ***[NTD: If there are subsequent draws on the warehouse before the launch of the Series 2018-1 Senior Notes Offering, this section to be updated.]***

Concurrently with the issuance of the Series 2018-1 Senior Notes, OPG will also subscribe for~~:(i) $● of ●% subordinated notes due ●~~, the Series 2018-1~~; and(ii) $● of ●% subordinated junior notes due ●~~, Subordinated Notes and the Series 2018-~~1.~~1 Junior Subordinated Notes.

The following table summarizes the capitalization of the Issuer as at the dates indicated before and after completion of the Series 2018-1 Senior Notes Offering.

	As at December 31, 2017 before giving effect to the Series 2018-1 Senior Notes Offering	**As at December 31, 2017 after giving effect to the Series 2018-1 Senior Notes Offering**
Cash and Cash Equivalents……..	Nil	~~Nil~~$●
Debt		
Long-term debt, including current portion……	Nil	$●
Short-term debt……...	$~~[~~1,179,000,000.00~~]~~(~~1~~2)	$~~[1,179,000,000.00]~~●
Bank indebtedness……..	Nil	~~Nil~~$●
Total Debt……	$~~[~~1,179,000,000.00~~]~~(~~1~~2)	$●
Equity		
Equity……	$10,000.01	$10,000.01
Total Capitalization……	$~~[~~1,179,010,000.01~~]~~(~~1~~2)	$●

(~~1~~2) Representing Notes outstanding as of the date hereof under the Warehouse Facilities as follows: (i) $601,290,000, or 51% of all short~~-~~ term debt, represented by Senior Notes, Series 2017-1; (ii) $459,810,000, or 39% of all short term debt, represented by Subordinated Notes,

Series 2017-1 held by OPG; and (iii) $~~117,900,000 of which,~~**117,900,000,** or 10% of all short term debt, represented by Junior Subordinated Notes**, Series 2017-1** held by OPG.

CERTAIN CANADIAN FEDERAL INCOME TAX CONSIDERATIONS

In the opinion of Torys LLP and Osler, Hoskin & Harcourt LLP, the following summary describes the principal Canadian federal income tax considerations generally applicable under the Income Tax Act (Canada) (the "**Tax Act**") to a holder who acquires Series 2018-1 Senior Notes as beneficial owner pursuant to the Series 2018-1 Senior Notes Offering and who, for purposes of the Tax Act and at all relevant times, deals at arm's length and is not affiliated with the Issuer, and holds Series 2018-1 Senior Notes as capital property (a "**Holder**"). Generally, the Series 2018-1 Senior Notes will be capital property to a Holder provided that the Holder does not acquire or hold the Series 2018-1 Senior Notes in the course of carrying on a business or as part of an adventure or concern in the nature of trade. Certain holders who might not otherwise be considered to hold their Series 2018-1 Senior Notes as capital property may, in certain circumstances, be entitled to treat their Series 2018-1 Senior Notes and any other "Canadian security" (as defined in the Tax Act) owned by them in the taxation year of the election and all subsequent taxation years as capital property by making the irrevocable election permitted by subsection 39(4) of the Tax Act. Such holders are advised to consult their own tax advisors to determine whether such an election is available and desirable in their particular circumstances.

This summary is not applicable to a holder: (i) that is a "financial institution" (as defined in the Tax Act for purposes of the "mark to market property" and "specified debt obligation" rules); (ii) an interest in which is a "tax shelter investment" (as defined in the Tax Act); (iii) that reports its "Canadian tax results" (as defined in the Tax Act) in a currency other than Canadian dollars; or (iv) that has entered into or will enter into a "derivative forward agreement" as defined in the Tax Act in respect of the Series 2018-1 Senior Notes. Any such holders should consult their own tax advisors with respect to an investment in the Series 2018-1 Senior Notes. In addition, this summary does not address the deductibility of interest by a holder who has borrowed money to acquire Series 2018-1 Senior Notes.

On July 18, 2017, the Minister of Finance (Canada) released a consultation paper that included an announcement of its intention to amend the Tax Act to increase the amount of tax applicable to passive investment income earned through a private corporation. No specific amendments to the Tax Act were proposed in connection with this announcement and this summary does not consider the implications of this announcement. On October 18, 2017, the Minister of Finance (Canada) announced that the government intends to move forward with the planned amendments subject to further developments to address concerns of business owners the details of which are not yet available. Holders that are private corporations should consult their own tax advisors regarding the implications of these announcements with respect to their particular circumstances.

This summary is based upon the facts set out in the confidential shelf offering memorandum, the current provisions of the Tax Act and the regulations thereunder (the "**Regulations**"), all specific proposals to amend the Tax Act and the Regulations publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date hereof (the "**Tax Proposals**") and counsel's understanding of the current published administrative policies and practices of the Canada Revenue Agency. There can be no assurance that any Tax Proposals will be implemented in their current form or at all. This summary does not otherwise take into account or anticipate any changes in law or administrative policies and practices, whether by legislative, administrative or judicial action nor does it take into account provincial, territorial or foreign tax legislation or considerations, which may differ significantly from those discussed herein.

This summary is not exhaustive of all possible Canadian federal income tax considerations applicable to an investment in the Series 2018-1 Senior Notes. Moreover, the income and other tax consequences of acquiring, holding or disposing of the Series 2018-1 Senior Notes will vary depending on the Holder's particular circumstances, including the province or territory, or provinces or territories, in which the Holder resides or carries on business. Accordingly, this summary is of a general nature only and is not intended to be legal or tax advice to any particular Holder, and no representations with respect to the income tax consequences to any Holder are made. Investors should consult their own tax advisors for advice with respect to the tax consequences of an investment in the Series 2018-1 Senior Notes based on their particular circumstances. This summary does not address any tax considerations applicable to persons other than Holders and such persons should consult their own tax advisors regarding the consequences of acquiring, holding and disposing of Series 2018-1 Senior Notes under the Tax Act and any jurisdiction in which they may be subject to tax.

Foreign Exchange

For purposes of the Tax Act, all amounts relating to the acquisition, holding or disposition of Series 2018-1 Senior Notes must be expressed in Canadian dollars, including any interest, adjusted cost base and proceeds of disposition. For purposes of the Tax Act, amounts denominated in a currency other than the Canadian dollar generally must be converted into Canadian dollars in accordance with the Tax Act on the date such amounts first arose. A Holder may realize a capital gain or a capital loss on the disposition or deemed disposition of a Series 2018-1 Senior Note by virtue of fluctuations in the value of the U.S. dollar relative to the Canadian dollar. The amount of interest or other amounts required to be included in computing the Holder's income for a taxation year will also be affected by fluctuations in the U.S. dollar relative to the Canadian dollar.

Interest on Series 2018-1 Senior Notes

A Holder that is a corporation, partnership, unit trust or any trust of which a corporation or partnership is a beneficiary will be required to include in computing its income for a taxation year all interest on the Series 2018-1 Senior Notes that accrues or is deemed to accrue to such Holder to the end of the particular taxation year or that becomes receivable or is received by the Holder before the end of that taxation year, including on a redemption or repayment on maturity, except to the extent that such interest was included in computing the Holder's income for a preceding taxation year.

Any other Holder, including an individual, will be required to include in computing its income for a taxation year all interest on the Series 2018-1 Senior Notes that is received or receivable by the Holder in that taxation year (depending upon the method regularly followed by the Holder in computing income), including on a redemption, purchase for cancellation, or repayment on maturity, except to the extent that the interest was included in the Holder's income for a preceding taxation year.

Any premium paid by the Issuer to a Holder on the redemption of a Series 2018-1 Senior Note or a purchase for cancellation of a Series 2018-1 Senior Note (other than in the open market in the manner any such obligation would normally be purchased in the open market by any member of the public), will generally be deemed to be interest received at the time by the Holder to the extent that such premium can reasonably be considered to relate to, and does not exceed the value at the time of the redemption of or purchase for cancellation of, the interest that, would have been paid or payable by the Issuer on the Series 2018-1 Senior Note for a taxation year ending after the redemption or purchase for cancellation, and to the extent such premium was not otherwise included in computing the Holder's income for that taxation year or a previous taxation year.

Where a Holder is required to include in income interest on a Series 2018-1 Senior Note that accrued before such Series 2018-1 Senior Note was acquired by the Holder, the Holder will be entitled to a deduction in computing income of an equivalent amount. The adjusted cost base to the Holder of the Series 2018-1 Senior Note will be reduced by the amount which is so deductible.

If a Series 2018-1 Senior Note is purchased by a Holder at a discount from its face value, the Holder may be required to include an amount equal to such discount in computing income, either in accordance with the deemed interest accrual rules contained in the Tax Act and Regulations or in the taxation year in which an amount in respect of the discount is received or receivable by the Holder. Holders should consult their own tax advisors in these circumstances as the treatment of the discount may vary with the facts and circumstances giving rise to the discount.

Disposition of Series 2018-1 Senior Notes

On a disposition or deemed disposition of a Series 2018-1 Senior Note (including a redemption, purchase for cancellation or repayment at maturity), a Holder will generally be required to include in income any premium deemed to be interest and the amount of interest accrued, or deemed to have accrued, on the Series 2018-1 Senior Note from the date of the last interest payment to the date of disposition to the extent that such amount has not otherwise been included in the Holder's income for the taxation year or a previous taxation year.

A disposition or deemed disposition by a Holder of a Series 2018-1 Senior Note will generally result in the Holder realizing a capital gain (or capital loss) equal to the amount by which the proceeds of disposition, net of any accrued interest or any amount deemed to be interest, exceed (or are exceeded by) the aggregate of the Holder's adjusted cost base thereof and any reasonable costs of disposition.

One half of any capital gain (a "**taxable capital gain**") generally must be included in the Holder's income for the taxation year of the disposition, and one half of any capital loss (an "**allowable capital loss**") realized in a taxation year must be deducted from taxable capital gains realized in that year. Allowable capital losses in excess of taxable capital gains realized in a taxation year may be deducted from net taxable capital gains realized in the three preceding taxation years or any subsequent taxation year, subject to detailed rules contained in the Tax Act in this regard. A capital gain realized by an individual (other than certain specified trusts) may give rise to a liability for alternative minimum tax.

Eligibility for Investment

The Series 2018-1 Senior Notes would, if acquired on the date hereof and if they (i) are issued as part of a single issue of debt of at least $25 million and (ii) have an investment grade rating with certain rating agencies prescribed under the Tax Act, be qualified investments under the Tax Act for a trust governed by a registered retirement savings plan ("**RRSP**"), registered retirement income fund ("**RRIF**"), registered education savings plan ("**RESP**"), registered disability savings plan ("**RDSP**"), tax free savings account ("**TFSA**") and deferred profit sharing plan ("**DPSP**") (except for a trust governed by a DPSP to which the Issuer has made a contribution).

Even if the Series 2018-1 Senior Notes may be qualified investments for a trust governed by an RRSP, RRIF, RESP, RDSP or TFSA, if the Series 2018-1 Senior Notes are "prohibited investments" (as defined in section 207.01 of the Tax Act) for an RRSP, RRIF, RESP, RDSP or TFSA, then a holder of the TFSA or RDSP, a subscriber of the RESP or an annuitant of the RRSP or RRIF, as the case may be, will be subject to a penalty tax as set out in the Tax Act. The Series 2018-1 Senior Notes would not be prohibited investments on the date hereof, provided (i) the holder of the TFSA or RDSP, the subscriber of the RESP or the annuitant of the RRSP or RRIF, as the case may be, deals at arm's length with the Issuer within the meaning of the Tax Act, and (ii) does not have a "significant interest" within the meaning of subsection 207.01(4) of the Tax Act in the Issuer. Investors intending to hold the Series 2018-1 Senior Notes in a TFSA, RRSP, RRIF, RESP or RDSP should consult their own advisors as to whether the Series 2018-1 Senior Notes would be a prohibited investment in their particular circumstances.

RELATIONSHIP BETWEEN THE ISSUER AND THE AGENTS

CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. are each, directly or indirectly, a wholly-owned or majority-owned subsidiary or affiliate of a financial institution which is a lender to the Issuer and to which the Issuer is currently indebted under the terms of the Warehouse Facilities. The Issuer may use a portion of the net proceeds of the Series 2018-1 Senior Notes Offering to repay certain indebtedness under the Warehouse Facilities. Consequently, the Issuer may be considered to be a "connected issuer"~~,~~ of certain of the Agents under applicable Canadian securities legislation. As of the date of this Term Sheet, the Issuer is in compliance with the terms of its indebtedness under the Warehouse Facilities. Since the indebtedness under the Warehouse Facilities was incurred, the financial position of the Issuer has not materially changed. As of ●, **2018,** the Issuer had approximately $● ~~billion~~ outstanding under the Warehouse Facilities. CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. have each advised that the decision to act as Agents for the Series 2018-1 Senior Notes Offering was made independently of the lenders under the Warehouse Facilities and the lenders had no influence as to the determination of the terms of the distribution. None of CIBC World Markets Inc., RBC Dominion Securities Inc. and Goldman Sachs Canada Inc. will receive any benefit in connection with the Series 2018-1 Senior Notes Offering other than its respective portion of the Agents' ~~fee~~**commission** payable by the Issuer**.**

LEGAL MATTERS

Certain Canadian legal matters in connection with the Series 2018-1 Senior Notes Offering will be passed upon by Torys LLP on behalf of the Issuer and by Osler, Hoskin & Harcourt LLP on behalf of the Agents.

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Padding cell	

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Deletions	68
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	144

Fair Hydro Trust - Confidential Offering Memorandum.pdf

This confidential shelf offering memorandum constitutes an offering of these securities only in those jurisdictions and to those persons where and to whom they may be lawfully offered for sale. This confidential shelf offering memorandum is not, and in no circumstances is to be construed as, a prospectus or advertisement or public offering of these securities. ***No securities commission or similar authority in Canada or in any other jurisdiction has reviewed this material or in any way passed upon the merits of the securities offered hereunder and any representation to the contrary is an offence.*** *Persons who acquire securities pursuant to this confidential shelf offering memorandum will not have the benefit of the review of this material by any securities commission or similar authority. The information contained in this confidential shelf offering memorandum has been furnished or supplied by the Issuer based on the most accurate information available as at the date hereof and there is no representation or warranty by the Agents as to the accuracy or completeness of such information. These securities have not been and will not be registered under the United States Securities Act of 1933, as amended (the "**U.S. Securities Act**") or any state securities laws and may not be offered or sold within the United States or to, or for the account of, U.S. persons (within the meaning of Regulation S under the U.S. Securities Act) unless registered under the U.S. Securities Act and applicable state securities laws or an exemption from such registration is available. See "Plan of Distribution". This confidential shelf offering memorandum is confidential and contains certain information not publicly disclosed. No one is authorized to make any representation or give any warranty on behalf of the Issuer other than those representations and warranties made or referred to in this confidential shelf offering memorandum.*

The information contained in this confidential shelf offering memorandum and delivered in connection with the private placement of the Senior Notes by the Issuer is confidential, is for the confidential use of only those persons to whom it is delivered in connection with the offering solely for the purpose of considering the purchase of the Senior Notes and its use for any other purpose is prohibited. By accepting this confidential shelf offering memorandum, each prospective purchaser agrees that it will not transmit, reproduce or make available to anyone, other than their respective advisors (so long as they advise such advisors of the confidential nature of such document), this confidential shelf offering memorandum (including any Term Sheets) or any information contained herein, and will not use such information (or permit its advisors to use such information) for any purpose other than to evaluate an investment in the Senior Notes pursuant to an Offering.

CONFIDENTIAL SHELF OFFERING MEMORANDUM

New Issue By Way of Private Placement

January ■, 2018

FAIR HYDRO TRUST

Senior Secured Notes

Fair Hydro Trust (the "**Issuer**"), a special purpose trust established under the laws of the Province of Ontario by Computershare Trust Company of Canada, acting as trustee of the Issuer, and caused to be established by Ontario Power Generation Inc. ("**OPG**"), as Financial Services Manager (as hereinafter defined), has created a program providing for the offering and issuance of senior secured notes (the "**Senior Notes**"), in one or several offerings. The Issuer was established in connection with the *Ontario Fair Hydro Plan Act, 2017* (together with the regulations promulgated thereunder, the "**FHPA**"). Under the FHPA, OPG is appointed as financial services manager (in such capacity, the "**Financial Services Manager**") and is given the authority to, among other things, establish, or cause to be established, one or more financing entities (each, a "**Financing Entity**") to incur payment obligations (referred to as "**Funding Obligations**") for the purposes prescribed under the FHPA. The Issuer is a Financing Entity under the FHPA and the Senior Notes are Funding Obligations being offered for the purposes of the FHPA.

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*. The Senior Notes will be limited recourse obligations, secured only by the collateral described in this confidential shelf offering memorandum. See *"Capital Markets Platform — Acceleration and Remedies — Limited Recourse"* and *"Risk Factors"*.

The specific terms of any offering of Senior Notes, including, without limitation, the aggregate principal amount of Senior Notes being offered, the currency of the Senior Notes, the issue price (at par, at a discount or at a premium), the issue, delivery and maturity dates, any redemption or repayment provisions, the rating of the Senior Notes at the time of such offering, the interest (either fixed or floating and the circumstances, if any, under which the rate may be adjusted), the interest rate basis and interest payment dates, will be established by the Issuer and set forth in a term sheet (a "**Term Sheet**") that will accompany, be incorporated by reference in and form an integral part of this

confidential shelf offering memorandum. Unless otherwise specified in a Term Sheet, the Senior Notes will not be listed on any securities exchange.

The offering of Senior Notes from time to time (each, an "**Offering**") will be made pursuant to exemptions from the prospectus requirements of applicable securities laws in each of the provinces of Canada only to "accredited investors" (as such term is defined in National Instrument 45-106 – *Prospectus Exemptions* ("**NI 45-106**") and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) that are purchasing the Senior Notes as principal and that are not individuals unless those individuals are also "permitted clients" (as such term is defined in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**")). Purchasers of Senior Notes will be obliged to establish their qualification to invest in accordance with the requirements of the securities laws of the jurisdiction in which they reside. See *"Representations and Agreements of Purchasers"*. As each Offering will be made pursuant to exemptions from prospectus requirements of applicable securities laws, there will be restrictions on the resale of the Senior Notes. See *"Risk Factors"* and *"Restrictions on Resale"*.

The Senior Notes may be sold by the Issuer directly pursuant to applicable statutory exemptions or through agents designated by the Issuer from time to time (the "**Agents**"). See *"Plan of Distribution"*. Each Term Sheet will identify the Agents engaged to conditionally offer the Senior Notes for sale on a best efforts basis, subject to prior sale, in connection with the applicable Offering of Senior Notes and will also set forth the terms of such Offering of Senior Notes, including the net proceeds to the Issuer and, to the extent applicable, any fees payable to the Agents.

Subscriptions for the Senior Notes will be received subject to rejection or allotment in whole or in part and the right is reserved to close the subscription books at any time without notice. The Senior Notes will be delivered and recorded in book-entry form through CDS Clearing and Depository Services Inc. ("**CDS**") or another depository selected by the Issuer in accordance with the master trust indenture governing the Senior Notes. The Senior Notes will be represented by fully registered book-entry notes held by, or on behalf of, such depository, or a successor thereof, as the custodian of the book-entry notes, in its name or the name of its nominee.

The Senior Notes will be issued under and will be entitled to the benefits of a master trust indenture dated as of December 21, 2017 between the Issuer, as issuer, and BNY Trust Company of Canada, as indenture trustee, as amended, supplemented, restated or otherwise modified from time to time.

In making an investment decision, prospective investors acknowledge that they have not relied on the Agents or any person affiliated with the Agents for investment or other advice and are relying on their own examination of the terms of an Offering, including the merits and risks involved and creditworthiness of the Issuer. Prospective investors are not to construe the contents of this document as legal, tax, accounting or investment advice. Prior to investing in the Senior Notes, prospective investors should consult with their legal, tax, accounting and investment advisors to determine the consequences of an investment in the Senior Notes. See *"Risk Factors"* for a discussion of certain factors that should be considered by prospective purchasers of Senior Notes.

The Issuer is not a "reporting issuer" (as such term is defined under applicable Canadian securities laws) in any jurisdiction. The Issuer will only distribute the Senior Notes in Canada under exemptions from the prospectus requirements of the securities laws of the provinces where they are sold. The Senior Notes may only be traded in Canada under exemptions from the prospectus requirements of the securities laws of the provinces in which they are traded and only through dealers registered or exempt from the dealer registration requirements of applicable Canadian securities laws. See *"Restrictions on Resale"*.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of Senior Notes with liquidity for their investment or that it will continue for the term of the applicable Senior Notes. Accordingly, purchasers of the Senior Notes may be required to bear the financial risk of investing in such Senior Notes until the maturity date of such Senior Notes.

No person is authorized to give any information or make any representation other than those contained in this confidential shelf offering memorandum in connection with an Offering and any decision to purchase Senior Notes should be based solely on the information contained herein. The Term Sheet applicable to such Offering and the

investor presentation (the "**Investor Presentation**"), attached hereto as Exhibit 1, are incorporated by reference and included in, respectively, and form an integral part of, this confidential shelf offering memorandum. The information contained in the Investor Presentation is current only as of the date thereof. The Investor Presentation may be updated and replaced by the Issuer in connection with an Offering and such updated Investor Presentation will be attached as Exhibit 1, and will be included in, and form an integral part of, this confidential shelf offering memorandum delivered in respect of such Offering.

This confidential shelf offering memorandum, including the Investor Presentation attached hereto, and any Term Sheets, are provided on a confidential basis to prospective investors for informational use solely in connection with their consideration of the purchase of Senior Notes. Use for any other purpose is not authorized. Each Offering will be made solely on the basis of the information contained herein or incorporated by reference which has been furnished by the Issuer. No Agent makes any representation or warranty, express or implied, as to the accuracy, adequacy or completeness of such information. Furthermore, no Agent has independently verified the information in this confidential shelf offering memorandum and has no responsibility for the accuracy, adequacy or completeness of any such information.

This confidential shelf offering memorandum does not contain all of the information that would normally appear in a prospectus qualified under applicable Canadian securities laws. Neither the delivery of this confidential shelf offering memorandum, at any time, nor any sales made pursuant hereto, will imply that the information contained herein is correct as of any time subsequent to the date set forth on the face page hereof and the Issuer and the Agents will not update such information except as may be required by applicable law.

Capitalized terms used and not otherwise defined in this confidential shelf offering memorandum have the meanings ascribed to them in the glossary starting on page [92] of this confidential shelf offering memorandum. An index of defined terms used in this confidential shelf offering memorandum is provided starting on page [104] of this confidential shelf offering memorandum. All figures in this confidential shelf offering memorandum are in Canadian dollars unless otherwise noted.

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CAUTION REGARDING FORWARD-LOOKING INFORMATION

Some of the statements contained in this confidential shelf offering memorandum, including those relating to the Issuer's expectations, forecasts, strategic and other statements, are forward-looking information within the meaning of securities laws. Forward-looking information is contained in the summary and in the sections titled *"Ontario's Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*, *"Subordinated Debt"* and *"Risk Factors"* of this confidential shelf offering memorandum and *"Fair Allocation Amount"*, *"Financing Plan / Strategy"*, *"Financing Structure"*, *Aggregate Financing Program"* and *"Consumer Bill Forecast with FHP"* of the Investor Presentation. The forward-looking statements contained in this confidential shelf offering memorandum are presented for the purposes of assisting potential purchasers in making an investment decision regarding the Senior Notes and may not be appropriate for other purposes.

Often, but not always, forward-looking information can be identified by the use of forward-looking terminology such as "may", "will", "expect", "believe", "estimate", "plan", "could", "should", "would", "outlook", "forecast", "anticipate", "foresee", "continue" or the negative of these terms or variations of them or similar terminology. Forward-looking information is based on the reasonable assumptions, estimates, analysis and opinions of management of the Issuer made in light of its experience and perception of trends, current conditions and expected developments, as well as other factors that the Issuer believes to be relevant and reasonable at the date that such statements are made. A variety of factors, many of which are beyond the Issuer's control, may cause actual results to differ materially from the expectations expressed in the forward-looking statements. These factors include, but are not limited to, the following risks:

Judicial, Legislative or Regulatory Risks:

- Future legal action might challenge or invalidate the FHPA and materially adversely affect a holder's investment in the Senior Notes.
- Future legislative action to change the FHPA, the Change of Law Protection Agreement or the electricity market might materially adversely affect a holder's investment in the Senior Notes.
- Future regulatory action to change the rules applicable to the operation of the electricity market might materially adversely affect a holder's investment in the Senior Notes.
- Future judicial action could reduce the value of a holder's investment in the Senior Notes.
- Potential difficulties in enforcing civil liabilities against the Province of Ontario may arise.

Risks Associated with the Unusual Nature of the Investment Asset:

- Clean Energy Adjustments will not be payable until May 1, 2021 and until such time the IESO will be the sole source of funds for payment on the Senior Notes. Amounts paid by the IESO are not available to pay principal on the Senior Notes.
- The Issuer's ability to enforce security granted by the IESO may be significantly impaired or delayed.
- A holder of Senior Notes may experience material payment delays because the source of funds for payment after the Moratorium Period is limited.
- The Clean Energy Adjustment may not be billed after April 30, 2047, unless further regulations to extend that date are passed.
- Foreclosure of the Indenture Trustee's lien on the Investment Interest securing the Senior Notes might not be practical and acceleration of the Senior Notes before maturity might have little practical effect.
- The Issuer may issue multiple Series of Senior Notes secured by the Investment Interest and some decisions affecting holders of Senior Notes may require approval of all Series.
- If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected.
- The Issuer may have a co-ownership interest in the Investment Asset with other Financing Entities.
- If the Clean Energy Adjustment amounts and other funds held in the Issuer Accounts results in investment losses or the investments become illiquid, a holder of Senior Notes might receive payment of principal of and interest on the Senior Notes later than expected.

Servicing, Operating and Consumer Risks

- Payments on the Senior Notes depend on the performance of Electricity Vendors and the IESO.
- Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and as Manager.
- Inaccurate consumption forecasting or unanticipated delinquencies or write-offs might reduce or delay scheduled payments on the Senior Notes.
- Changes to billing and collection practices may reduce the amount of funds available for payments on the Senior Notes.
- Limits on rights to terminate service to Specified Consumers might make it more difficult to collect the Clean Energy Adjustment.
- It might be difficult for the Issuer to collect the Clean Energy Adjustment from Specified Consumers.
- Delinquent or partial payments of electricity bills may make principal payments on the Senior Notes occur later than expected.
- Indemnification obligations of OPG and the IESO are limited and might not be sufficient to protect the investments in the Senior Notes.
- Power outages could impair payment of the Senior Notes.
- Technological changes that make alternative energy sources more attractive in the future or significant population fluctuations may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment.

Insolvency-Related Risks

- If the Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed.
- If the IESO were to become subject to Canadian Insolvency and Restructuring Laws, the Transfers of specified portions of the Regulatory Asset by the IESO may not be respected as true sales of the Regulatory Asset.
- If any Electricity Vendor or the IESO were to become subject to Canadian Insolvency and Restructuring Laws, collections that have been commingled may be unrecoverable and the Issuer's ability to enforce its rights against such Electricity Vendor or the IESO may be significantly impaired or delayed.
- If OPG were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to enforce its rights against OPG may be significantly impaired or delayed and the Issuer's assets and liabilities may be substantively consolidated with those of OPG.
- If the Issuer Trustee were to become subject to Canadian Insolvency and Restructuring Laws, the assets and liabilities of the Issuer may be substantively consolidated with the Issuer Trustee.
- If a Specified Consumer were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to collect Clean Energy Adjustment amounts from such Specified Consumer may be adversely affected.
- If amounts in the Issuer Accounts for any Series are invested with entities that become subject to insolvency proceedings, the Issuer's ability to make payments to holders of Senior Notes may be adversely affected.

Other Risks:

- The credit ratings are not an indication of the expected rate of payment of principal on the Senior Notes.
- If the ratings on the Senior Notes are withdrawn or revised downward, the value of a holder's investment in the Senior Notes may be adversely affected.
- The credit ratings of the IESO, OPG and the Province of Ontario might affect the market value of the Senior Notes.
- The absence of an established market for the Senior Notes might limit the ability to resell or refinance the Senior Notes.
- Restrictions on resale might limit the ability to resell the Senior Notes.

Please also see *"Risk Factors"*.

The Issuer does not intend, or assume any obligation, to update any forward-looking information except as may be required by applicable law.

CONFIDENTIALITY

THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM IS FOR THE CONFIDENTIAL USE OF ONLY THOSE PERSONS, AND THEIR RESPECTIVE REPRESENTATIVES, TO WHOM IT IS TRANSMITTED, SOLELY TO ENABLE SUCH PERSONS TO EVALUATE AN INVESTMENT IN THE NOTES DESCRIBED IN THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM. BY ACCEPTING A COPY OF THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM, EACH PROSPECTIVE PURCHASER AGREES THAT ALL INFORMATION CONTAINED HEREIN, ALL DOCUMENTS DELIVERED IN CONNECTION HEREWITH AND ALL OTHER INFORMATION OBTAINED BY PROSPECTIVE PURCHASERS IN RELATION TO THE ISSUER (COLLECTIVELY, THE "**CONFIDENTIAL INFORMATION**") IS CONFIDENTIAL, THAT NONE OF THE CONFIDENTIAL INFORMATION WILL BE COPIED, TRANSCRIBED, RECORDED OR TRANSMITTED BY THE RECIPIENT FOR ANY REASON OR USED FOR ANY PURPOSE OTHER THAN EVALUATING AN INVESTMENT IN THE NOTES, AND THAT THE RECIPIENT WILL HOLD ALL OF THE CONFIDENTIAL INFORMATION IN CONFIDENCE AND WILL NOT PROVIDE ANY OF IT TO ANY THIRD PARTIES OTHER THAN PERSONS RETAINED TO ADVISE THE RECIPIENT WITH RESPECT TO THE PURCHASE OF THE NOTES (SO LONG AS THEY ADVISE SUCH PERSONS OF THE CONFIDENTIAL NATURE OF SUCH CONFIDENTIAL INFORMATION), WITHOUT THE PRIOR WRITTEN CONSENT OF THE ISSUER.

DOCUMENTS INCORPORATED BY REFERENCE

A Term Sheet containing the specific variable terms in respect of an Offering will be delivered to prospective purchasers of Senior Notes together with this confidential shelf offering memorandum and will be deemed to be incorporated into this confidential shelf offering memorandum as of the date of such Term Sheet, solely for the purposes of the Senior Notes issued under such Term Sheet.

Any statement contained in the confidential shelf offering memorandum or in any document incorporated or deemed to be incorporated by reference in the confidential shelf offering memorandum shall be deemed to be modified or superseded, to the extent that a statement contained herein or in any other subsequent document which is or is deemed to be incorporated by reference in the confidential shelf offering memorandum, modifies or supersedes such prior statement. The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information set forth in the document which it modifies or supersedes. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in light of the circumstances in which it was made. Any statement so modified or superseded shall not constitute a part of the confidential shelf offering memorandum, except as so modified or superseded.

The information contained in the Investor Presentation is current only as of the date thereof. The Investor Presentation may be updated and replaced by the Issuer in connection with an Offering and such updated Investor Presentation will be attached as Exhibit 1, and will be included in, and form an integral part of, this confidential shelf offering memorandum delivered in respect of such Offering.

MARKET AND INDUSTRY DATA

Certain of the information contained herein concerning the electricity industry in Ontario is based upon or derived from information provided by third party sources, including industry publications and other publicly available industry sources. Neither the Issuer nor the Agents guarantee the accuracy of such information and neither the Issuer nor the Agents have independently verified the assumptions upon which projections of future trends and performance are based. This information and data is subject to change and cannot always be verified with complete certainty due to limits on the availability and reliability of raw data, the voluntary nature of the data gathering process and other limitations and uncertainties inherent in any statistical survey of market or industry data. As a result, prospective

purchasers should be aware that the information and data set forth herein, and estimates and beliefs based on such information and data, may not be reliable.

REFERENCES TO THE FHPA AND RELATED REGULATIONS

This confidential shelf offering memorandum describes certain provisions of the *Ontario Fair Hydro Plan Act, 2017* and the regulations made pursuant to that Act. These descriptions include simplified and summary descriptions of the terms and requirements of the legislation and do not purport to be comprehensive, definitive or determinative. All references in this confidential shelf offering memorandum to the terms and requirements of the *Ontario Fair Hydro Plan Act, 2017* and the regulations made pursuant to that Act are qualified in their entirety by reference to the specific terms and requirements set forth in such legislation, copies of which are available at www.ontario.ca/laws/statute/17o16.

SUMMARY

This summary does not contain all the information prospective purchasers should consider before investing in the Senior Notes. Prospective purchasers should read this entire confidential shelf offering memorandum carefully, including the section entitled "Risk Factors". Capitalized terms used and not otherwise defined in this summary have the meanings ascribed to them in the glossary starting on page [92] of this confidential shelf offering memorandum. An index of defined terms used in this summary is provided starting on page [104] of this confidential shelf offering memorandum.

Issuer:	Fair Hydro Trust, a special purpose trust established under the laws of the Province of Ontario.
Manager:	Ontario Power Generation Inc. ("**OPG**"), pursuant to the terms of the Management Agreement.
Limitations:	The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"— Change of Law Protection Agreement"*.
Ontario Fair Hydro Plan Act:	On June 1, 2017, the Ontario Legislature passed the Ontario Fair Hydro Plan Act, 2017 (the "FHPA"). The FHPA was enacted to: (i) ensure that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers (a category of consumers that generally is comprised of residential consumers, small businesses and farms); (ii) recognize that Clean Energy Benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in Ontario; and (iii) align Clean Energy Costs with Clean Energy Benefits, in order to provide fairness for Specified Consumers over time. As a result, from July 1, 2017 until April 30, 2018, electricity rates payable by Specified Consumers will in effect be the rate that would result in a representative consumer being charged an invoice amount that is 25%[1] less than the rate that would otherwise have been determined by the Ontario Energy Board (the "**OEB**") under its Regulated Price Plan[2] for that period. Under the FHPA, OPG is appointed as Financial Services Manager and is given the authority to, among other things, establish, or cause to be established, one or more Financing Entities to incur Funding Obligations for the purposes prescribed under the FHPA. The Issuer is a Financing Entity under the FHPA and the Notes are Funding Obligations being offered for the purposes of the FHPA. See *"Ontario's Fair Hydro Plan — Background"*.

[1] The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax previously granted by the Ontario government.

[2] Specified Consumers, as a class, are not a one-to-one equivalent class to the RPP consumer class.

Summary of the Fair Hydro Financing Program:	The implementation of the Fair Hydro Plan is intended to be financed by the Issuer through the Fair Hydro financing program. The program provides for the offering and issuance by the Issuer of Senior Notes, in any number of Series, in one or several Offerings. A Term Sheet will describe particulars of the terms of each Series of Senior Notes and will be incorporated by reference and form an integral part of this confidential shelf offering memorandum. Each Series of Senior Notes will be issued under the Master Trust Indenture, as supplemented by a Supplemental Indenture authorizing that Series.
Transferor and Servicer:	The Independent Electricity System Operator (the "**IESO**") is a not-for-profit corporation established under the *Electricity Act, 1998* (Ontario). As a non-share capital corporation, the IESO does not have any shareholders or owners and is governed by an independent board of directors appointed by the Minister of Energy. The IESO manages the operation and reliability of Ontario's bulk power system and administers the wholesale electricity market. Each month, the IESO will determine the shortfall resulting from the rate reduction mandated by the FHPA and record the amount in a variance account. The IESO has the right, exercisable in accordance with the FHPA, to recover the balance recorded in the variance account from Specified Consumers (such right, the "**Regulatory Asset**"). The FHPA provides that the OEB shall, from time to time and in accordance with the Regulations, determine and set rates payable by Specified Consumers to allow for the IESO to recover the balance recorded in the variance account and that the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from Specified Consumers before May 1, 2021. Pursuant to the Master Transfer and Servicing Agreement, the IESO may, on a monthly basis, offer to Transfer specified portions of the Regulatory Asset to the Issuer in accordance with the FHPA. See *"The Transferor and Servicer"*.
Investment Interest:	Upon completion of a Transfer by the IESO of a specified portion of the Regulatory Asset, the Issuer will acquire an Investment Interest in the Investment Asset, which is a current and irrevocable property right consisting of the rights specified in the FHPA, including the right to impose, invoice, collect, receive and recover the Clean Energy Adjustment from Specified Consumers in accordance with the FHPA. See *"— Clean Energy Adjustment"* below and *"Ontario's Fair Hydro Plan — Regulatory Asset"*, *"Ontario's Fair Hydro Plan — Investment Interest"* and *"The Transferor and Servicer"*.
Clean Energy Adjustment:	The FHPA imposes an irrevocable and non-bypassable charge referred to as the Clean Energy Adjustment that will be determined by the Financial Services Manager and will be converted by the OEB into a cent per kWh rate and added to the electricity invoices sent to Specified Consumers. See *"— Statutory Duties of the OEB"* below. The required Clean Energy Adjustment will be determined by the Financial Services Manager for each month in a Reference Period and consists of the sum (without duplication) of: (i) the estimated Finance Amount in respect of the Reference Period, which will include an estimate of all repayments, redemptions, funding costs, derivative payments, required deposits, Issuer expenses and taxes, and other amounts paid or payable during such Reference Period, and (ii) the

True-up Amount for such Reference Period, all divided by the number of months in the applicable Reference Period.

The "**True-up Amount**" is comprised of the cumulative Finance Amounts in respect of all preceding Reference Periods less the cumulative Clean Energy Adjustment amounts remitted to the Issuer in respect of all preceding Reference Periods plus other anticipated shortfalls. The True-up Amount may also reflect historical and reasonably foreseeable differences between the estimated and actual Finance Amount; between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs; and variations in billings due to variations in electricity consumption. In determining such differences, the Financial Services Manager is required to have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of Specified Consumers, an Electricity Vendor or the IESO, whether in its capacity as an Electricity Vendor or its activities as agent or otherwise under the FHPA. The Financial Services Manager is obligated to calculate the True-up Amount in respect of each Reference Period so long as all Funding Obligations and other Finance Amounts have not been paid in full. The Financial Services Manager may also, at any time during a Reference Period, determine an interim True-up Amount if, among other things, it reasonably forecasts that the collection of the Clean Energy Adjustment will be insufficient to pay the estimated Finance Amount for a Reference Period.

Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and other financing expenses of the Issuer. Based on the Fair Allocation Amount provided by the Province, from July 1, 2017 until April 30, 2021 (the "**Moratorium Period**"), no Clean Energy Adjustment amounts are permitted to be collected from Specified Consumers. During the Moratorium Period, the sole source of funds for payment on the Senior Notes, and the Issuer's other Carrying Costs, will be the amounts the IESO is obligated to pay under the Regulations during such period. See *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

Non-bypassability:

The FHPA mandates that an amount in respect of the Clean Energy Adjustment shown on an invoice issued to a Specified Consumer is determinative of the amount of the consumer's indebtedness resulting from the Clean Energy Adjustment, and is irrevocable on invoicing such Specified Consumer and may not be set off or bypassed. See *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

Payment of Carrying Costs until July 31, 2021:

The IESO, which is rated A(high) by DBRS and Aa2 by Moody's, is required under the Regulations to pay and remit to the Issuer any amounts charged to the IESO by the Issuer in respect of Carrying Costs incurred in respect of the period from June 1, 2017 to July 31, 2021. Under the Regulations, Carrying Costs include all funding costs, such as interest on the Senior Notes, and other expenses of the Issuer, other than repayment of principal on any debt obligations of the Issuer (such as principal on the Senior Notes).

Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's carrying costs statement, the IESO is required to deliver the amount specified therein to the Issuer. See *"The Transferor and Servicer"*. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring September 30, 2022, which is permitted to be used to pay the Issuer's Carrying Costs. The amounts paid by the IESO to fund these Carrying Costs will be recorded by the IESO in the variance account and form part of the Regulatory Asset that the IESO is expected to Transfer to the Issuer in a subsequent period. Upon such Transfer, the Issuer will acquire a corresponding Investment Interest.

As security for the performance of its obligation under the Regulations to pay the Issuer's Carrying Costs, the IESO has granted the Issuer a first-priority security interest in all accounts receivable owing to the IESO from Electricity Vendors, including amounts owing with respect to the global adjustment charge. See *"The Transferor and Servicer"*. For a further description of the global adjustment charge, see *"The Electricity Industry in Ontario — Electricity Prices"*.

Acceleration of Indebtedness:

A holder of Senior Notes must rely solely on the Clean Energy Adjustment amounts collected and any available reserve accounts for repayment of principal on the Senior Notes. Accordingly, if all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable during the Moratorium Period and before its scheduled payment date, maturity date or redemption date, the source of funds for repayment of principal may be limited.

If all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable after the Moratorium Period and before its scheduled payment date, maturity date or redemption date, then the estimated Finance Amount used by the Financial Services Manager to determine the Clean Energy Adjustment for a period will be determined without regard to the fact that such amount has become due and payable, unless and only to the extent that the amount of the Clean Energy Adjustment is capable of being increased based on the Fair Allocation Amount for such period. See *"— Fair Allocation Amount & Financing Plan"* below. However, upon such acceleration, all accelerated Senior Notes will be repaid in full before any further payments of principal are made to holders of subordinated indebtedness, including the subordinated debt held by OPG; therefore, collections of the Clean Energy Adjustment that would otherwise have been available to repay the principal amount of subordinated indebtedness in the absence of acceleration of the Senior Notes will instead be applied to repay accelerated Senior Notes. See "— *Subordinated Debt"* below.

Statutory Duties of the OEB:

The OEB is an independent public regulatory agency established under the *Ontario Energy Board Act, 1998*. The *Ontario Energy Board Act, 1998* provides the OEB with the authority to regulate participants (e.g. OEB licensees) in Ontario's electricity market, including the activities

of transmitters and distributors as well as the IESO (all Electricity Vendors for the purposes of the FHPA).

Under the Regulations, the OEB is responsible for determining the rates at which Specified Consumers are to be invoiced to recover the Clean Energy Adjustment. The rates are expressed as a cent per kWh rate and are determined by the OEB by dividing (i) the aggregate Clean Energy Adjustment as determined by the Financial Services Manager in respect of the relevant period of time by (ii) a forecast of electricity consumption of Specified Consumers in respect of such period, based on forecast information provided by the IESO to the OEB. See *"— Statutory and Servicing Duties of the IESO"* below.

Statutory Duties of Electricity Vendors:

Electricity is distributed to almost all Specified Consumers in Ontario through a network of local distributors. See "*The Electricity Industry in Ontario*" and the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Ontario electricity market and these local distributors.

The FHPA requires Electricity Vendors to invoice their Specified Consumers for a charge in respect of the Clean Energy Adjustment, as determined by applying the rate set by the OEB, which is required to be included as a separate line item on each invoice sent to Specified Consumers. Electricity Vendors are also required to collect, as agent of all Financing Entities, of which the Issuer is the first, amounts in respect of the Clean Energy Adjustment, deposit such amounts into a segregated account established for the purpose of receiving those amounts and hold such amounts in trust for the benefit of the Financing Entities until remitted to the IESO for the benefit of the Financing Entities (initially, only the Issuer). If an Electricity Vendor does not receive payment in full of an invoice issued to a Specified Consumer, the Electricity Vendor shall allocate any payment received to the Clean Energy Adjustment and the other amounts payable under the particular invoice in the manner set out in the FHPA. It is a deemed condition of their distribution license issued by the OEB that Electricity Vendors comply with the FHPA.

As security for any failure of an Electricity Vendor that does not have an investment grade rating from DBRS and Moody's to remit Clean Energy Adjustment amounts collected under the FHPA, the IESO is required, pursuant to the Master Transfer and Servicing Agreement, to provide to the Issuer on or prior to the first day of the first billing period when the Clean Energy Adjustment is being invoiced to Specified Consumers, a letter of credit from a provider that satisfies the Rating Agency Condition or a performance guarantee or such other form of security that is acceptable to the Issuer and that satisfies the Rating Agency Condition. The amount of the security required is based on a formula as set out in the Master Transfer and Servicing Agreement and will be equal to: (a) (i) 50% of estimated Clean Energy Adjustment amounts that are to be collected over a twelve-month period by all such non-investment grade rated Electricity Vendors, (ii) multiplied by a fraction equal to 45/365 (representing the 45-day period during which funds are expected to be held by such non-investment grade rated Electricity Vendors prior to being remitted to the Issuer); or (b) such

other lesser amount that satisfies the Rating Agency Condition. See *"The Transferor and Servicer."*

Management Duties of OPG:

Pursuant to the Management Agreement, the Issuer has delegated to OPG, as Manager, all of the powers and duties of managing the Issuer, including determining whether to incur Funding Obligations (including Offerings of Senior Notes) to acquire an Investment Interest or refinance existing Funding Obligations; negotiating and executing, on behalf of the Issuer, all agreements; maintaining accounts and banking records; preparing any offering documents to be furnished by the Issuer to prospective purchasers of Funding Obligations (including the Senior Notes); and preparing financial statements and tax filings on behalf of the Issuer.

In addition to the powers and duties delegated to the Manager under the Management Agreement, OPG is also required to comply with its duties as Financial Services Manager under the FHPA, including preparing the Financing Plan to evaluate whether potential Funding Obligations should be incurred for the purposes of Financing Entities acquiring and financing an Investment Interest, determining the amount of the Clean Energy Adjustment inclusive of the calculation of any True-up Amount, notifying the OEB of the Clean Energy Adjustment inclusive of any True-up Amount and ensuring that Funding Obligations are incurred in a manner consistent with the Financing Plan. OPG may also administer the Investment Interest on behalf of the Issuer and any other Financing Entities. Subject to OEB approval and as provided for in the FHPA, OPG is entitled to charge the Issuer a fee, comprised of a base fee and a variable fee, to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer or in relation to the establishment, management and administration of the Issuer and its Investment Interest. The priority of the Manager's entitlement to fees is subject to the payment priorities set forth in the Master Trust Indenture. The Province of Ontario is the sole shareholder of OPG and thereby has the power to determine the composition of OPG's board of directors. See *"The Electricity Industry in Ontario — Key Industry Participants — Ontario Power Generation Inc."* and *"The Manager"*.

Statutory and Servicing Duties of the IESO:

Following the Moratorium Period, the IESO is required, as agent of the Financing Entities (of which the Issuer is currently the only one), to receive Clean Energy Adjustment amounts paid to it from Electricity Vendors, deposit such amounts promptly into a segregated account established for the purpose of receiving amounts in respect of the Clean Energy Adjustment, hold such amounts in trust on behalf of the Financing Entities (of which the Issuer is currently the only one) and remit such amounts on a monthly basis, subject to daily remittance being required in certain limited circumstances. Pursuant to the Master Transfer and Servicing Agreement, monthly remittances of amounts received in respect of the Clean Energy Adjustment will occur on the 18th business day of each calendar month. In addition, the IESO will provide certain reporting and other servicing duties in favour of the Issuer, including providing forecast information to the OEB and the Issuer, making commercially reasonable efforts to cause Electricity Vendors to establish segregated accounts into which Clean Energy Adjustment amounts are deposited, remitting such amounts and fulfilling certain additional reporting requirements. Generally, all servicing duties provided by the IESO to the Issuer are provided at no

cost to the Issuer. However, the Issuer will reimburse the IESO for certain direct costs relating to the performance by the IESO of its duties and obligations under the Master Transfer and Servicing Agreement that are otherwise not recovered or recoverable by the IESO under the *Electricity Act, 1998* (Ontario). See *"The Transferor and Servicer."*

Change of Law Protection Agreement:

Pursuant to the Change of Law Protection Agreement, upon a Protection Event and delivery by the Indenture Trustee of a written payment demand, the Province of Ontario is required to make payments in respect of all "Approved Obligations" when due and payable into the Protection Account (which, provided that the Notes are Approved Obligations, includes payments of amounts that are due and payable in respect of Notes), although the amount of the Province of Ontario's payment obligations in a particular period may differ depending on whether an Acceleration has occurred. See *"Change of Law Protection Agreement"*. The Issuer and the Indenture Trustee must ensure that amounts deposited into the Protection Account are applied to pay Specified Creditors to whom amounts are due and payable under an Approved Obligation in accordance with the provisions of the Master Trust Indenture. See *"Capital Markets Platform"*.

Generally, an "**Approved Obligation**" under the Change of Law Protection Agreement includes all obligations of the Issuer (except for amounts required to be deposited into any capital account or finance reserve account, or any obligation for the Issuer to pay itself any remaining amounts in the Collection Account pursuant to the Master Trust Indenture), including obligations of the Issuer under the Notes, subject to the satisfaction of certain adherence conditions for those obligations that constitute "Certified Primary Obligations", as defined in the Change of Law Protection Agreement. Subject to certain limited exceptions for refinancings, a "Certified Primary Obligation" includes all Notes, as well as certain other obligations of the Issuer under derivative agreements or under contracts with terms of greater than three years that are not terminable by the Issuer on less than three years' notice under which the Manager, acting reasonably, expects aggregate payments by the Issuer during the term of the contract in an amount in excess of $5,000,000.

Protection Event:

Each of the following constitutes a "**Protection Event**" for purposes of the Change of Law Protection Agreement:

(a)

(i) the Ontario legislature repeals, and does not replace on an equivalent basis, or amends, the FHPA or any portion thereof, as in effect on the date hereof;

(ii) the Ontario legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals, and does not replace on an equivalent basis, the regulations made under the FHPA or any portion thereof, as in effect on the date hereof;

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or

commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof; or

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province of Ontario or an entity controlled by the Province of Ontario,

in each case, that (X) adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in any of clauses (i) to (v) above, or (Y) adversely affects the enforceability of, or adversely changes, the terms and conditions of the Change of Law Protection Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the FHPA, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable and that has the effect of the Issuer not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in this paragraph (b).

The occurrence of a Protection Event in and of itself will not result in the acceleration of the Senior Notes.

The Province of Ontario's obligation to make payments under the Change of Law Protection Agreement upon a Protection Event and subsequent delivery of a written payment demand by the Indenture Trustee is referred to as the "**Limited Guarantee**".

Upon paying amounts when due and payable in respect of Approved Obligations, including the Senior Notes, into the Protection Account, the Province of Ontario will be subrogated and entitled to all of the rights and interests of applicable Specified Creditors (including

Noteholders) under and in respect of the Approved Obligations to the extent of the amounts paid.

Under the Change of Law Protection Agreement, the right to deliver a written payment demand on occurrence of a Protection Event to enforce the Limited Guarantee is the only remedy available to the Indenture Trustee (and to Specified Creditors, to the extent they are permitted to exercise any rights, interests or elections under and in accordance with the Master Trust Indenture). Specified Creditors are not permitted to exercise any rights, interests, or elections under the Change of Law Protection Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Master Trust Indenture (in effect as of the date hereof).

Approved Obligations & Adherence Conditions:

Under the Management Agreement, the Manager is required to ensure that all obligations of the Issuer are and remain Approved Obligations under the Change of Law Protection Agreement.

The Limited Guarantee shall apply to all Certified Primary Obligations that meet the following adherence conditions:

(a) the Certified Primary Obligation when incurred is an Obligation Secured under the Master Trust Indenture;

(b) OPG, as Financial Services Manager, delivers a certificate to the Indenture Trustee on or before the incurrence of such obligation certifying that it has complied with all of its obligations to the Province of Ontario and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation; and

(c) the Province of Ontario has not provided a Suspension Notice to the Indenture Trustee, OPG and the Issuer.

All Senior Notes shall constitute Obligations Secured under the Master Trust Indenture and therefore condition (a) above will be satisfied for all Offerings of Senior Notes. It will be a condition to any Offering of Senior Notes that OPG deliver the adherence certificate required pursuant to (b) above or that the Province of Ontario designates in writing that the Senior Notes are Approved Obligations. The Change of Law Protection Agreement provides that delivery of an adherence certificate shall be determinative of satisfaction of this adherence condition, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such certificate may be relied upon as conclusive evidence of same.

Suspension Notice & Post-Suspension Refinancing

The Change of Law Protection Agreement will remain in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, including all Senior Notes.

However, in the following limited circumstances, the Province of Ontario may deliver a Suspension Notice under the Change of Law Protection Agreement: (i) if there has been an acceleration of Funding

Obligations in accordance with the provisions of the Master Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement; (ii) if there has been an uncured breach of covenant, uncured default in performance, or uncured representation, warranty or certification that proves to be incorrect in any material respect on the date made, in each case of OPG (or its officers, in the case of a certification) to the Province of Ontario in connection with its obligations to the Province of Ontario pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations; or (iii) if the Financial Services Manager is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove the Financial Services Manager as the Manager.

Upon delivery of a Suspension Notice, the Limited Guarantee shall not apply in respect of obligations incurred by the Issuer (excluding certain refinancings of Approved Obligations as described below) and certain material amendments of outstanding obligations of the Issuer.

Notwithstanding delivery of a Suspension Notice, the Limited Guarantee shall continue to apply to: (i) any Approved Obligations that were incurred prior to the suspension and (ii) any Funding Obligations incurred by the Issuer following a suspension that satisfy the terms and conditions of the Change of Law Protection Agreement, provided that the proceeds of such incurrence are to be used for the purpose of repaying one or more series of Approved Obligations. Accordingly, subject to compliance with the Change of Law Protection Agreement, any Senior Notes or other Funding Obligations that may be issued following a suspension to refinance Senior Notes that were Approved Obligations issued prior to a suspension will continue to have the benefit of the Limited Guarantee.

See *"Change of Law Protection Agreement"*.

Fair Allocation Amount & Financing Plan:

The Fair Allocation Amount is an amount calculated under the FHPA by the Minister of Energy in respect of each Reference Period that, among other things, allocates the estimated value of Clean Energy Costs in proportion to the relative attribution of the value of Clean Energy Benefits among Specified Consumers. See *"Ontario's Fair Hydro Plan"*.

The Financial Services Manager is required to prepare a Financing Plan under the FHPA to evaluate whether potential Funding Obligations should be incurred by the Issuer or other Financing Entities for the purposes of acquiring an Investment Interest or for the purposes of a Refinancing. In preparing the Financing Plan, the Financial Services Manager must have regard to certain principles, including that Funding Obligations should be incurred such that, along with any Funding Obligations already incurred, the estimated Finance Amount that would, subject to any Refinancing, become due and payable during a Reference Period will reasonably align with the Fair Allocation Amount

	determined in respect of such Reference Period as of the date the Funding Obligations were incurred. In other words, the Financing Plan should contemplate the issuance of Funding Obligations from time to time, with terms that would result in Clean Energy Adjustments being payable by Specified Consumers that align with the purposes of the FHPA. Notwithstanding the above, the FHPA provides that each Funding Obligation is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated Finance Amount with the Fair Allocation Amount. The Financing Plan allows for the issuance of a variety of short and long term debt. See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Financing Plan and the Fair Allocation Amount.
Subordinated Debt:	Concurrent with every issuance of senior debt by the Issuer, including any Offering of Senior Notes, it is expected that OPG will subscribe for subordinated debt and junior subordinated debt of the Issuer in an amount equal to no more than 49% of all of the Issuer's Funding Obligations, approximately 44% of which is expected to be funded through equity investments in OPG by the Province of Ontario with the remaining 5% being funded from OPG's available funds, including all or a portion of the proceeds of any offerings by OPG of medium term notes. Under the Master Trust Indenture, the Issuer will be required at all times to ensure that: (i) the aggregate outstanding principal amount of all subordinated debt and junior subordinated debt be not less than 35% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations; and (ii) the aggregate outstanding principal amount of all junior subordinated debt be not less than 10% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations.
Use of Proceeds:	The proceeds from each Offering may be used to (i) acquire an Investment Interest pursuant to the FHPA and the Master Transfer and Servicing Agreement, (ii) refinance indebtedness of the Issuer (including other Series of Senior Notes), (iii) pay Offering and related costs of the Issuer and (iv) fund specific reserve accounts as required. The Term Sheet for each Offering of Senior Notes will identify the amount of proceeds that will be used for such specified purposes.
Interest Rate:	Fixed, floating or otherwise, as determined by the Issuer and as set out in the Term Sheet applicable to such Offering.
Interest Payment Dates:	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Principal Accumulation Amount(s):	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.

Principal Payment Date(s) and Principal Payment Amount(s):	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Principal Payment Default Date:	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Ranking:	Subject to the applicable payment waterfalls set out in the Master Trust Indenture, the Senior Notes will be direct, secured and unsubordinated obligations of the Issuer, and will at all times rank equally and proportionately with each other and all other senior indebtedness issued by the Issuer from time to time pursuant to the Indenture, without discrimination or preference. See "*Capital Markets Platform — Subordination Provisions*", "*Capital Markets Platform — Acceleration and Remedies — Payment Waterfall Upon Acceleration"*.
Security:	All indebtedness and other obligations of the Issuer, including the Senior Notes, will be secured by a first ranking charge against all property and assets of the Issuer, including each Issuer Account (and all funds and property credited thereto), all rights and benefits, and powers of the Issuer under the FHPA and all rights, benefits and power under all Program Agreements, including under the Limited Guarantee. Under the Master Trust Indenture, the Issuer is required to maintain certain reserves: the IESO Cash Reserve Deposit Amount (an amount equal to the aggregate of (i) 0.50% of the aggregate amount of all outstanding senior, subordinated and junior subordinated funding obligations determined as of April 15, 2021, and (ii) an amount estimated as the amount of Carrying Costs payable during May, June and July 2021, provided such amount in (ii) satisfies the Rating Agency Condition) will be deposited by the IESO by April 30, 2021. There is also a Program Cash Reserve Account which will begin to be funded from Clean Energy Adjustments following the Moratorium Period until it reaches the Program Cash Reserve Required Amount (on each Payment Date on and after May 15, 2021, an amount equal to 0.50% of the aggregate amount of all outstanding senior, subordinated and junior subordinated funding obligations determined as of such date, or such lesser amount that satisfies the Rating Agency Condition). Funds in the IESO Cash Reserve Account will be applied to pay Carrying Costs after April 2021 to the extent that funds can be so applied such that the aggregate amount of funds in the IESO Cash Reserve Account and Program Cash Reserve Account is maintained at the Program Cash Reserve Required Amount. In connection with the incurrence of any Series of Notes, the Issuer may (i) establish a Series Account for purposes of accumulating funds used to make principal payments or for purposes of reserving funds to pay finance charges, and/or (ii) enter into a credit enhancement agreement or liquidity agreement. Whether a Series of Senior Notes has the benefit of a Series Account or any credit enhancement agreement or liquidity agreement will be determined from time to time by the Issuer and set out in the Term Sheet applicable to such Offering. See "*Capital Markets Platform — Security*".
Priority of Payments:	Prior to an Event of Default and acceleration of the Issuer Funding Obligations (other than Derivative Funding Obligations), amounts

available for disbursement will generally be applied in the following order of priority:

- taxes;
- trustee fees, expenses and reimbursement amounts (up to a specified cap);
- payment of or accumulations in respect of interest for Senior Funding Obligations, *pari passu* with payments under derivative agreements (other than termination payments);
- payment of or accumulations in respect of interest for Subordinated Funding Obligations;
- payments of or accumulations in respect of interest for Junior Subordinated Funding Obligations;
- payment of or accumulations in respect of principal for Warehouse Obligations (see *"Warehouse Facilities"*);
- accumulations in respect of principal for Senior Funding Obligations (other than Warehouse Obligations), *pari passu* with termination payments under derivative agreements (other than as provided below);
- fees and other amounts (other than principal and interest) on Senior Funding Obligations;
- the Manager's fees, expenses and reimbursement amounts;
- payment of or accumulations in respect of principal for Subordinated Funding Obligations;
- fees and other amounts (other than principal and interest) on Subordinated Funding Obligations;
- payment of or accumulations in respect of principal for Junior Subordinated Funding Obligations;
- replenishment of Program Cash Reserve Account;
- replenishment of Series Accounts (other than accounts established for Subordinated Funding Obligations or Junior Subordinated Funding Obligations);
- replenishment of Series Accounts established for Subordinated Funding Obligations;
- fees and other amounts (other than principal and interest) on Junior Subordinated Funding Obligations;
- replenishment of Series Accounts established for Junior Subordinated Funding Obligations;
- termination payments under derivative agreements where the counterparty is the defaulting party or sole affected party;
- beneficiaries of the Issuer;
- indemnity amounts owing to the Manager; and
- all other obligations not specifically dealt with above.

After an Event of Default and acceleration of the Issuer Funding Obligations (other than Derivative Funding Obligations), amounts available to the Issuer or otherwise held by the Indenture Trustee will generally be applied in the following order of priority:

- taxes;
- trustee fees, expenses and reimbursement amounts;
- interest, fees and other amounts (other than principal) on Senior Funding Obligations and payments under derivative agreements (other than termination payments), *pari passu*,

then Subordinated Funding Obligations (other than principal) and then Junior Subordinated Funding Obligations (other than principal);
- principal for Warehouse Obligations;
- *pari passu*, principal on Senior Funding Obligations (other than Warehouse Obligations) and termination payments under derivative agreements (other than where the counterparty is the defaulting party or sole affected party);
- the Manager's fees, expenses and reimbursement amounts;
- principal for Subordinated Funding Obligations and then Junior Subordinated Funding Obligations; and
- all other obligations not specifically dealt with above.

Notwithstanding the above, amounts held in a Series Account will be applied in accordance with the relevant Funding Obligation Agreement and amounts held in the Protection Account will be applied in accordance with the specific written payment statement and would not otherwise modify the provisions of the applicable payment waterfalls set out in the Master Trust Indenture.

See "*Capital Markets Platform — Payment Waterfall Prior to Acceleration*" and "*Capital Markets Platform — Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

Currency: Senior Notes may be denominated in any currency. The currency for a particular Series of Senior Notes will be set out in the Term Sheet applicable to such Offering.

Minimum Subscription: Minimum principal amount of 100,000 units of the applicable currency and integral multiple of 1,000 units of the applicable currency. The minimum subscription and denomination of the Senior Notes may be varied as set out in the Term Sheet applicable to such Offering.

Optional Redemption: Senior Notes may be subject to redemption prior to maturity at the times and redemption price set out in the Term Sheet applicable to such Offering.

Purchase for Cancellation: The Issuer may, at any time, purchase at any price all or any of the Senior Notes in the market or by invitation for tenders or by private contract. Any Senior Notes so purchased shall be cancelled.

Distribution Method: The Senior Notes may be offered and sold by the Issuer on a private placement basis in Canada to "accredited investors" (as such term is defined in NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) who purchase the Senior Notes as principal and that are not individuals unless those individuals are also "permitted clients" (as such term is defined in NI 31-103).

By purchasing Senior Notes and accepting a purchase confirmation in respect thereof, a purchaser will be agreeing with and representing to the Issuer and any Agent participating in the trade that the purchaser is an accredited investor purchasing as principal along with certain other matters. See *"Representations and Agreements of Purchasers"*.

Book-Entry Form:	The Senior Notes will be delivered and recorded in book-entry form only through CDS or another depository selected by the Issuer in accordance with the Master Trust Indenture. Each Series of Senior Notes will be evidenced by a global note held by such depository, registered in its name or the name of its nominee, on behalf of all holders of such Series of Senior Notes. Subject to limited exceptions, no purchasers of Senior Notes will be entitled to a certificate or other instrument from the Issuer or CDS evidencing that purchaser's ownership thereof, and no holder of a Senior Note will be shown on the records maintained by CDS except through book-entry accounts of a participant of CDS acting on behalf of owners. See *"Depository Services"*.
Resale Restrictions:	Resale of the Senior Notes will be subject to restrictions under applicable securities legislation which vary depending on the relevant jurisdictions. **The Senior Notes may only be sold on a basis that is in accordance with, or pursuant to an exemption from, the prospectus requirements of applicable provincial securities laws and only through an appropriately registered dealer or pursuant to an exemption from the dealer registration requirements of applicable provincial securities laws.** See *"Restrictions on Resale"*.
Risk Factors:	The purchase of the Senior Notes is subject to risks. Prospective investors should carefully consider the risk factors and other information in this confidential shelf offering memorandum and the Term Sheet for each Offering before purchasing Senior Notes, including the discussion set forth under *"Risk Factors"*, and any additional disclosure set out in the Term Sheet for each Offering.
Indenture Trustee:	BNY Trust Company of Canada.
Issuer Trustee:	Computershare Trust Company of Canada.

THE ELECTRICITY INDUSTRY IN ONTARIO

General Overview

The following summary of the electricity industry in Ontario does not purport to be comprehensive or definitive. It is a general and high-level overview of the history and manner in which the industry operates, including how real-time energy supply needs are met.

The Ontario electricity industry is principally comprised of three components:

- *Generation*: the production of electricity from various forms of energy, such as wind, solar, hydropower, natural gas and nuclear;
- *Transmission*: the transfer of electricity across high-voltage power lines from generating facilities to local areas and large directly connected consumers; and
- *Distribution*: the delivery of electricity within local areas to homes and businesses using lower voltage power lines.

The structure of Ontario's electricity industry underwent significant changes in the late 1990s and early 2000s. Prior to April 1, 1999, Ontario Hydro, a Crown corporation, supplied most of Ontario's electricity generation and transmission needs. Consistent with initiatives taken in other electricity markets in North America at the time, the electricity industry was restructured in order to encourage greater competition. Ontario's competitive wholesale electricity market was opened by the IESO on May 1, 2002 and the market is used to administer the purchase and sale of wholesale electricity in Ontario.

Since the opening of the competitive market, Ontario's power supply mix has experienced significant change. As a result of provincial government policy, coal-fired generation has been eliminated and a significant amount of new capacity has been added as a result of new natural gas powered capacity, new wind and solar capacity and additional baseload nuclear generation capacity. These changes have resulted in significantly increased costs of electricity to consumers in Ontario.

While electricity supply in Ontario has increased, the province's electricity demand as reported by the IESO has fallen over the last decade, largely due to changes in economic conditions and conservation measures. Moreover, the addition of smaller scale wind and solar generation embedded in the distribution system has reduced the level of demand that is supplied by transmission-connected generation. Reducing electricity demand by encouraging conservation and demand management has been a key part of the Government of Ontario's plan to reduce greenhouse gas emissions from the province's electricity sector. Shorter-term fluctuations in electricity demand are impacted by variations in seasonal weather conditions.

Real-time energy supply needs are met through the wholesale electricity market administered by the IESO. Generators offer their generation into this real-time energy market, or "spot market", to be scheduled and dispatched by the IESO. The IESO receives hourly offers from electricity generators and importers to provide energy, along with bids by domestic loads and exporters, and then schedules the lowest-cost offers and bids needed to meet demand. Most generators in Ontario also have bilateral contracts with the IESO or receive regulated prices, or payment amounts, that provide for payments in addition to wholesale market settlements that are paid to generators.

Key Industry Participants

Ontario Power Generation Inc.

OPG is a corporation formed under the *Business Corporation Act* (Ontario). The Province of Ontario is the sole shareholder of OPG and thereby has the power to determine the composition of OPG's board of directors. In 1999, when Ontario Hydro was split up in anticipation of deregulation, OPG was formed to hold the generation assets

of the former Ontario Hydro. OPG has divested itself of certain of those assets, but remains the largest generator in Ontario.

OPG is Ontario's largest clean energy generator. As at the date hereof, OPG operated two nuclear generating stations, 66 hydroelectric generating stations, three thermal generating stations, and one wind power facility. OPG's mandate is to provide low cost power in a safe, clean, reliable and sustainable manner for the benefit of its customers and its sole shareholder, the Province of Ontario. OPG's electricity generation accounts for a significant portion of the total energy generated and injected into Ontario's electricity transmission system. OPG is one of the most experienced and largest generating companies in Canada with a broad set of relationships and capabilities. OPG is also experienced in successful complex financing arrangements of large capital projects, including the recently completed Lower Mattagami project.

Additional information about OPG is provided in the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum and is available at www.opg.com.

The IESO

The IESO is a non-share capital corporation created under the *Electricity Act, 1998* (Ontario). It was created as an amalgamation of two predecessor entities, one of which was also called the IESO ("**Predecessor IESO**") and the other of which was called the Ontario Power Authority ("**OPA**"). Predecessor IESO was responsible for managing the reliability of the provincial transmission system and operating the wholesale electricity markets in Ontario. The OPA was formed to plan the provincial power system and to procure electricity resources. The OPA entered into bilateral power purchase contracts with generators and other electricity resource providers. These two entities were merged statutorily on January 1, 2015 into the IESO, which now carries out all of these functions. As a non-share capital corporation, the IESO does not have any shareholders or owners and is governed by an independent board of directors appointed by the Minister of Energy.

Additional information about the IESO is provided in the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum and is available at www.ieso.ca.

The Ontario Energy Board

The OEB is a non-share capital corporation created under the *Ontario Energy Board Act, 1998*. The OEB is an independent and impartial public regulatory agency. The *Ontario Energy Board Act, 1998* provides the OEB with the authority to license and regulate the participants in Ontario's electricity market, including the activities of the IESO, transmitters and distributors, which are also Electricity Vendors for the purposes of the FHPA.

The OEB has the following objectives in relation to the electricity industry:

(a) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(b) to promote the education of consumers;

(c) to promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry;

(d) to promote electricity conservation and demand management in a manner consistent with the policies of the Province of Ontario, including having regard to the consumers' economic circumstances;

(e) to facilitate the implementation of a smart grid in Ontario; and

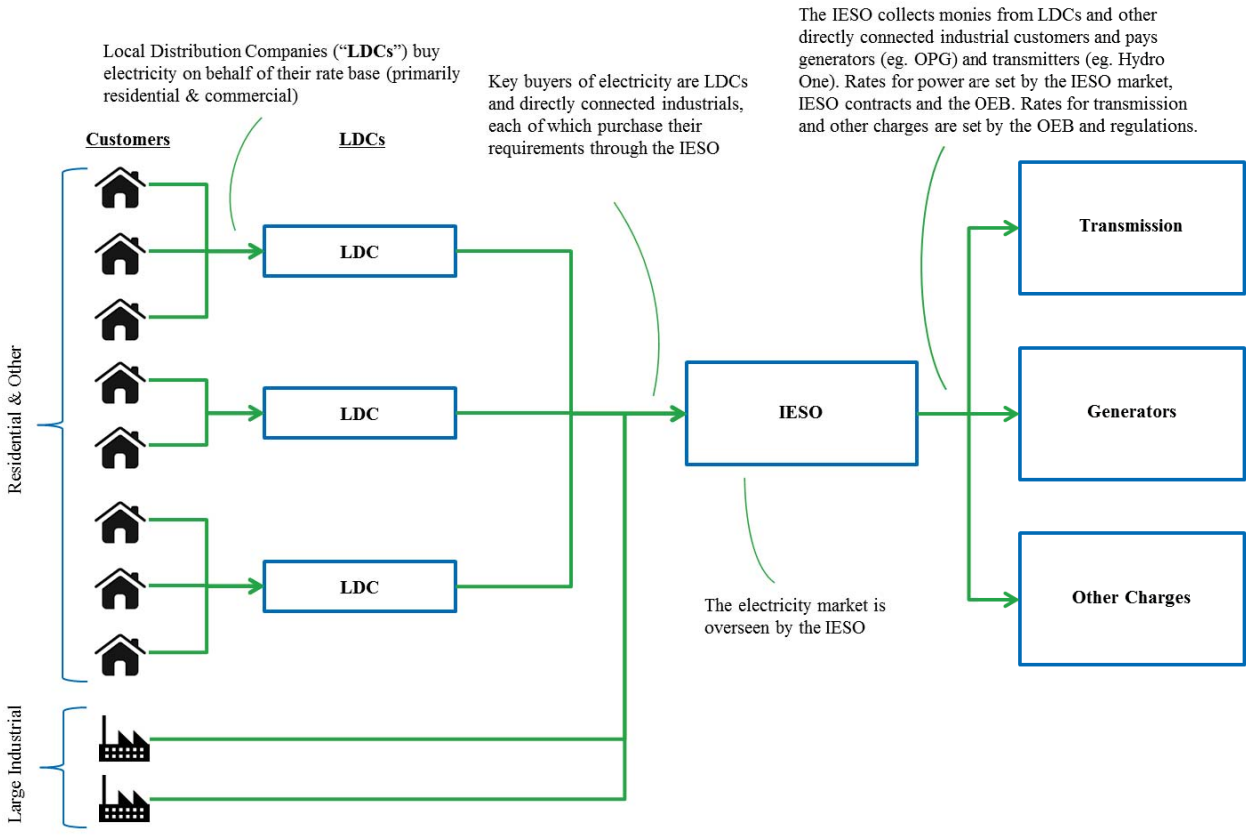
(f) to promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Ontario government, including the timely expansion or

reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

The OEB is responsible for, among other things, approving transmission and distribution rates in Ontario, as well as payment amounts for OPG's nuclear and hydroelectric generation. It also approves the construction, expansion, or reinforcement of transmission lines greater than two kilometres in length, as well as mergers, acquisitions, amalgamations and divestitures involving distributors, transmitters and other entities which it licenses. The activities of transmitters and distributors are subject to the conditions of their transmission and distribution licenses, as applicable, which require compliance with a number of industry codes issued by the OEB, as well as with the market rules that are administered by the IESO. These codes and other requirements prescribe minimum standards of conduct and service for licensed participants in the electricity market.

Electricity Vendors

As part of the restructuring of Ontario's electricity industry, the province's municipally-owned electricity distributors were reorganized into separate business corporations. These distributors are typically referred to in Ontario as local distribution companies, or "**LDCs**". An LDC is responsible for distributing electricity to customers in its OEB-licensed service territory, and in some cases to other distributors. A service territory may cover large portions or all of a particular municipality, or an otherwise-defined geographic area. Distribution customers include residential, commercial and industrial end-users, such as governments, schools and hospitals. At multi-unit buildings within an LDC's service territory, there may be a unit sub-metering service provider that provides metering services for each individual unit. These sub-metering service providers are also licensed by the OEB. The following diagram depicts the flow of funds between the key industry participants:



See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding LDCs.

Electricity Prices

There are main components that make up the commodity cost of electricity in Ontario, the Hourly Ontario Energy Price ("**HOEP**") and the global adjustment charge.

- The HOEP is set by the IESO based on bids and offers in the real-time energy market that is administered by the IESO.

- The global adjustment charge is established monthly by the IESO in accordance with regulations and is the amount necessary to pay certain other costs to generators and other suppliers that are not compensated by the HOEP, including the cost of energy supply contracts with generators and payments made to OPG pursuant to OEB-established payment amounts.

Prior to the FHPA being passed, the amount collected generally over an annual basis by the IESO on account of the HOEP and global adjustment charge was approximately equal to the IESO's current payables to generators and other electricity resource suppliers, subject to certain periodic true-ups, fees and adjustments to keep the IESO whole.

At the request of the Minister of Energy in 2004, the OEB created the "**Regulated Price Plan**" or "**RPP**", which establishes time-of-use and tiered prices primarily for residential, farm and small commercial customers. Prior to the introduction of the FHPA, the RPP prices were reviewed and changed every six months by the OEB based on an updated forecast and any accumulated differences between the amounts collected from RPP consumers and the amount paid to generators in previous periods. RPP prices are now established in accordance with the FHPA. Most Specified Consumers are billed for electricity based on the Regulated Price Plan, although some Specified Consumers may be invoiced the HOEP and the global adjustment charge by their LDC for electricity they have consumed. The IESO has also stated that there is one Specified Consumer connected directly to the transmission system and settled by the IESO, not an LDC.

While most residential and small commercial consumers in Ontario choose to purchase their electricity under the RPP, consumers in Ontario may instead choose to buy their electricity from a licensed retailer pursuant to a retail contract that provides a rate for electricity over a specified period. These customers are also required to pay the global adjustment charge in addition to the rate under their retail contract.

In addition to the HOEP and global adjustment charges, or RPP prices, as the case may be, electricity consumers pay a number of other uplifts and charges, such as transmission and distribution tariffs.

ONTARIO'S FAIR HYDRO PLAN

Background

On June 1, 2017, the Ontario Legislature passed the FHPA. From July 1, 2017 until April 30, 2018, electricity rates payable by Specified Consumers (a category of consumers that generally is comprised of residential consumers, small businesses and farms) will in effect be the rate that would result in a representative consumer being charged an invoice amount that is 25%[3] less than the rate that would otherwise have been determined by the OEB for that period absent Ontario's Fair Hydro Plan (such adjustment, together with the further adjustments described below in this section, the "**Fair Adjustment**").

Under the FHPA, a "**Specified Consumer**" is:

(a) a person who has an account with an Electricity Vendor for the supply of electricity in the Province of Ontario and meets any one of the following criteria:

[3] The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax previously granted by the Ontario government.

(i) the person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed by the Regulations;

(ii) the person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed by the Regulations;

(iii) the person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22(6) of that Act;

(iv) the person's account with the Electricity Vendor relates to

(A) a dwelling;

(B) a property within the meaning of the *Condominium Act, 1998*;

(C) a residential complex within the meaning of subsection 2(1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act; or

(D) a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*; or

(v) the person satisfies such criteria as may be prescribed by the Regulations; or

(b) such other person as may be prescribed by the Regulations.

Electricity bills for Specified Consumers for the period between May 1, 2018 and April 30, 2019 are to increase by the rate of inflation (or remain unchanged in the event inflation is negative). Permitted increases after April 30, 2019 will be determined by the Ontario government through additional regulations, though the Ontario government has indicated that rate increases will be held to the rate of inflation until 2021.

Under the FHPA, OPG is appointed as Financial Services Manager and given the authority to, among other things, establish, or cause to be established, one or more Financing Entities to incur Funding Obligations to fund the acquisition of an Investment Interest. The Issuer is a Financing Entity under the FHPA and the Senior Notes are Funding Obligations under the FHPA.

Regulatory Asset

Under the FHPA, each month the IESO determines the shortfall that results from the Fair Adjustment as compared to what the IESO would have been entitled to receive without the Fair Adjustment and records this amount, together with the costs of financing the shortfall, the amounts charged to the IESO by the Issuer in respect of the Carrying Costs of the Issuer [and certain other amounts] ***[NTD: IESO to confirm what other amounts are included]*** in a variance account. The IESO has the right, exercisable in accordance with the FHPA and the Regulations, to recover the balance recorded in the variance account from Specified Consumers (such right, the "**Regulatory Asset**"). The FHPA provides that the OEB shall, from time to time and in accordance with the Regulations, determine and set rates payable by Specified Consumers to allow for the IESO to recover the balance recorded in the variance account and that the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from Specified Consumers before May 1, 2021. The IESO may, in accordance with the FHPA, Transfer a specified portion of the Regulatory Asset to a Financing Entity for a cash purchase price equal to the amount recorded in the variance account in respect of such specified portion of the Regulatory Asset. Upon receipt by the IESO of payment by the Financing Entity, the IESO retains no further right, title or interest in the corresponding Investment Interest.

Investment Interest

By acquiring an Investment Interest, the Financing Entity is financing a portion of the shortfall that results from the Fair Adjustment and, as an owner of the Investment Interest, will be entitled to recover its Finance Amount (the costs of such financing). While a Financing Entity may choose to acquire an Investment Interest by accepting a Transfer of the corresponding specified portion of a Regulatory Asset, it is under no obligation to do so.

If the IESO and a Financing Entity agree to the Transfer of a specified portion of the Regulatory Asset from the IESO, such Transfer results in the creation of a current and irrevocable property right that is immediately vested in the Financing Entity, free and clear of any adverse claim (such right, the "**Investment Asset**", and an ownership interest therein, an "**Investment Interest**"). The Investment Asset consists, collectively, of the following rights and interests of Financing Entities that own an Investment Interest (among other things):

(a) the right and interest to impose, invoice, collect, receive and recover the Clean Energy Adjustment from Specified Consumers, including the right to determine the Clean Energy Adjustment in accordance with the FHPA;

(b) the right to receive, collect and recover the Clean Energy Adjustment that is imposed, invoiced and recoverable under the FHPA, including any amounts in respect of the Clean Energy Adjustment that are held by Electricity Vendors or the IESO;

(c) the right to enforce the duties and obligations under the FHPA of each Electricity Vendor to impose, attribute, charge and invoice for the Clean Energy Adjustment;

(d) the right to enforce the duties and obligations under the FHPA of each Electricity Vendor and the IESO to collect, receive and remit amounts received by it in respect of the Clean Energy Adjustment, including all collections and the proceeds of any enforcement action undertaken by any Electricity Vendor to recover payment of the Clean Energy Adjustment;

(e) all rights of any kind related to any of the other property rights or interests that comprise the Investment Interest; and

(f) all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs (a) to (e), regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Clean Energy Adjustment

The "**Clean Energy Adjustment**" is the amount calculated in accordance with the FHPA and payable by Specified Consumers to cover the cost of financing the shortfall that results from the Fair Adjustment. The Financial Services Manager will determine the amount of the Clean Energy Adjustment payable by Specified Consumers for each month of a Reference Period. The Clean Energy Adjustment is based on an estimate of the amount payable by a Financing Entity in a Reference Period in respect of the Finance Amount and the True-up Amount (each as described below).

The "**Finance Amount**" in respect of the Issuer for a period of time is an amount determined by the Financial Services Manager as follows:

(a) after eliminating any duplication in the following amounts, calculating the sum of the following amounts:

(i) amounts paid or payable during the period in respect of the payment by or on behalf of the Issuer or the provision by or on behalf of the Issuer for the payment of all or a portion of the principal amount advanced to the Issuer under a Funding Obligation;

(ii) interest, commitment fees or other similar costs payable by or on behalf of the Issuer in respect of Funding Obligations that are paid or payable during the period;

(iii) amounts payable by or on behalf of the Issuer to redeem, prepay or repurchase Funding Obligations incurred by or on behalf of the Issuer, including any premium, make-whole or other amount payable to give effect to the prepayment redemption or repurchase, that are paid or payable during the period;

(iv) payments required to be made in respect of any derivative agreements during the period, including ordinary course payments, payments on termination and payments made in connection with margining or collateral arrangements;

(v) amounts deposited, as required under the governing documents of Funding Obligations, into capital accounts or finance reserve accounts during the Reference Period;

(vi) Issuer expenses, including fees (including fees charged by the Financial Services Manager), charges, costs, indemnities, reimbursements and other amounts incurred or committed to by or on behalf of the Issuer as a result of an activity authorized or permitted under the FHPA, and any taxes on such amounts, in each case that are paid or payable during the period;

(vii) taxes paid or payable by or on behalf of the Issuer, incurred directly or indirectly by the Issuer , or for which the Issuer is otherwise liable as a result of any activity, undertaking, transaction or event authorized or permitted under the FHPA that are payable during the period; and

(viii) amounts paid or payable by or on behalf of the Issuer during the period to any guarantor or surety that made a payment of an amount due and payable under a Funding Obligation, including pursuant to a guarantee, indemnity, contract of insurance or agreement entered into under subsection 5(2) or (3) of the FHPA;

(b) after eliminating any duplication in the following amounts, calculating the sum of the following amounts:

(i) amounts withdrawn, as required under the governing documents of Funding Obligations, from capital accounts or finance reserve accounts during the period;

(ii) amounts received during the period in respect of Carrying Costs;

(iii) the aggregate of all amounts received by or on behalf of the Issuer in respect of Funding Obligations during the period;

(iv) the principal amount of Funding Obligations incurred by the Issuer that are applied to refinance existing Funding Obligation during the period;

(v) any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements, in each case during the period;

(vi) amounts received by or on behalf of the Issuer as a refund of tax during the period; and

(c) subtracting the sum calculated under (b) from the sum calculated under (a).

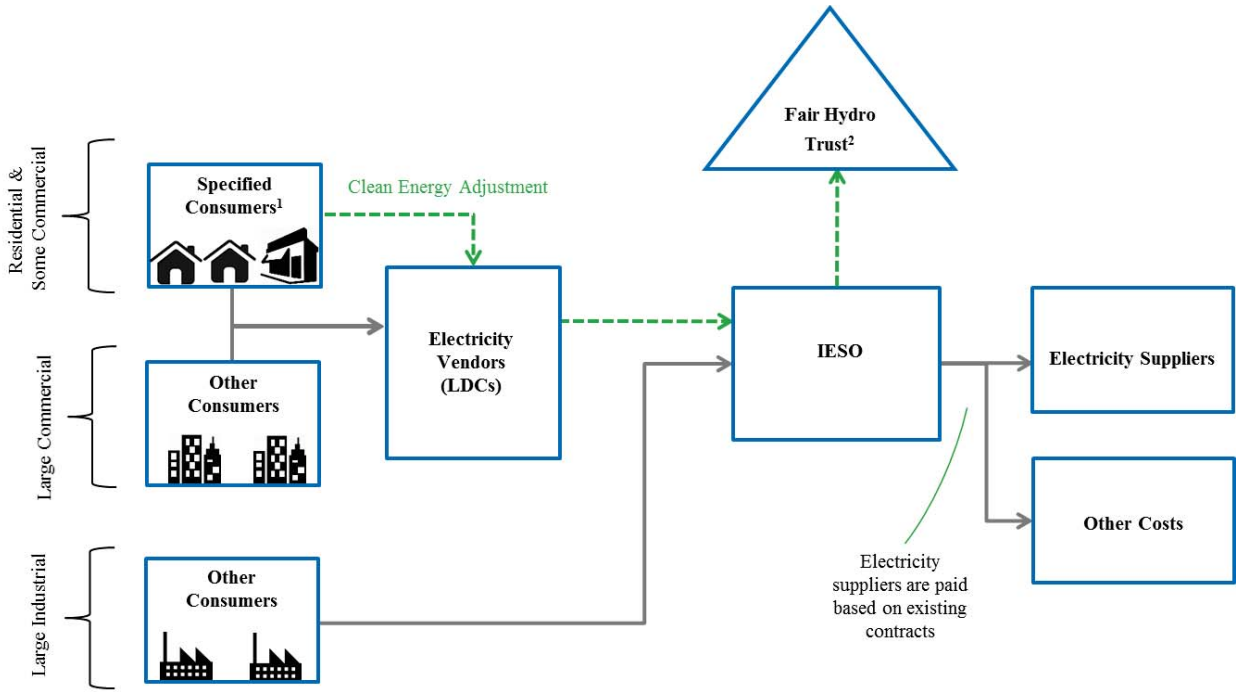
In determining the Clean Energy Adjustment, the Financial Services Manager must also calculate a "**True-up Amount**" in accordance with the Regulations. The True-up Amount is comprised of the cumulative Finance Amounts in respect of all preceding Reference Periods less the cumulative Clean Energy Adjustment amounts remitted

to the Issuer in respect of all preceding Reference Periods plus other anticipated shortfalls. The True-up Amount may also reflect historical and reasonably foreseeable differences between the estimated and actual Finance Amount; between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs; and variations in billings due to variations in electricity consumption. In determining such differences, the Financial Services Manager is required to have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of Specified Consumers, an Electricity Vendor or the IESO, whether in its capacity as an Electricity Vendor or its activities as agent or otherwise under the FHPA. The Regulations obligate the Financial Services Manager to calculate the True-up Amount in respect of each Reference Period so long as all Funding Obligations and other Finance Amounts have not been paid in full. After the final scheduled payment date of the Funding Obligation that has the latest maturity date of all outstanding Funding Obligations, the Financial Services Manager will calculate the True-up Amount quarterly. The Financial Services Manager may also at any time during a Reference Period determine an interim True-up Amount if, among other things, it reasonably forecasts that the collection of the Clean Energy Adjustment will be insufficient to pay the estimated Finance Amount for a Reference Period.

The Financial Services Manager must notify the OEB of the Clean Energy Adjustment for each Reference Period. The OEB must accept this amount and will determine the rates at which Specified Consumers are to be invoiced to recover the Clean Energy Adjustment. The rates are expressed as a cent per kWh amount and are determined by the OEB by dividing (i) the Clean Energy Adjustment provided by the Financial Services Manager in respect of the relevant period of time by (ii) a forecast of electricity consumption of Specified Consumers in respect of such period based on forecast information provided by the IESO. Electricity Vendors are required to invoice their Specified Consumers for the Clean Energy Adjustment, as determined by applying the rate set by the OEB, which is required to be included as a separate line item on each invoice. Electricity Vendors are required to collect, as agent of the Financing Entities (of which the Issuer is currently the only one), amounts in respect of the Clean Energy Adjustment, deposit such amounts into a segregated account established for the purpose of receiving those amounts, and hold such amounts in trust for the benefit of the Financing Entities (of which the Issuer is currently the only one) until remitted to the IESO for the benefit of the Financing Entities (of which the Issuer is currently the only one). If an Electricity Vendor does not receive payment in full of an invoice issued to a Specified Consumer, the Electricity Vendor shall allocate any payment received on a *pro rata* basis to the Clean Energy Adjustment and the other amounts payable under the particular invoice in the manner set out in the FHPA. It is a deemed condition of their licenses that Electricity Vendors comply with their obligations under the FHPA. If there are any amounts that are collected by the Electricity Vendor, but not remitted to the IESO to remit to the Issuer during a Reference Period, such shortfall will be included in the True-up Amount for the subsequent period.

An amount in respect of the Clean Energy Adjustment shown on an invoice issued to a Specified Consumer is determinative of the amount of such Specified Consumer's indebtedness resulting from the Clean Energy Adjustment and is irrevocable upon invoicing and may not be set off or bypassed, except to the extent that the invoice reflects a clerical, typographical or calculation-related error. Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and other financing expenses of the Issuer. From July 1, 2017 until April 30, 2021 (the "**Moratorium Period**"), no Clean Energy Adjustments are permitted to be collected from Specified Consumers. During the Moratorium Period, the sole source of funds for payment on the Senior Notes, and the Issuer's other Carrying Costs, will be the amounts the IESO is obligated to pay under the Regulations during such period. See *"— IESO Payment of Carrying Costs during the Moratorium Period"* below. Once it starts being included on such invoices, the Clean Energy Adjustment will be collected until all outstanding Funding Obligations and other Finance Amounts have been repaid in full. Subject to the FHPA, the Clean Energy Adjustment will be collected and remitted to the Issuer to pay the Finance Amount, including the principal and interest on the Senior Notes and all other administrative and other financing expenses of the Issuer.

The following diagram illustrates the flow of funds under the Fair Hydro Plan.



[1] There is currently one Specified Consumer that is directly connected to the IESO and, accordingly, makes payments, including in respect of the Clean Energy Adjustment, directly to the IESO.

[2] Pursuant to the Master Transfer and Servicing Agreement, the IESO may periodically Transfer specified portions of the Regulatory Asset to the Issuer for a corresponding purchase price. Upon completion of a Transfer by the IESO of a specified portion of the Regulatory Asset following payment by the Issuer of the corresponding purchase price, the Issuer will acquire an Investment Interest.

Fair Allocation Amount and Financing Plan

The FHPA was enacted to: (i) ensure that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers; (ii) recognize that Clean Energy Benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in Ontario; and (iii) align Clean Energy Costs with Clean Energy Benefits, in order to provide fairness for Specified Consumers over time. Under the FHPA, the Minister of Energy calculates a "**Fair Allocation Amount**", which is an amount for every Reference Period that, among other things, allocates the estimated Clean Energy Costs in proportion to the relative attribution of Clean Energy Benefits among Specified Consumers. Under the FHPA, the Minister of Energy is responsible for determining the Fair Allocation Amount prior to the incurrence of the first Funding Obligation. The Fair Allocation Amount may be changed from time to time in accordance with the FHPA, provided that no change of the Fair Allocation Amount shall affect any Clean Energy Adjustment that arises as a result of a Funding Obligation that has been incurred prior to such change.

OPG, as Financial Services Manager, is required to prepare a Financing Plan to evaluate whether and when potential Funding Obligations should be incurred by a Financing Entity to acquire an Investment Interest or for the purposes of a Refinancing. The Financial Services Manager is required to prepare the Financing Plan having regard to certain prescribed principles, including that Funding Obligations should be incurred such that, along with any Funding Obligations already incurred, the estimated Finance Amount that would, subject to any Refinancing, become due and payable during a Reference Period will reasonably align with the Fair Allocation Amount determined in respect of such Reference Period as of the date the Funding Obligations were incurred. In other words, the Financing Plan should contemplate the issuance of Funding Obligations from time to time, with terms that would result in Clean Energy Adjustments being payable by Specified Consumers that align with the purposes of the FHPA. Notwithstanding the above, the FHPA provides that each Funding Obligation is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated Finance Amount with the Fair Allocation Amount.

The Financing Plan allows for the issuance of a variety of short and long term debt. See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Financing Plan and the Fair Allocation Amount.

Payment of Carrying Costs until July 31, 2021

Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and financing expenses of the Issuer. The IESO, which is rated A(high) by DBRS and Aa2 by Moody's, is required under the Regulations to pay and remit to the Issuer amounts charged to the IESO by the Issuer in respect of its Carrying Costs incurred in respect of the period from June 1, 2017 to July 31, 2021. Carrying Costs include all funding costs (such as interest on the Senior Notes) and other expenses of the Issuer, other than repayment of principal on any debt obligations of the Issuer (including repayment of principal on the Senior Notes). The amounts paid by the IESO to fund these Carrying Costs will be recorded by the IESO in the variance account and form part of the Regulatory Asset that the IESO is expected to Transfer to the Issuer in a subsequent period. Upon such Transfer, the Issuer will acquire a corresponding Investment Interest pursuant to the FHPA.

Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's statement, the IESO is required to deliver the amount specified in the carrying costs statement to the Issuer. See *"The Transferor and Servicer"*. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring September 30, 2022, which is permitted to be used to pay the Issuer's Carrying Costs. Furthermore, as security for the performance of its obligations under the Regulations to pay the Issuer's Carrying Costs, the IESO has granted the Issuer a first-priority security interest in all accounts receivable owing to the IESO from Electricity Vendors, including amounts owing with respect to the global adjustment charge. See *"The Transferor and Servicer"*.

Other Statutory Protections

The FHPA provides certain protection and assurances in respect of the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment. Generally, no action or omission by the OEB, the Minister of Energy or the Crown, and no regulation under the FHPA, will be effective to reduce, impair, postpone or terminate the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment or to impair or postpone the invoicing, collection or remittance of the Clean Energy Adjustment. If an Electricity Vendor, the IESO or the Financial Services Manager, has failed, or will fail, to comply with the FHPA, the Issuer may apply to an Ontario court to make an order directing such party to comply and requiring compensation to be provided to the Issuer by such non-compliant party. Additional contractual protections are provided in the Change of Law Protection Agreement described below.

CHANGE OF LAW PROTECTION AGREEMENT

The following brief summary of certain provisions of the Change of Law Protection Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Change of Law Protection Agreement are qualified in their entirety by reference to the Change of Law Protection Agreement and the detailed provisions thereof. The Change of Law Protection Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

Pursuant to the Change of Law Protection Agreement, upon a Protection Event and delivery by the Indenture Trustee of a written payment demand, the Province of Ontario is required to make payments of amounts that are due and payable in respect of all Approved Obligations when due and payable into the Protection Account. The Issuer and Indenture Trustee must ensure that amounts deposited into the Protection Account are applied to pay Specified Creditors to whom amounts are due and payable under an Approved Obligation in accordance with the provisions of the Master Trust Indenture. See *"Capital Markets Platform"*. The Province of Ontario's obligation to make such payments under the Change of Law Protection Agreement upon a Protection Event and delivery by the Indenture Trustee of a written payment demand is referred to as the "**Limited Guarantee**".

The payment obligations of the Province of Ontario under the Limited Guarantee differ depending on whether an Acceleration has occurred. If no Acceleration has occurred in respect of any Senior Notes on or before a date on which the Province of Ontario is to perform the Limited Guarantee, the Change of Law Protection Agreement provides that the Province of Ontario is to pay the amounts due and payable on such date in respect of Approved Obligations. If an Acceleration has occurred in respect of any Senior Notes on or before a date on which the Province of Ontario is to perform the Limited Guarantee, the Province of Ontario is to pay the amounts that would be available to be paid on such date in respect of the Approved Obligation on an applicable payment date in respect of the Approved Obligation under the applicable payment provisions of the Master Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Master Trust Indenture in respect of each relevant month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period, divided by the number of months in such Reference Period.

The Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include payments of amounts that are due and payable in respect of the Senior Notes).

Under the Change of Law Protection Agreement, the right to deliver a written payment demand on occurrence of a Protection Event to enforce the Limited Guarantee is the only remedy available to the Indenture Trustee (and to Specified Creditors, to the extent they are permitted to exercise any rights, interests or elections under and in accordance with the Master Trust Indenture). Specified Creditors are not permitted to exercise any rights, interests, or elections under the Change of Law Protection Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Master Trust Indenture as at December 21, 2017.

In connection with the provision of the Limited Guarantee, OPG, as Financial Services Manager, has entered into a process agreement with the Province of Ontario pursuant to which OPG is required to satisfy certain reporting and other requirements regarding the Issuer's incurrence of, and material amendments to, any Issuer Funding Obligations.

Protection Event

Each of the following constitutes a "**Protection Event**" under the Change of Law Protection Agreement:

(a)

(i) the Ontario legislature repeals, and does not replace on an equivalent basis, or amends, the FHPA or any portion thereof, as in effect on the date hereof;

(ii) the Ontario legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals, and does not replace on an equivalent basis, the regulations made under the FHPA or any portion thereof, in whole or in part, as in effect on the date hereof;

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof; or

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province of Ontario or an entity controlled by the Province of Ontario,

in each case, that (X) adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable, in each case determined after taking

into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in any of clauses (i) to (v) above, or (Y) adversely affects the enforceability of, or adversely changes, the terms and conditions of the Change of Law Protection Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the FHPA, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable and that has the effect of the Issuer not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in this paragraph (b).

The occurrence of a Protection Event in and of itself will not result in the acceleration of the Senior Notes.

On a Protection Event and payment by the Province of Ontario of amounts in respect of Approved Obligations that are due and payable into the Protection Account, such deposited amounts are applied by the Issuer and Indenture Trustee in the priority of payments governed by the Master Trust Indenture.

Upon the Province of Ontario's payment of amounts in respect of Approved Obligations that are due and payable into the Protection Account, the Province of Ontario will be subrogated and entitled to all of the rights of applicable Specified Creditors (including Noteholders) under and in respect of the Approved Obligations to the extent of the amounts paid. Applicable Specified Creditors in respect of whom amounts were deposited into the Protection Account will not have continuing rights, interests or entitlements (including rights as a secured party) in respect of Approved Obligations to the extent so paid; the Province of Ontario will be the absolute assignee of such rights. The Province of Ontario will have the right to be paid from the Issuer the amounts that the Province of Ontario paid in respect of the Approved Obligations ("**Subrogation Amounts**"), such Subrogation Amounts being payable in the same order of priority and with the same entitlements accruing to the Province of Ontario as applied to the amounts in respect of the Approved Obligations previously owing to Specified Creditors that the Province of Ontario has paid. The Province of Ontario will also be entitled to the benefit of the Collateral and proceeds therefrom to the extent of the amounts paid under the Limited Guarantee.

As payee of Subrogation Amounts, the Province of Ontario will be a Specified Creditor under the Master Trust Indenture. Further, the entitlements of the Province of Ontario to Subrogation Amounts arising in respect of Approved Obligations that are interest and principal obligations on Notes will be treated for all purposes of the Master Trust Indenture as interest and principal obligations, respectively, arising under Notes, having the same priority and any applicable voting rights as under the related Approved Obligations, and accordingly the Province of Ontario will be entitled to all of the rights, entitlements, interests and privileges of a holder of such Notes in accordance with the Master Trust Indenture, as supplemented by the supplemental indenture or other indenture document under which the related Approved Obligations were issued, provided that for purposes of determining voting rights with respect to Notes, Notes in which the Province of Ontario has an interest will be deemed not to be outstanding at any time that a Specified Creditor other than the Province of Ontario has an interest in such Class of Notes.

Approved Obligations & Adherence Conditions

Under the Management Agreement, the Manager is required to ensure that all obligations of the Issuer are and remain Approved Obligations under the Change of Law Protection Agreement.

An "**Approved Obligation**" under the Change of Law Protection Agreement means: (i) a Certified Primary Obligation if the adherence conditions applicable thereto have been satisfied at the time such obligation was incurred; (ii) all other Primary Obligations that are not Certified Primary Obligations (except any Primary Obligation to which the Limited Guarantee will not apply on or after delivery of a Suspension Notice as described below); and (iii) all Certified Primary Obligations that the Province of Ontario, in its sole discretion, designates in writing is an Approved Obligation.

A "**Primary Obligation**" under the Change of Law Protection Agreements means any Obligation Secured under the Master Trust Indenture (i) that is a Funding Obligation or (ii) that otherwise is a payment obligation of the Issuer that gives rise to a Finance Amount, in each case other than (x) any amounts required to be deposited by or on behalf of the Issuer into any capital account or finance reserve account; and (y) any obligation to pay the Issuer or on the Issuer's direction any remaining amounts in the Collection Account pursuant to the Master Trust Indenture.

A "**Certified Primary Obligation**" means a Primary Obligation: (i) incurred by or on behalf of the Issuer to fund its ownership of an Investment Interest, including any Refinancing, other than a Post-Suspension Refinancing or a Pre-Approved Refinancing (each as defined below), of such a Primary Obligation (for greater certainty, including, in the case of any Certified Primary Obligation permitting funding transactions pursuant to a Funding Obligation Agreement applicable to the Certified Primary Obligation, each individual borrowing or funding utilization thereunder), (ii) incurred by or on behalf of the Issuer upon the Issuer entering into a derivative agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such derivative agreement and not any individual trade confirmation other than a trade confirmation that modifies or purports to override the express terms or conditions of the related Master Agreement, or (iii) incurred by or on behalf of the Issuer upon entering into a contract that has a term of more than three (3) years which is not terminable by the Issuer giving three (3) years' notice or less and expected (as determined by the Manager, acting reasonably) aggregate payments by the Issuer thereunder during the term of such contract are or would be in excess of $5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).

The Limited Guarantee shall apply to all Certified Primary Obligations that meet the following adherence conditions:

(a) the Certified Primary Obligation when incurred is an Obligation Secured under the Master Trust Indenture;

(b) OPG, as Financial Services Manager, delivers a certificate to the Indenture Trustee on or before the incurrence of such obligation certifying, among other things, that OPG has delivered a certificate to the Province of Ontario confirming that OPG has complied with all of its obligations to the Province of Ontario and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation (an "**Adherence Compliance Certificate**"); and

(c) the Province of Ontario has not provided a Suspension Notice to the Indenture Trustee, OPG and the Issuer.

All Senior Notes shall constitute Obligations Secured under the Master Trust Indenture and therefore condition (a) above will be satisfied for all Offerings of Senior Notes. It will be a condition to any Offering of Senior Notes that OPG deliver the adherence certificate required pursuant to (b) above or that the Province of Ontario designates in writing that the Senior Notes are Approved Obligations. The Change of Law Protection Agreement provides that delivery of an adherence certificate shall be determinative of satisfaction of this adherence condition, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such certificate may be relied upon as conclusive evidence of same.

Suspension Notice & Post-Suspension Refinancings

The Change of Law Protection Agreement will remain in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations, including the Senior Notes.

However, in the following limited circumstances, the Province of Ontario may deliver a written notice (a "**Suspension Notice**") to the Indenture Trustee, the Financial Services Manager and the Issuer:

(a) an acceleration of Funding Obligations in accordance with the provisions of the Master Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement;

(b) a default in the performance, or breach, of any covenants of OPG, as Financial Services Manager, or OPG, in its corporate capacity, in each case to the Province of Ontario in connection with its obligations to the Province of Ontario pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligation and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as Financial Services Manager or in its corporate capacity, to the Province of Ontario in connection with its obligations to the Province of Ontario and its internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations, proves to be incorrect in any material respect on the date made and the expiration of any applicable cure period; or

(d) the Financial Services Manager no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the Financial Services Manager as the Manager;

If a Suspension Notice has been provided under the Change of Law Protection Agreement (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary Obligation incurred, excluding any Post-Suspension Refinancing, or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province of Ontario, in each case, on or after the time such Suspension Notice is delivered.

Following the occurrence of a Suspension Event, the Limited Guarantee shall continue to apply in respect of any Post-Suspension Refinancing; provided that prior to the Financing Entity incurring any Primary Obligation constituting a Post-Suspension Refinancing, the Manager shall provide the Province of Ontario with at least 30 days' notice of its intention to seek a Post-Suspension Refinancing and during such 30-day period the Province of Ontario may, but is not obligated to, offer to fund such Post-Suspension Refinancing or arrange for another Person to fund such Post-Suspension Refinancing on the same terms as set out in the notice or on such other terms as may be considered by the Province of Ontario to be not more onerous on the Financing Entity and that are acceptable on that basis to the Financing Entity, acting reasonably.

A "**Post-Suspension Refinancing**" means a Funding Obligation that is an Obligation Secured and that is incurred on or after the occurrence of a Suspension Event in compliance with the requirements of the Change of Law Protection Agreement, as a Refinancing of one or more Series of Approved Obligations (including any Pre-Approved Refinancing incurred on or after the occurrence of a Suspension Event), in each case the proceeds of which, together with any other funds that may be available, are used solely for the purpose of paying in full such Series of Approved Obligations and any costs and expenses associated with such Refinancing.

A "**Pre-Approved Refinancing**" means a Refinancing of a Certified Primary Obligation in respect of which the Province of Ontario has, prior to the incurrence of such Certified Primary Obligation, agreed shall be an Approved Obligation, subject to compliance with such conditions and requirements as may be specified in such agreement.

A "**Material Effect**" means a material adverse effect on the obligations or the rights of the Province of Ontario under the Limited Guarantee that relates to, and in each case, differs in any material respect from the terms or conditions applicable to any transaction document to which the Limited Guarantee applies and which was previously provided to the Province of Ontario, the following: (i) the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization) that, in each case, is inconsistent with the Fair Allocation Amount; (ii) the appointment,

obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Issuer or the Issuer Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province of Ontario as a Specified Creditor; (v) the payment provisions and associated priorities set forth in the Master Trust Indenture; (vi) compliance by the Financial Services Manager with the then applicable Financing Plan; (vii) compliance by the Financial Services Manager or the Issuer with the FHPA; or (viii) the Province of Ontario's rights of subrogation or assignment or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

Accordingly, notwithstanding delivery of a Suspension Notice, the Limited Guarantee shall continue to apply to: (i) any Approved Obligations that were incurred prior to the Suspension Event and (ii) any Funding Obligations incurred by the Issuer following a Suspension Event if the terms and conditions of the Change of Law Protection Agreement are satisfied and the proceeds of such incurrence are to be used for the purpose of repaying one or more series of Approved Obligations. Accordingly, subject to compliance with the Change of Law Protection Agreement, any Senior Notes or other Funding Obligations that may be issued following a Suspension Event to refinance Senior Notes that were issued prior to a Suspension Event will continue to have the benefit of the Limited Guarantee.

THE ISSUER

The Issuer is an unincorporated open-ended unit trust established under the laws of the Province of Ontario pursuant to the Declaration of Trust. The Issuer Trustee is the sole trustee of the Issuer, which is a Financing Entity established to incur Funding Obligations for the purpose of acquiring Investment Interests pursuant to the FHPA. The principal business address and head office of the Issuer is in Ontario, in the care of the Issuer Trustee at the following address: 100 University Avenue, 11th Floor, Toronto, Ontario M5J 2Y1.

The following brief summary of certain provisions of the Declaration of Trust does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Declaration of Trust are qualified in their entirety by reference to the Declaration of Trust and the detailed provisions thereof. The Declaration of Trust may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

The Declaration of Trust establishes the Issuer to carry on activities for the exclusive benefit of its unitholders, FHP2017 Inc., a wholly-owned subsidiary of OPG, and BNY Trust Company of Canada, the Indenture Trustee under the Master Trust Indenture (collectively, the "**Unitholders**"). The beneficial interest and rights generally of the Unitholders in the Issuer are limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Issuer. The legal ownership of the trust property and the right to conduct the activities of the Issuer are vested exclusively in the Issuer Trustee and no Unitholder has any right of ownership in any of the trust property. Except in limited circumstances provided in the Declaration of Trust, no Unitholder is entitled to interfere with or give any direction to the Issuer Trustee with respect to the affairs of the Issuer or in connection with the exercise of any powers or authorities conferred upon the Issuer Trustee under the Declaration of Trust. The Issuer Trustee will generally have, free from any power or control on the part of the Unitholders, full authority over the trust property and the activities of the Issuer to the same extent as if the Issuer Trustee were the sole and absolute owner thereof. The Unitholders will also not be subject to any liability arising out of the activities of the Issuer.

The Issuer Trustee, on behalf of the Issuer, has entered into a management agreement with OPG, as Manager, whereby all of the powers and duties of managing the Issuer have been delegated to the Manager. See *"The Manager."*

The permitted activities of the Issuer are limited to:

(a) acquiring, owning, holding, administering or entering into agreements regarding the acquisition and servicing of Investment Interests, along with certain other related assets;

(b) managing, selling, assigning, pledging and collecting amounts due on or otherwise dealing with Investment Interests and certain other related assets in accordance with the terms of the Program Agreements;

(c) negotiating, authorizing, executing, delivering, assuming the obligations under and performing its duties under the Program Agreements;

(d) filing with any applicable securities commission one or more prospectuses, offering memoranda, registration statements or documents necessary or desirable to register one or more series of Funding Obligations under the securities laws of any applicable jurisdiction;

(e) authorizing, executing, delivering, issuing and registering one or more series of Funding Obligations;

(f) making payments on Funding Obligations;

(g) pledging its interest in Investment Interests and related assets to the Indenture Trustee in order to secure Funding Obligations; and

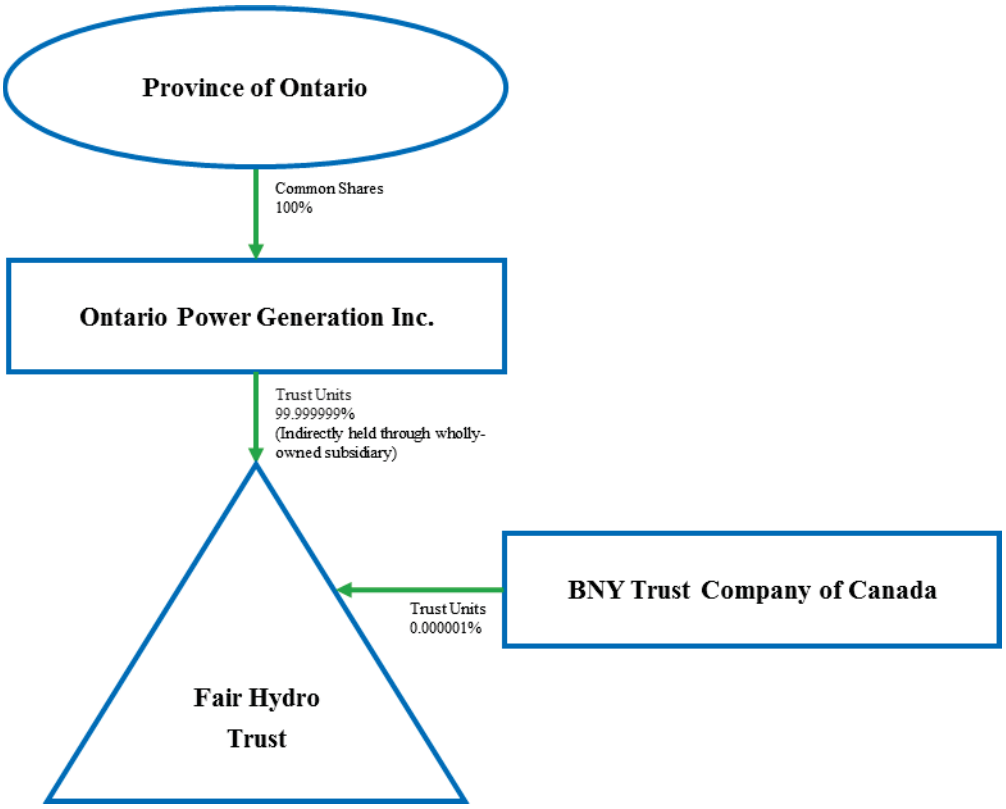
(h) engaging in any lawful act or activity that is incidental to the above-mentioned purposes.

The Issuer Trustee may amend the Declaration of Trust under specified circumstances without the consent of Unitholders provided (i) the amendment will not materially adversely affect the interest of any Unitholder, unless that Unitholder has approved of the amendment in writing, and (ii) in respect of any material amendment, the Rating Agency Condition has been satisfied. The Issuer Trustee is required to provide the Rating Agencies and the Indenture Trustee with a copy of any amendment, variation, supplement, replacement or restatement of the Declaration of Trust.

The consent of the Indenture Trustee, in addition to all other Unitholders, will be required to wind up the Issuer or voluntarily institute or consent to insolvency proceedings against the Issuer while any Funding Obligations remain outstanding. The Issuer Trustee may be removed by the Unitholders at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date such removal is to take effect. The Issuer Trustee may also be removed by the Unitholders with no prior written notice if it becomes bankrupt or insolvent or it is unable to exercise its duties under the Declaration of Trust. The Issuer Trustee may resign on 120 days' prior written notice to the Unitholders, the Indenture Trustee and the Rating Agencies. No such resignation will be effective until a replacement issuer trustee acceptable to the Unitholders and the Indenture Trustee has been appointed and the Rating Agency Condition has been satisfied.

Each of the Issuer Trustee and its directors, officers, agents, representatives and employees will be indemnified from and against all claims (including any claim arising out of the assessment of any tax on income by a taxing authority), demands, levies, penalties, suits, losses, actions, causes of action, costs, charges, fees and expenses, damages and liabilities whatsoever arising out of, among other things, any action or omission in relation to the execution of the duties of the Issuer Trustee or in relation to the trust property or the activities of the Issuer, except, in each case, for wilful misconduct, gross negligence or failure to comply with the standard of care established by the Declaration of Trust.

The following diagram illustrates the structure of the Issuer and its affiliates.



THE MANAGER

Pursuant to the Management Agreement, the Issuer has delegated to OPG, as Manager, all of the powers and duties of managing the Issuer. The following brief summary of certain provisions of the Management Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Management Agreement are qualified in their entirety by reference to the Management Agreement and the detailed provisions thereof. The Management Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

The powers and duties delegated to the Manager under the Management Agreement include, among others:

(a) negotiating and executing, on behalf of the Issuer, the Program Agreements;

(b) maintaining accounts and banking records;

(c) enforcing the rights of the Issuer under the Program Agreements and the FHPA;

(d) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to incur Funding Obligations;

(e) ensuring that all Primary Obligations of the Issuer are and remain Approved Obligations;

(f) administering all activities of the Issuer in connection with the issuance, sale, payment, repurchase and redemption of the Issuer's Funding Obligations;

(g) preparing, in accordance with applicable securities laws, any offering documents to be furnished by the Issuer to prospective purchasers of Funding Obligations, including the Senior Notes, and ensuring that all statements of the Issuer made therein are at all times true and correct in all material respects;

(h) arranging for compliance by the Issuer with any continuous disclosure obligations;

(i) arranging for the retention of legal counsel, accountants and an auditor for the Issuer;

(j) preparing financial statements and paying taxes on behalf of the Issuer;

(k) preparing a monthly portfolio report setting out information regarding incoming and outgoing cash flows; and

(l) providing such other services as are incidental to the foregoing or as may be agreed upon between the Issuer and the Manager.

The Manager is also required to work with the IESO to develop, on or before January 31, 2020, a written implementation plan identifying the actions to be taken by the IESO and the Issuer to facilitate the OEB, the Issuer, the IESO and Electricity Vendors being prepared to perform their obligations under the FHPA when setting, invoicing and collecting the Clean Energy Adjustment. The Manager will deliver written progress reports to the Issuer and the Indenture Trustee on the status of the implementation plan on or before June 30, 2020, October 31, 2020 and January 31, 2021.

Following the Moratorium Period, the Manager will review a monthly servicer report required to be delivered to the Issuer by the IESO under the Master Transfer and Servicing Agreement and make commercially reasonable efforts to resolve any Electricity Vendor failures or discrepancies identified in such report that have not been remedied or adequately explained by Electricity Vendors. The Manager is obligated to institute any proceedings necessary to compel performance by Electricity Vendors of any obligations or duties under the FHPA, including with respect to the invoicing, collection and remittance of Clean Energy Adjustment amounts. Commencing May 1, 2021 and pursuant to its rights under the Regulations, the Manager (on behalf of the Issuer) shall review, or cause to be reviewed, on an annual basis, or less frequently as may be determined by the Manager and subject to satisfaction of the Rating Agency Condition, the records maintained by Electricity Vendors with respect to the Clean Energy Adjustment and if there is evidence of material non-compliance by an Electricity Vendor, the Manager will promptly review or cause to be reviewed the records of such Electricity Vendor.

The Manager is obligated to perform its duties under the Management Agreement diligently and in conformity with the Issuer's obligations under each of the Program Agreements and with the FHPA, as applicable, and honestly, in good faith and in the best interest of the Issuer. The Manager must exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

In addition to the powers and duties delegated to OPG pursuant to the Management Agreement, OPG has also agreed to comply with its duties under the FHPA in its capacity as Financial Services Manager, including:

(a) preparing the Financing Plan to evaluate whether potential Funding Obligations should be incurred by Financing Entities for the purposes of acquiring Investment Interests;

(b) determining the amounts of the Clean Energy Adjustment, inclusive of any True-up Amount;

(c) calculating the True-up Amount;

(d) notifying the OEB of the Clean Energy Adjustment, inclusive of any True-up Amount;

(e) administering the Investment Interests on behalf of Financing Entities in accordance with the Program Agreements;

(f) ensuring that Funding Obligations are incurred in a manner that is consistent with the Financing Plan; and

(g) establishing and charging fees for the services provided under the Management Agreement.

Subject to OEB approval, OPG is entitled to charge the Issuer a fee, comprised of a base fee and a variable fee, to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer or in relation to the establishment, management and administration of the Issuer and its Investment Interest. The priority of the Manager's entitlement to fees is subject to the payment priorities set forth in the Master Trust Indenture.

The Manager is not entitled to resign from its duties or terminate the Management Agreement as long as Funding Obligations remain outstanding. The Manager may be terminated by the Issuer Trustee, with the consent of the Indenture Trustee, or by the Indenture Trustee in accordance with the Master Trust Indenture. No termination of the Manager will be effective until a replacement manager that satisfies the Rating Agency Condition has been approved and has entered into a management agreement with the Issuer whereby the replacement manager agrees to assume, in substance, the obligations of the Manager under the Management Agreement. If the Manager ceases to perform, or inadequately performs, its management duties under the Management Agreement, it might be difficult to find a replacement for the Manager or a successor manager. See "*Risk Factors – Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and as Manager.*"

The Manager shall provide to the Issuer Trustee an annual certificate confirming compliance with certain matters, including: (i) accurate maintenance of the books and records of the Issuer; (ii) all debt obligations and expenses due and payable by the Issuer have been paid to date; (iii) all required filings with tax and regulatory authorities have been completed to date; and (iv) all material statements and reports to be delivered by the Issuer under the Program Agreements have been delivered and all material statements and reports to be received by the Issuer under the Program Agreements have been received.

The Manager indemnifies the Issuer under the Management Agreement for any losses incurred by the Issuer as a result of the failure of the Manager to perform its obligations under the Management Agreement or any breach by the Manager of its representations and warranties under the Management Agreement or any other Program Agreement to which it is a party, except to the extent such losses result from the willful misconduct, bad faith or gross negligence of the Issuer. Notwithstanding the foregoing, the Manager is not obligated to indemnify the Issuer under the Management Agreement for any losses resulting from: (i) a breach or failure to perform by a third party under any Program Agreement, the FHPA (excluding any delegation by the Manager under the Management Agreement to a third party); (ii) changes in law, (iii) the validity or applicability of the Change of Law Protection Agreement; (iv) the collectability or sufficiency of the Clean Energy Adjustment or Carrying Costs to satisfy the Issuer Funding Obligations, including the Senior Notes; or (v) any liability of the Issuer incurred after termination of the Management Agreement unless attributable to the actions or omissions of the Manager prior to such termination or in respect of a representation, warranty or covenant that survives such termination.

SUBORDINATED DEBT

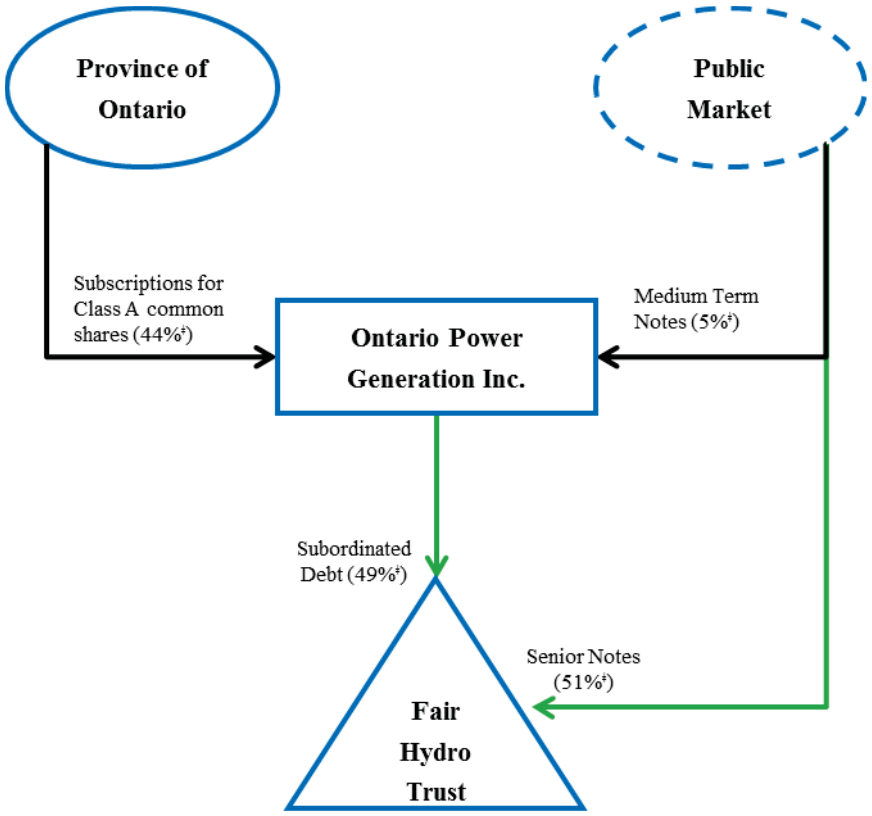
Concurrent with every issuance of senior debt by the Issuer, including any Offering of Senior Notes, it is expected that OPG will subscribe for subordinated debt and junior subordinated debt of the Issuer in an amount of no more than 49% of all of the Issuer's Funding Obligations, approximately 44% of which is expected to be funded through equity investments in OPG by the Province of Ontario with the remaining approximate 5% being funded from OPG's available funds, including all or a portion of the proceeds of any offerings by OPG of medium term notes.

Under the Master Trust Indenture, the Issuer will be required at all times to ensure that: (i) the aggregate outstanding principal amount of all subordinated debt and junior subordinated debt be equal to not less than 35% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations; and (ii) the aggregate outstanding principal amount of all junior subordinated debt be equal to not less than 10% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations.

The Issuer is structured to be bankruptcy remote from OPG insofar as none of OPG, its subsidiaries or holders of its indebtedness will have any recourse whatsoever against the Issuer or its assets other than OPG's rights and

remedies as a holder of subordinated debt of the Issuer in accordance with the provisions of that indebtedness. From an accounting perspective, however, the Issuer will be consolidated with OPG.

The following diagram illustrates the expected structure of OPG's investments in subordinated debt of the Issuer.



ǂ OPG is expected to acquire up to 49% of the Issuer's outstanding debt in the form of subordinated debt. Actual amounts may vary if OPG acquires less than 49% of the Issuer's outstanding debt.

SHORT TERM INDEBTEDNESS

On December 21, 2017, the Issuer entered into the following supplemental indentures under the Master Trust Indenture for the provision of an aggregate of approximately $1.56 billion in short term indebtedness (collectively, the "**Warehouse Facilities**"), of which a total of $1.179 billion is drawn as of the date hereof:

(a) a warehouse senior series 2017-1 supplemental indenture with, among others, Royal Bank of Canada, as administrative agent for certain commercial paper conduit purchasers and financial institutions named therein, for the provision of an aggregate maximum principal amount of $800,000,000 floating rate variable funding Senior Notes, Series 2017-1 ("**Senior Notes, Series 2017-1**"), of which $601,290,000 is drawn;

(b) a warehouse subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $611,764,705.88 floating rate variable funding Subordinated Notes, Series 2017-1 ("**Subordinated Notes, Series 2017-1**"), of which $459,810,000 is drawn; and

(c) a warehouse junior subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $156,862,745.10 floating rate variable

funding Junior Subordinated Notes, Series 2017-1 ("**Junior Subordinated Notes, Series 2017-1**"), of which $117,900,000 is drawn.

The issuance of Senior Notes, Series 2017-1, Subordinated Notes, Series 2017-1 and Junior Subordinated Notes, Series 2017-1 under the Warehouse Facilities described above were used to acquire a $1.179 billion Investment Interest on December 21, 2017.

THE TRANSFEROR AND SERVICER

Pursuant to the Master Transfer and Servicing Agreement, the IESO may periodically Transfer specified portions of the Regulatory Asset to the Issuer. Additional information regarding the IESO, including its most recently published financial statements, is available at www.ieso.ca. Such information does not form part of this confidential shelf offering memorandum and neither the Issuer nor the Agents guarantee the accuracy of such information or has independently verified the accuracy or completeness of any such information or to determine if there has been any omission by the IESO to disclose any facts, information or events which may affect the significance or accuracy of any such financial statements or other information.

The following brief summary of certain provisions of the Master Transfer and Servicing Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Master Transfer and Servicing Agreement are qualified in their entirety by reference to the Master Transfer and Servicing Agreement and the detailed provisions thereof. The Master Transfer and Servicing Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

Under the Master Transfer and Servicing Agreement, the IESO may offer, no more frequently than monthly, to Transfer to the Issuer a specified portion of the Regulatory Asset. The Issuer has the right, but not the obligation, to accept the IESO's offer. The IESO is responsible for servicing the Issuer's Investment Interest in accordance with the Regulations and the Master Transfer and Servicing Agreement. Its responsibilities including, among others:

(a) establishing a segregated account to be used for the sole purpose of receiving the Clean Energy Adjustment in respect of the Issuer's Investment Interest and making commercially reasonable efforts to cause Electricity Vendors to do the same;

(b) making commercially reasonable efforts to cause each Electricity Vendor to establish procedures for the invoicing of amounts in respect of the Clean Energy Adjustment;

(c) responding to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(d) reviewing reports submitted to the IESO by Electricity Vendors regarding the collection of Clean Energy Adjustment amounts for material manifest discrepancies;

(e) contacting Electricity Vendors on the occurrence of certain events;

(f) holding Clean Energy Adjustment amounts received in respect of the Issuer's Investment Interest in trust for the benefit of the Issuer and remitting such amounts to the Issuer on the 18th business day of each month, subject to daily remittance being required in certain limited circumstances;

(g) together with the Issuer, settling a form of monthly servicer report to be provided to the Issuer; and

(h) providing forecast information to the OEB and the Issuer.

The IESO must follow standards, policies and procedures in performing its servicing duties that are customary for an electricity market operator and administrator that regularly performs settlement functions. The Master Transfer and Servicing Agreement provides for various limitations on the duties and responsibilities of the IESO including that: (i) the IESO provides no guarantee that collections of the Clean Energy Adjustment from

Electricity Vendors will equal amounts invoiced or that Clean Energy Adjustment amounts will be sufficient to satisfy the Issuer's Funding Obligations, (ii) the IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Investment Interest, the collectability of the Clean Energy Adjustment or that Clean Energy Adjustment amounts received will be sufficient to satisfy the Issuer's Funding Obligations, (iii) the IESO shall have no liability or responsibility to any person in respect of any forecasts or other information provided, provided only that such forecasts or other information has been prepared and provided in good faith and (iv) the IESO is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from Specified Consumers or not remitted by Electricity Vendors to the IESO.

The IESO is required to work with the Manager to develop, on or before January 31, 2020, a written implementation plan identifying the actions to be taken by the IESO and the Issuer to facilitate the OEB, the Issuer, the IESO and Electricity Vendors being prepared to perform their obligations under the FHPA when setting, invoicing and collecting Clean Energy Adjustment amounts. The IESO and the Manager will deliver to the Issuer written progress reports on the status of the implementation plan on or before June 30, 2020, October 31, 2020 and January 31, 2021. The IESO is also required to work with the Issuer to settle a form of monthly servicer report, which will be provided to the Manager on or before the 20th business day after the end of each month in which Clean Energy Adjustment amounts are collected by Electricity Vendors from Specified Consumers, and which report is expected to contain available information regarding the Clean Energy Adjustment amounts billed, collected and remitted by Electricity Vendors, actual electricity consumption compared to forecast electricity consumption and such other information as may be agreed to by the IESO.

Generally, all servicing duties provided by the IESO to the Issuer are provided at no cost to the Issuer. However, the Issuer will reimburse the IESO for its direct costs relating to the performance by the IESO of its duties and obligations under the Master Transfer and Servicing Agreement that are not otherwise recovered by the IESO under the *Electricity Act, 1998* (Ontario), excluding any costs relating to the performance of the IESO's duties and obligations under the FHPA, including its obligation to pay the Issuer's Carrying Costs.

During the Moratorium Period and extending to July 31, 2021, the IESO, which is rated A(high) by DBRS and Aa2 by Moody's is required under the Regulations to pay and remit to the Issuer amounts charged to the IESO by the Issuer in respect of its Carrying Costs. Under the Regulations, Carrying Costs include all funding costs, such as interest on the Senior Notes, and other expenses of the Issuer, other than repayment of principal on any debt obligations of the Issuer, including repayment of principal on the Senior Notes. Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's carry costs statement, the IESO is required to deliver the amount specified therein to the Issuer. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring September 30, 2022, which is permitted to be used to pay the Issuer's Carrying Costs.

As security for the performance of its obligation to pay the Issuer's Carrying Costs, the IESO has granted the Issuer a first-priority security interest in all accounts receivable owing to the IESO from Electricity Vendors, including amounts owing with respect to the global adjustment charge. The amounts paid by the IESO to fund these Carrying Costs will be recorded by the IESO in the variance account and form part of the Regulatory Asset which is expected to be offered by the IESO for Transfer to the Issuer in a subsequent period. Upon completion of such Transfer, the Issuer will acquire an Investment Interest pursuant to the FHPA.

As security for any failure of Non-Investment Grade Rated Electricity Vendors to remit Clean Energy Adjustment amounts collected under the FHPA, the IESO is required, pursuant to the Master Transfer and Servicing Agreement, to provide to the Issuer on or prior to the first day of the first billing period when the Clean Energy Adjustment is being invoiced to Specified Consumers, a letter of credit from a provider that satisfies the Rating Agency Condition or a performance guarantee or such other form of security that is acceptable to the Issuer and that satisfies the Rating Agency Condition. A "**Non-Investment Grade Rated Electricity Vendor**" means any Electricity Vendor that does not have a rating of: (i) "Baa3" or higher by Moody's, unless otherwise agreed to by Moody's; and (ii) "BBB(low)" or higher by DBRS, unless otherwise agreed to by DBRS.

The amount of security required from the IESO will be calculated on an annual basis and will be equal to the amount determined by the following formula:

((A / B) x C x D / 365 x E)

where A, B, C, D and E are as follows:

A = for the most recently completed twelve-month period, the aggregate amount of energy consumed by Specified Consumers of all Non-Investment Grade Rated Electricity Vendors.

B = for the same twelve-month period used for A, the aggregate amount of energy consumed by all Specified Consumers.

C = for the most current twelve-month forecast period available, the Clean Energy Adjustment amounts estimated to be payable by all Specified Consumers.

D = 45, representing the estimated number of days that total Clean Energy Adjustment amounts are expected to be held by Electricity Vendors or such other number as mutually agreed to in writing by the Issuer and the IESO and that satisfies the Rating Agency Condition.

E = 0.50 or another value as mutually agreed to in writing by the Issuer and the IESO and that satisfies the Rating Agency Condition.

The Master Transfer and Servicing Agreement sets out specific servicer defaults. Upon the occurrence of a servicer default, the Issuer will be entitled to appoint a replacement servicer that will perform the IESO's duties as servicer under the Master Transfer and Servicing Agreement. Any replacement servicer must be permitted under the FHPA to perform the duties of servicer, the Rating Agency Condition must be satisfied and the replacement servicer must enter into a master transfer and servicing agreement with the Issuer having substantially the same terms as the Master Transfer and Servicing Agreement.

The IESO has agreed to indemnify the Issuer for any losses incurred by the Issuer as a result of the failure of the IESO to perform its obligations under the Master Transfer and Servicing Agreement or any other Program Agreement to which it is a party or the breach by the IESO of any of its representations or warranties under the Master Transfer and Servicing Agreement or any other Program Agreement to which the IESO is a party, except to the extent such losses result from the willful misconduct, bad faith or gross negligence of the Issuer. Notwithstanding the foregoing, the IESO is not obligated to indemnify the Issuer under the Master Transfer and Servicing Agreement for any losses resulting from: (i) a breach or failure to perform by a third party under any Program Agreement, the FHPA (excluding any delegation by the IESO under the Master Transfer and Servicing Agreement to a third party); (ii) changes in law, (iii) the collectability or sufficiency of the Clean Energy Adjustment to satisfy the Issuer's Funding Obligations, including the Senior Notes; or (iv) any liability of the Issuer incurred after termination of the Master Transfer and Servicing Agreement unless attributable to the actions or omissions of the IESO prior to such termination or in respect of a representation, warranty or covenant that survives such termination.

CREDIT RATINGS

Credit ratings are intended to provide investors with an independent measure of the credit quality of securities and are indicators of the likelihood of the payment capacity and willingness of an issuer to meet its financial commitment on an obligation in accordance with the terms of such obligation. The credit ratings accorded to the Senior Notes are not recommendations to purchase, hold or sell such securities inasmuch as such ratings are not a comment upon the market price of the securities or their suitability for a particular investor. There is no assurance that any rating will remain in effect for any given period of time or that any rating will not be revised or withdrawn entirely by a rating agency in the future if, in its judgment, circumstances so warrant.

The Term Sheet for each Offering will identify the rating of the applicable Senior Notes at the time of such Offering.

RATING AGENCY CONDITION

The Program Agreements provide that certain actions are subject to the "**Rating Agency Condition**". In each such case, satisfaction of the Rating Agency Condition requires: (a) that the Issuer has delivered written notice of the proposed action to the Rating Agencies at least ten business days prior to the effective date of such action; and (b) that the Rating Agencies shall have informed the Issuer prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating in effect with respect to the Notes immediately before the taking of such action. If the Rating Agency Condition is to be satisfied without specifying one or more specific Series or Tranches of Notes, the Rating Agency Condition must be satisfied with respect to all outstanding Series or Tranches of Notes.

CAPITAL MARKETS PLATFORM

The Financial Services Manager has developed a Financing Plan for the Issuer which encompasses an ongoing program which allows for the issuance of a variety of short and long term debt, as well as interest rate and currency swaps and other hedging instruments.

The Master Trust Indenture establishes common security and a set of common covenants given by the Issuer for the benefit of all of its creditors. Notes are issued under Supplemental Indentures and in certain cases, Terms Documents. Borrowings are incurred pursuant to liquidity agreements or loan agreements. Notes and Borrowings incurred by the Issuer are Issuer Funding Obligations. Each Issuer Funding Obligation will be part of a Class and Series of Issuer Funding Obligations, and may include one or more Tranches. A Class designation determines the relative seniority for receipt of cash flows. See *"— Subordination Provisions"*, "*— Payment Waterfalls Prior to Acceleration*" and "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*". Tranches of Issuer Funding Obligations may differ from each other as to the interest rate, maturity and the timing, sequential order and amount of payments of principal or interest, or both.

The following summary of the principal provisions contained in the Master Trust Indenture does not purport to be comprehensive or definitive. This overview summarizes certain provisions of the Master Trust Indenture and omits descriptions of many provisions which may be considered to be of a customary nature. All references in this confidential shelf offering memorandum to the Master Trust Indenture are qualified in their entirety by reference to the Master Trust Indenture and the detailed provisions thereof. The Master Trust Indenture may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Notes are outstanding.

Indenture Trustee

BNY Trust Company of Canada, a trust company governed by the laws of Canada, is the Indenture Trustee under the Master Trust Indenture.

Under the terms of the Master Trust Indenture, the Issuer has agreed to pay the Indenture Trustee reasonable compensation for the performance of its duties under the Master Trust Indenture. The Indenture Trustee has agreed to perform only those duties expressly set forth in the Master Trust Indenture. Many of the duties of the Indenture Trustee are described throughout this confidential shelf offering memorandum. Under the terms of the Master Trust Indenture, the Indenture Trustee's limited responsibilities include the following:

- to authenticate, deliver, cancel and otherwise administer the Notes;
- to serve as the registrar in respect of the Notes;
- to establish and maintain all Issuer Accounts and to maintain accurate records of activity in those accounts;
- to serve as the Paying Agent and distribute and transfer funds at the direction of the Manager in accordance with the terms of the Master Trust Indenture;

- to invest funds in the Issuer Accounts at the direction of the Manager (or its agent);

- to deliver to Specified Creditors notice of any Default, Event of Default, Acceleration Event, Protection Event or Servicer Default of which it has received notice, as required under the Master Trust Indenture; and

- to perform certain other administrative functions identified in the Master Trust Indenture.

In the exercise of its duties, the Indenture Trustee will use the same degree of care and skill as a reasonably prudent person would use in comparable circumstances. When all Issuer Funding Obligations have been satisfied and discharged (see "— *Satisfaction and Discharge*"), the Indenture Trustee will no longer act as Indenture Trustee and will have no fiduciary responsibilities to any remaining Specified Creditors and will act only as security agent for those remaining Specified Creditors. The Indenture Trustee is not liable for any errors of judgment as long as the errors are made in good faith and the Indenture Trustee was not negligent. Furthermore, the Indenture Trustee will not be liable for any action taken or not taken by it in good faith if directed to do so by Extraordinary Resolution. The Indenture Trustee is not required to expend or risk its own funds, or incur any financial liability in the exercise of its duties under the Master Trust Indenture and it will not be obliged to exercise any of its rights under the Master Trust Indenture at the request of any Controlling Class Creditor unless such Controlling Class Creditor has provided it with security or an indemnity reasonably satisfactory to it.

In addition to the Indenture Trustee's compensation and the reimbursement of the Indenture Trustee's expenses in connection with the Master Trust Indenture, the Issuer will indemnify the Indenture Trustee for any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the administration of the trusts under the Master Trust Indenture. The payment of all such amounts will be subject to the payment waterfalls set out in the Master Trust Indenture and in certain instances, such amounts will be higher in priority than payments to Noteholders. See "— *Payment Waterfalls Prior to Acceleration — Collection Account*", "— *Payment Waterfalls Prior to Acceleration — Protection Account*" and "— *Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

The Indenture Trustee may resign at any time by giving written notice to the Issuer and it may be removed for any reason by Ordinary Resolution of Controlling Class Creditors. The Indenture Trustee must resign if a material conflict of interest arises in its role as an Indenture Trustee under the Master Trust Indenture and such conflict of interest is not eliminated within 90 days after the Indenture Trustee becomes aware of such material conflict of interest. The Issuer may remove, or any Controlling Class Creditor who has been a *bona fide* Controlling Class Creditor for at least six months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the removal of the Indenture Trustee if (i) the Indenture Trustee is no longer eligible to act as trustee under the Master Trust Indenture (and any Supplemental Indenture) and fails to resign after it has received a written request to do so by the Issuer or by any Controlling Class Creditor, (ii) the Indenture Trustee becomes incapable of acting, or (iii) the Indenture Trustee becomes subject to any bankruptcy or insolvency related events. In all such circumstances, the Issuer must appoint a successor Indenture Trustee. Any resignation or removal of the Indenture Trustee and appointment of a successor Indenture Trustee will not become effective until the successor Indenture Trustee accepts the appointment. If an instrument of acceptance by a successor Indenture Trustee has not been delivered to the Indenture Trustee within 30 days of giving notice of resignation or removal, the Indenture Trustee may petition a court of competent jurisdiction to appoint a successor Indenture Trustee.

Any successor Indenture Trustee will execute and deliver to the Issuer and its predecessor Indenture Trustee an instrument accepting such appointment. The successor Indenture Trustee must be a bank, a trust company or a corporation organized and doing business under the laws of Canada or of any province or territory thereof, authorized under such laws to carry on a trust business in each of the provinces and territories of Canada. The Issuer may not, nor may any person directly or indirectly controlling, controlled by, or under common control with the Issuer, serve as Indenture Trustee.

The Indenture Trustee may become the owner or pledgee of Notes and may otherwise deal with the Issuer with the same rights it would have if it were not the Indenture Trustee (subject to its obligation to resign if there is a material conflict).

Conditions Precedent to Incurrence of Obligations Secured

There is no limit on the aggregate amount of indebtedness or other obligations which may be secured under the Master Trust Indenture. However, the Issuer will not be permitted to incur any Issuer Funding Obligations or other obligations unless the Issuer meets the conditions described below under *"— Issuer Funding Obligations"* and *"— Other Obligations Secured"*.

Issuer Funding Obligations

The Issuer may not incur any new Issuer Funding Obligations, or renew or extend any existing Issuer Funding Obligations (in each case, other than Derivative Funding Obligations), unless the conditions described below are met on or prior to the date that the Issuer enters into a definitive agreement in respect of such Issuer Funding Obligations:

(a) the Issuer delivers to the Indenture Trustee and each Rating Agency notice of such incurrence;

(b) the Issuer delivers to the Indenture Trustee and each Rating Agency a certificate to the effect that:

(i) the Issuer reasonably believes that such incurrence will not cause an Adverse Effect; an "**Adverse Effect**" means that such action will at the time of its occurrence (a) result in the occurrence of an Event of Default or any event which with the giving of notice or passage of time, or both, would become an Event of Default, (b) adversely affect the amount or timing of any payment to be made to any Debtholder or Derivative Counterparty pursuant to the Master Trust Indenture or any Program Agreement, (c) materially adversely affect the amount or timing of payments to be made to the Specified Creditors (other than Debtholders and Derivative Counterparties) pursuant to this Indenture or any Program Agreement, or (d) adversely affect the security interest and the rights and remedies of the Indenture Trustee in respect thereof;

(ii) all instruments furnished to the Indenture Trustee conform to the requirements of the Master Trust Indenture and constitute sufficient authority under the Master Trust Indenture for the Indenture Trustee to (A) in the case of an issuance of Notes only, authenticate and deliver such Notes, and (B) in the case of all other Issuer Funding Obligations, execute and deliver the applicable Funding Obligation Agreement;

(iii) in the case of an issuance of Notes only, the form and terms of the Notes have been established in conformity with the provisions of the Master Trust Indenture;

(iv) the incurrence of such Issuer Funding Obligation is consistent in all material respects with the Financing Plan; see *"Ontario Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*;

(v) the conditions set out in clauses (c), (d), (g) and (k) below are met; and

(vi) such other matters as the Indenture Trustee may reasonably request;

(c) the representations and warranties of the Issuer in the Master Trust Indenture are true and correct in all material respects;

(d) the Rating Agency Condition is satisfied with respect to all outstanding Series or Tranches of Issuer Funding Obligations;

(e) the Indenture Trustee receives either:

(i) a certified copy of the instrument whereby the Province of Ontario designated in writing that such Issuer Funding Obligation is an Approved Obligation as contemplated by the Change of Law Protection Agreement; or

(ii) both (A) an Adherence Compliance Certificate addressed to the Indenture Trustee with respect to such Issuer Funding Obligation delivered in accordance with the Change of Law Protection Agreement; and (B) a certificate signed by the Manager certifying that the Province of Ontario has not provided a Suspension Notice;

(f) the Issuer delivers to the Indenture Trustee copies of the applicable Funding Obligation Agreement, including in the case of Notes, a Supplemental Indenture relating to the applicable Series or Tranche of Notes and, if applicable, a Terms Document relating to the applicable Tranche of Notes;

(g) in the case of Senior Funding Obligations only, the Issuer has Subordinated Funding Obligations and Junior Subordinated Funding Obligations in an aggregate outstanding principal amount equal to not less than 35% of the aggregate outstanding principal amount of the aggregate Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations (after giving effect to such incurrence) and in the case of Subordinated Funding Obligations only, the Issuer has Junior Subordinated Funding Obligations in an aggregate outstanding principal amount equal to not less than 10% of the aggregate outstanding principal amount of the aggregate Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations (after giving effect to such incurrence);

(h) except in the case of Notes, the Issuer delivers to the Indenture Trustee an updated list of the Specified Creditors;

(i) each Debtholder in respect of such Issuer Funding Obligation (or an authorized agent on their behalf) has made the acknowledgements and agreements described below under "*— Acknowledgements of Specified Creditors*";

(j) the Change of Law Protection Agreement is in full force and effect against the Province of Ontario or has been replaced with a new agreement that is in form and substance satisfactory to Controlling Class Creditors pursuant to an Ordinary Resolution;

(k) the conditions precedent, if any, specified in the applicable Funding Obligation Agreement are satisfied; and

(l) in the case of an issuance of Notes only:

(i) the Indenture Trustee receives a certificate for the certification and delivery of the Notes and specifying the particulars relating to such Notes;

(ii) in the case of Notes described in section 163(f)(2)(A) of the Internal Revenue Code, if such Notes are not in registered form (including by reason of a book entry system described in section 163(f) of the United States Internal Revenue Code of 1986), then such Notes are described in section 4701(b)(1)(B) of the United States Internal Revenue Code of 1986 and such section will apply to such Notes; and

(iii) in the case of foreign currency Notes, the Issuer appoints one or more Paying Agents in the appropriate countries, if requested by the Indenture Trustee.

Periodic drawdowns under existing Funding Obligation Agreements will not constitute a new incurrence of Issuer Funding Obligations. However, an increase in the aggregate commitment under an existing Funding Obligation Agreement or the issuance of additional Notes of an outstanding Series or Tranche of Notes will constitute a new incurrence of Issuer Funding Obligations.

The Indenture Trustee is not required to and, except as otherwise provided in a Funding Obligation Agreement, the Issuer is not required to, provide prior notice to or obtain the consent of any Debtholder or any other Specified Creditor to issue any Issuer Funding Obligations.

Other Obligations Secured

The Issuer may incur other obligations (including Derivative Funding Obligations) so long as:

(a) the Issuer delivers to the Indenture Trustee a copy of the agreement giving rise to such obligations;

(b) the Issuer delivers to the Indenture Trustee an updated list of the Specified Creditors;

(c) the counterparty to the agreement giving rise to such obligations makes the acknowledgements and agreements described below under "*— Acknowledgements of Specified Creditors*";

(d) if the obligations are Certified Primary Obligations, the Indenture Trustee receives either:

(i) a certified copy of the instrument whereby the Province of Ontario designated in writing that such obligation is an Approved Obligation as contemplated by the Change of Law Protection Agreement; or

(ii) both (A) an Adherence Compliance Certificate addressed to the Indenture Trustee with respect to such obligation delivered in accordance with the Change of Law Protection Agreement; and (B) a certificate signed by the Manager certifying that the Province of Ontario has not provided a Suspension Notice;

provided that, in respect of derivative agreements, the Issuer will provide notice to each Rating Agency of the identity of the Derivative Counterparty and the terms of any applicable master agreement and schedule.

Derivative Agreements

The Issuer may, from time to time, enter into one or more derivative agreements, which would consist of a currency swap or interest rate swap, a cap (obligating a Derivative Counterparty to make payments if a reference rate is greater than a specified rate), a floor (obligating a Derivative Counterparty to make payments if a reference rate is less than a specified rate), or a collar (obligating a Derivative Counterparty to make payments if a reference rate is greater than a specified rate and entitling the Derivative Counterparty to receive payments if the same reference rate is less than a lower specified rate), with various counterparties. In general, the Issuer will receive payments from the Derivative Counterparty in exchange for the Issuer's payments to them, to the extent required under the derivative agreements. Payments received by the Issuer will constitute Available Collections.

Acknowledgements of Specified Creditors

Each Specified Creditor must acknowledge and agree in favour of the Indenture Trustee that it is a Specified Creditor under the Master Trust Indenture and that its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Master Trust Indenture including, without limitation, those described under "*— Indenture Trustee*", "*— Payment Waterfalls Prior to Acceleration*", "*— Debtholder Approvals and Meetings — Access to Debtholder Lists*", "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*", "*— Acceleration and Remedies — Rights of Specified Creditors*", "*— Acceleration and Remedies — Limited Recourse*" and "*— Acceleration and Remedies — No Petition*".

Subordination Provisions

Under the Master Trust Indenture, the Issuer can issue the following classes of Issuer Funding Obligations: "Senior Funding Obligations", "Subordinated Funding Obligations" or "Junior Subordinated Funding Obligations" (each, a "**Class**"). The payment of interest on Subordinated Funding Obligations shall be subordinate and rank junior to the payment of interest on Senior Funding Obligations and Derivative Funding Obligations. The payment of interest on Junior Subordinated Funding Obligations shall be subordinate and rank junior to the payment of interest on Senior Funding Obligations, Derivative Funding Obligations and Subordinated Funding Obligations. The payment of principal on Subordinated Funding Obligations shall be subordinate and rank junior to the payment of principal on Senior Funding Obligations and Derivative Funding Obligations. The payment of principal on Junior Subordinated

Funding Obligations shall be subordinate and rank junior to the payment of principal on Senior Funding Obligations, Derivative Funding Obligations and Subordinated Funding Obligations. In each case, the subordinations are the to the extent and in the manner set forth in the Master Trust Indenture and described under "*— Payment Waterfalls Prior to Acceleration*" and "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

Subject to the applicable payment waterfall, (i) all Senior Funding Obligations will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction on account, (ii) all Subordinated Funding Obligations will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction and (iii) all Junior Subordinated Funding Obligations of each Series or Tranche will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction, in each case, except as set out in a related Funding Obligation Agreement.

Security

To secure the payment of all Obligations Secured, including principal of and interest on the Issuer Funding Obligations, the Issuer has granted to the Indenture Trustee a security interest in all of its right, title and interest (whether now owned or hereafter acquired or arising) in and to the following property: (i) the Investment Interest acquired by the Issuer; (ii) each Issuer Account (including all sub-accounts); (iii) all Eligible Investments and all investment property, money and other property held in any Issuer Accounts (including all sub-accounts); (iv) all rights, benefits and powers of the Issuer under any Program Agreement; (v) all rights, benefits and powers of the Issuer under the FHPA; (vi) all present and future claims, demands, causes of and choses in action in respect of any of the foregoing and all interest, principal, payments and distributions of any nature or type on any of the foregoing; (vii) all accounts, general intangibles, chattel paper, instruments, documents, goods, money, investment property, deposit accounts, letters of credit and letter-of-credit rights consisting of, arising from, or relating to any of the foregoing; (viii) all debts, accounts, claims, monies and choses in action due or to become due with respect to all of the foregoing and also all securities, bills, notes, evidences of deposits of money, and other documents now held or owned or which may be hereafter taken, held or owned by the Issuer, or anyone on behalf of the Issuer, and all renewals thereof, accretions thereto, substitutions therefor and all interest, income and revenue arising therefrom or by virtue thereof; (ix) all amounts received with respect to all of the foregoing; and (x) all proceeds of the foregoing (collectively, the "**Collateral**").

Issuer Accounts

Pursuant to the Master Trust Indenture, the Issuer will establish various accounts ("**Issuer Accounts**") – Program Accounts, Series Accounts and Securities Accounts. Each Issuer Account will be under the sole dominion and exclusive control of the Indenture Trustee. Each Program Account and each Series Account will be established as a segregated trust account with an Eligible Institution (an "**Eligible Deposit Account**"). If the institution holding any Program Account or Series Account ceases to be an Eligible Institution, the Issuer will establish a new Program Account or Series Account that is an Eligible Deposit Account and transfer any funds or other property from such existing Program Account or Series Account to such new Program Account or Series Account. Each Securities Account will be established as a segregated securities trust account with an affiliate of an Eligible Institution, which affiliate is licensed to maintain securities accounts (an "**Eligible Securities Account**"). If the institution holding any Securities Account ceases to be an affiliate of an Eligible Institution, the Issuer will establish a new Securities Account that is an Eligible Securities Account and transfer any funds or other property from such existing Securities Account to such new Securities Account. The Indenture Trustee has no obligation to reconcile any Issuer Account against another Issuer Accounts or against the Program Agreements.

Program Accounts

Collection Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Collection Account**"). The Indenture Trustee will hold the Collection Account for the benefit of the Indenture Trustee and the Specified Creditors. All Available Collections received by the Issuer will be

credited to the Collection Account. "**Available Collections**" means: (i) all amounts received by the Servicer in respect of the Clean Energy Adjustment from Specified Consumers, (ii) IESO Carrying Cost payments (other than the IESO Cash Reserve Deposit Amount); and (iii) amounts received by the Issuer pursuant to derivative agreements. See *"Ontario Fair Hydro Plan"* and *"The Transferor and Servicer"*.

Interest Accumulation Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Interest Accumulation Account**"). The Indenture Trustee will hold the Interest Accumulation Account for the benefit of the Indenture Trustee and the Specified Creditors. The Interest Accumulation Account has been established for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of interest in respect of all Issuer Funding Obligations.

Principal Accumulation Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Principal Accumulation Account**"). The Indenture Trustee will hold the Principal Accumulation Account for the benefit of the Indenture Trustee and the Specified Creditors. The Principal Accumulation Account has been established for the purpose of accumulating funds to be used to make repayments in respect of all Issuer Funding Obligations.

IESO Cash Reserve Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**IESO Cash Reserve Account**"). The Indenture Trustee will hold the IESO Cash Reserve Account for the benefit of the Indenture Trustee and the Specified Creditors. The Issuer will deposit the IESO Cash Reserve Deposit Amount in the IESO Cash Reserve Account on the earlier of (x) April 30, 2021, and (y) the receipt by the Issuer of the IESO Cash Reserve Deposit Amount from the IESO. Amounts in the IESO Cash Reserve Account are not available to pay principal on the Senior Notes.

Program Cash Reserve Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Program Cash Reserve Account**"). The Indenture Trustee will hold the Program Cash Reserve Account for the benefit of the Indenture Trustee and the Specified Creditors. The Issuer will deposit the Program Cash Reserve Required Amount in the Program Cash Reserve Account during the Reference Period commencing May 1, 2021 pursuant to the application of amounts available therefor under the Collection Account Waterfall.

Refinancing Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Refinancing Account**"). The Indenture Trustee will hold the Refinancing Account for the benefit of the Indenture Trustee and the Specified Creditors. All proceeds arising from Notes and Borrowings related to Refinancings will be credited to the Refinancing Account.

Protection Account

Pursuant to the Master Trust Indenture, before the making of any demand for payment under the Change of Law Protection Agreement, the Issuer will establish an Eligible Deposit Account in the name of the Indenture Trustee (the "**Protection Account**"). The Indenture Trustee will hold the Protection Account for the benefit of the Indenture Trustee and the Specified Creditors. On the occurrence of a Protection Event and a written payment demand from the Indenture Trustee to the Province of Ontario, all payments received from the Province of Ontario under the Change of Law Protection Agreement will be credited to the Protection Account.

Series Accounts

Series Capital Reserve Account

In connection with the creation of a Series of Issuer Funding Obligations, the Issuer may establish an Eligible Deposit Account in the name of the Indenture Trustee (a "**Series Capital Reserve Account**"). The Indenture Trustee will hold each Series Capital Reserve Account for the benefit of the Indenture Trustee and the applicable Debtholders or Derivative Counterparties. A Series Capital Reserve Account may be established for the sole purpose of allowing the Issuer to accumulate funds to be used to make repayments in respect of a Series of Issuer Funding Obligations. Details of any period of accumulation and the amounts to be accumulated will be specified in the applicable Funding Obligation Agreement.

Series Finance Reserve Account

In connection with the creation of a Series of Issuer Funding Obligations, the Issuer may establish an Eligible Deposit Account in the name of the Indenture Trustee (a "**Series Finance Reserve Account**"). The Series Finance Reserve Account will be under the sole dominion and exclusive control of the Indenture Trustee. The Indenture Trustee will hold each Series Finance Reserve Account for the benefit of the applicable Debtholders or Derivative Counterparties. A Series Finance Reserve Account may be established for the sole purpose of allowing the Issuer to reserve funds to pay finance charges for a Series of Issuer Funding Obligations. Details of any reserve requirements will be specified in the applicable Funding Obligation Agreement.

Securities Accounts

In connection with the establishment of any Program Account (other than the Protection Account) or Series Account, the Issuer may establish an Eligible Securities Account in the name of the Indenture Trustee (a "**Securities Account**"). The Indenture Trustee will hold each Securities Account for the benefit of the applicable Specified Creditors. A Securities Account may be established for the purpose of allowing the Issuer to invest funds held in any Program Account or Series Account in Eligible Investments. Each Securities Account may relate to only one Program Account or Series Account. Funds in each Program Account and Series Account will be invested in Eligible Investments at the direction of the Manager using the associated Securities Account. Additionally, neither the Indenture Trustee nor the Manager will be responsible for any losses incurred in the investment of any funds in any Eligible Investments and any insufficiency in an Issuer Account resulting from any loss on Eligible Investments.

Credit Enhancement Agreements and Liquidity Agreements

A Series or Tranche of Issuer Funding Obligations may have the benefit of one or more additional forms of credit enhancement—referred to herein as credit enhancement agreements—such as a letter of credit, surety bond or loan facility. In addition, a Series or Tranche of Notes may have the benefit of one or more forms of liquidity agreements—referred to herein as liquidity agreements—such as a liquidity facility. Whether a Series or Tranche of Issuer Funding Obligations has the benefit of a credit enhancement agreement or a liquidity agreement, including how any payments made pursuant to such agreement will be applied, will be set out in the applicable Funding Obligation Agreement and the related Term Sheet (where applicable).

Payment Waterfalls Prior to Acceleration

All amounts received by the Issuer and all amounts to be paid by the Issuer from a Program Account or Series Account will be made in accordance with the payment waterfalls described below. All payments or transfers described in the sections below will be made by the Paying Agent based on payment instructions provided by the Manager. See "*— Covenants of the Issuer — Payment Instructions*".

Collection Account

Subject to the paragraph below, on each Payment Date (after giving effect to the distributions described in the first paragraph under "*— IESO Cash Reserve Account*"), all amounts on deposit in the Collection Account will be

distributed in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted) (the "**Collection Account Waterfall**"):

(a) first, to the payment or remittance of taxes for which a governmental authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(b) second, to pay fees, expenses and reimbursement amounts owing to the Issuer Trustee and the Indenture Trustee up to a maximum aggregate amount equal to (i) $150,000, multiplied by (ii) the number of Series of Senior Funding Obligations outstanding on such Payment Date, divided by (iii) 12;

(c) third, *pari passu* (i) to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Senior) for such Payment Date, and (ii) to pay all Derivative Funding Obligations (other than termination payments);

(d) fourth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Subordinated) for such Payment Date;

(e) fifth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Junior Subordinated) for such Payment Date;

(f) sixth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Warehouse) for such Payment Date;

(g) seventh, *pari passu* (i) to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Senior) for such Payment Date, and (ii) to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is not the defaulting party or the sole affected party;

(h) eighth, to pay all fees and other amounts (other than principal or interest) owing in respect of Senior Funding Obligations;

(i) ninth, to pay fees, expenses and reimbursement amounts owing to the Manager;

(j) tenth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Subordinated) for such Payment Date;

(k) eleventh, to pay all fees and other amounts (other than principal or interest) owing in respect of Subordinated Funding Obligations;

(l) twelfth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Junior Subordinated) for such Payment Date;

(m) thirteenth, to transfer to the Program Cash Reserve Account, the amount, if any, by which the amount on deposit in the Program Cash Reserve Account is less than the Program Cash Reserve Required Amount;

(n) fourteenth, to transfer to any Series Account (other than any Series Account related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations), the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(o) fifteenth, to transfer to any Series Account related solely to Subordinated Funding Obligations, the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(p) sixteenth, to pay all fees and other amounts (other than principal or interest) owing in respect of Junior Subordinated Funding Obligations;

(q) seventeenth, to transfer to any Series Account related solely to Junior Subordinated Funding Obligations, the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(r) eighteenth, to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is the defaulting party or the sole affected party;

(s) nineteenth, to pay the amount required pursuant to the Declaration of Trust to the Issuer Trustee for the account of the beneficiaries of the Issuer;

(t) twentieth, to pay all indemnity amounts owing to the Manager;

(u) twenty-first, *pari passu* (i) to pay fees, expenses, reimbursement and indemnity amounts owing to the Issuer Trustee and the Indenture Trustee not previously paid pursuant to paragraph (b), (ii) to the payment or remittance of taxes not previously paid pursuant to paragraph (a), and (iii) to pay all amounts owing to Specified Creditors not specifically referred to above; in each case, including, for each referenced party, any amounts payable to their respective affiliates under the terms of any relevant indemnity; and

(v) twenty-second, any amounts remaining (i) to be held in the Collection Account for distribution in the above order of priority on the next Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full and discharged, and all other amounts have been paid in full, to pay to the Issuer.

Notwithstanding the foregoing, (i) the transfer of any amounts deposited by the IESO into the Collection Account on account of the IESO Cash Reserve Deposit Amount to the IESO Cash Reserve Account, and (ii) the transfer of any amounts deposited in the Collection Account on account of one-time transaction costs and expenses in connection with the incurrence of Issuer Funding Obligations on or within three business days of the closing date of such transaction, will, in each case, be made without reserving for or paying amounts which are senior in priority to such obligation under the Collection Account Waterfall.

Interest Accumulation Account

On each Interest Payment Date, the Paying Agent will distribute all amounts on deposit in the Interest Accumulation Account in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay all interest that is due and payable on Senior Funding Obligations on such Interest Payment Date;

(b) second, to pay all interest that is due and payable on Subordinated Funding Obligations on such Interest Payment Date, so long as after making this payment, the amount remaining on deposit in the Interest Accumulation Account at least equals the amount of accrued and unpaid interest on Senior Funding Obligations as of such Interest Payment Date; and

(c) third, to pay all interest that is due and payable on Junior Subordinated Funding Obligations on such Interest Payment Date, so long as after making this payment, the amount remaining in the Interest Accumulation Account at least equals the amount of accrued and unpaid interest on Senior Funding Obligations and Subordinated Funding Obligations as of such Interest Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Interest Accumulation Account for distribution in the above order of priority on the next Interest Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

Principal Accumulation Account

On each Interest Payment Date (after making the applications provided for in the waterfall under "— *Interest Accumulation Account*"), if any interest that is due and payable on Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations has not been paid, an amount equal to such deficiency will be withdrawn from the Principal Accumulation Account and applied to the payment of interest due and payable on such Interest Payment Date, provided that if the amount to be applied pursuant to this paragraph is insufficient to pay all such interest, the application of such amounts will be made first to Senior Funding Obligations, then to Subordinated Funding Obligations, and finally to Junior Subordinated Funding Obligations, in each case, on a *pro rata* basis.

On each Principal Payment Date (after making the applications provided for in the previous paragraph), the Paying Agent will distribute all amounts on deposit in the Principal Accumulation Account in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay all principal that is due and payable on Warehouse Obligations on such Principal Payment Date;

(b) second, to pay all principal that is due and payable on Senior Funding Obligations (other than Warehouse Obligations) on such Principal Payment Date;

(c) third, to pay all principal that is due and payable on Subordinated Funding Obligations on such Principal Payment Date, so long as after making this payment, the amount remaining in the Principal Accumulation Account at least equals the Required Principal Accumulation Amount (Senior) as of such Principal Payment Date; and

(d) fourth, to pay all principal that is due and payable on Junior Subordinated Funding Obligations on such Principal Payment Date, so long as after making this payment, the amount remaining in the Principal Accumulation Account at least equals the sum of the Required Principal Accumulation Amount (Senior) and the Required Principal Accumulation Amount (Subordinated) as of such Principal Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Principal Accumulation Account for distribution in the above order of priority on the next Interest Payment Date or Principal Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

IESO Cash Reserve Account

On each Payment Date beginning in November, 2021, an amount equal to the lesser of (i) the amounts to be paid or transferred pursuant to items (a) through (e) of the Collection Account Waterfall, and (ii) the amount, if any, by which the amount on deposit in the IESO Cash Reserve Account exceeds the IESO Cash Reserve Required Amount will be withdrawn from the IESO Cash Reserve Account and applied to the making of such payments or transfers in the order provided for in the Collection Account Waterfall.

On each Payment Date, if the amounts available for distribution from the Collection Account and from the preceding sentence are insufficient to pay or transfer items (a) through (e) of the Collection Account Waterfall, an amount equal to such deficiency will be withdrawn from the IESO Cash Reserve Account and applied to the making of such payments or transfers in the order provided for in the Collection Account Waterfall. Amounts in the IESO Cash Reserve Account are not available to pay principal on the Senior Notes. Once all funds in the IESO Cash Reserve Account have been paid out, the IESO Cash Reserve Account will be closed.

Program Cash Reserve Account

If, on any Payment Date, the amount on deposit in the Interest Accumulation Account is less than the sum of the Interest Accrual Amount (Senior), the Interest Accrual Amount (Subordinated) and the Interest Accrual Amount

(Junior Subordinated), an amount equal to such deficiency will be withdrawn from the Program Cash Reserve Account and deposited in the Interest Accumulation Account.

If, on any Principal Payment Date, the amount available in the Principal Accumulation Account (in accordance with the provisions applicable thereto) is insufficient to pay all principal that is due and payable on Warehouse Obligations, other Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as applicable (see "— *Principal Accumulation Account*"), on such Principal Payment Date (after making the applications provided for in the previous paragraph), amounts on deposit in the Program Cash Reserve Account will be used in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay the deficiency on principal that is due and payable on Warehouse Obligations on such Principal Payment Date;

(b) second, to pay the deficiency on principal that is due and payable on Senior Funding Obligations (other than Warehouse Obligations) on such Principal Payment Date;

(c) third, to pay the deficiency on principal that is due and payable on Subordinated Funding Obligations on such Principal Payment Date; and

(d) fourth, to pay the deficiency on principal that is due and payable on Junior Subordinated Funding Obligations on such Principal Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Program Cash Reserve Account for distribution in the above order of priority on the next Interest Payment Date or Principal Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

Refinancing Account

On each Principal Payment Date, the Paying Agent will transfer from the Refinancing Account to the Principal Accumulation Account the lesser of (i) the amount on deposit in the Refinancing Account, and (ii) the amount by which the sum of the Principal Accumulation Amounts for all Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations on such Principal Payment Date (without reference to any refinancing notice) exceeds the amount on deposit in the Principal Accumulation Account. After all Issuer Funding Obligations have been paid in full, any amounts remaining in the Refinancing Account will be transferred to the Collection Account.

Protection Account

On each date in respect of which the Province of Ontario makes a payment pursuant to the Change of Law Protection Agreement, the Paying Agent will, prior to making any payments under any other payment waterfall, distribute all amounts in the Protection Account solely to satisfy payments in respect of Approved Obligations as set out in the written payment statement delivered by the Manager to the Province of Ontario under the Change of Law Protection Agreement in the order of priority the applicable Obligation Secured has under the applicable payment waterfall.

On the Province of Ontario paying any amount in respect of an Approved Obligation into the Protection Account, the Province of Ontario will be subrogated and entitled to each applicable Specified Creditor's rights and interests under and in respect of the Approved Obligation to the extent of the amounts paid to the Specified Creditor out of the Protection Account, and shall be entitled to the right to be paid the applicable Subrogation Amount, the benefits of the Collateral and all proceeds therefrom.

Series Accounts

If, after giving effect to payments made on any Payment Date, the amount in the Collection Account is insufficient to make all required payments to Specified Creditors on such date, amounts on deposit in any Series

Account may be withdrawn from such Series Account and allocated to the applicable Specified Creditors in accordance with the related Funding Obligation Agreement.

Covenants of the Issuer

Payment of Principal and Interest

The Issuer will duly and punctually pay the principal of and interest due on the Issuer Funding Obligations in the manner specified in the Master Trust Indenture and any related Funding Obligation Agreement.

Use of Proceeds

The Issuer will use the proceeds of such indebtedness solely for: (i) the acquisition by the Issuer of an Investment Interest; (ii) the redemption, repayment or repurchase of any existing Issuer Funding Obligations; (iii) the funding of Issuer Accounts; and (iv) the payment of transaction fees and expenses in connection with the incurrence of Issuer Funding Obligations.

Legal Existence

The Issuer will do or cause to be done all things necessary to preserve its existence and maintain its status as a Financing Entity.

Separateness Covenants

The Issuer will take all reasonable steps to maintain its identity as a distinct entity with assets and liabilities distinct from those of the Manager and any of its affiliates. Such steps include: (i) conducting all transactions with the Manager strictly on an arm's length basis and in good faith; (ii) allocating all overhead expenses for items shared between the Issuer and the Manager on the basis of actual use to the extent practicable; (iii) conducting its affairs strictly in accordance with the Declaration of Trust; (iv) maintaining its books and records separate from those of the Manager or any affiliate thereof; (v) preparing its financial statements separately from those of the Manager and ensuring that any consolidated financial statements of the Manager that include the Issuer have notes clearly stating that the Issuer is a separate entity; (vi) only maintaining bank accounts or other depository accounts to which the Issuer alone is the account party and from which only the Issuer or its agent has the power to make withdrawals; (vii) paying its operating expenses from its own assets (including, reimbursing the Manager for any such expenses); (viii) maintaining its property in such a manner that it is not costly or difficult to segregate, ascertain or otherwise identify its individual assets from or against those of the Manager or any affiliate thereof; and (ix) not becoming liable to any person for any obligations of the Manager or any affiliate thereof.

Performance of Obligations

The Issuer agrees that it will (i) perform and observe all of its obligations and agreements contained in the Master Trust Indenture, the Declaration of Trust, the Master Transfer and Servicing Agreement, the other Program Agreements and in the instruments and agreements relating to the Collateral; (ii) diligently pursue any and all actions to enforce its rights each instrument or agreement included in the Collateral except as expressly provided in any Program Agreement; and (iii) enforce the Servicer's material obligations under the Master Transfer and Servicing Agreement and the Manager's material obligations under the Management Agreement.

Funding Obligations

The Issuer will ensure that all indebtedness is incurred pursuant to and in accordance with the provisions of the Master Trust Indenture, as described under "*— Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations*". The Issuer will not enter into any Funding Obligation Agreement (other than a Funding Obligation Agreement relating to Warehouse Obligations) that the Manager believes, acting reasonably, would likely require the Issuer to pay principal on such Issuer Funding Obligation by means of a Refinancing (other than a Pre-Approved Refinancing).

Financial Statements; Statement as to Compliance

The Issuer will deliver, or cause to be delivered to the Indenture Trustee and the Rating Agencies: (i) within 140 days after the end of each fiscal year, audited financial statements of the Issuer; (ii) within 90 days after the end of each fiscal quarter (other than the last fiscal quarter of each fiscal year), unaudited financial statements of the Issuer; and (iii) on an annual basis on or before March 31 of each year, a written statement concerning compliance with the conditions and covenants contained in the Master Trust Indenture and confirming that no Default or Event of Default has occurred or if a material Default or Event of Default has occurred, specifying the details thereof.

Payment Instructions

The Issuer will deliver to the Indenture Trustee and the Paying Agent (if the Paying Agent is not the Indenture Trustee) on a monthly basis, a payment instruction in respect of the Collection Account, which instruction shall set out the payments to be made on the following Payment Date and setting forth, among other things, (i) the amount of the payment to Debtholders (including a breakdown of principal and interest), (ii) any other transfers and payments to be made on such Payment Date, including amounts paid to the Indenture Trustee, the Issuer Trustee and the Manager, and (iii) the amounts on deposit in the Collection Account after giving effect to the foregoing payments. Similar payment instructions will also be delivered in respect of each other Program Account and Series Account, as and when payments are to be made from those accounts.

Notice of Certain Events; Protection Event

The Issuer will give the Indenture Trustee and each Rating Agency prompt written notice of (i) each Event of Default, (ii) each breach on the part of the Issuer or the Servicer of its respective obligations under the Master Transfer and Servicing Agreement (including any Servicer Default), (iii) each breach on the part of the Manager of its obligations under the Management Agreement, (iv) any default of the Issuer or a Derivative Counterparty under a derivative agreement, and (v) any Protection Event.

No Other Business

The Issuer will not engage in any activity other than the activities set forth in the Declaration of Trust or the other Program Agreements, the material provisions of which are described in this confidential shelf offering memorandum under "The Issuer".

Amendments to Program Agreements

Unless the Rating Agency Condition is satisfied, the Issuer will not make any material amendments to any Program Agreement (other than the Master Trust Indenture and individual trade confirmations under derivative agreements), or enter into any Co-Owner Agreement. Without limiting the foregoing sentence, the Issuer will not:

(a) enter into any Co-Owner Agreement without the consent of Controlling Class Creditors by Ordinary Resolution;

(b) amend, supplement, modify, restate or replace, or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to, any of the Program Agreements (other than the Master Trust Indenture, the derivative agreements and the Declaration of Trust) if any such amendment, supplement, modification, restatement or replacement, or waiver or consent, could reasonably be considered to be materially prejudicial to the rights or interests of any Specified Creditor(s), except as expressly permitted by such Specified Creditor(s) and subject to the Province of Ontario having been given prior notice;

(c) consent, if consent is required, to the resignation of the Manager under the Management Agreement; or

(d) amend the Declaration of Trust if such amendment would have or reasonably be expected to have an Adverse Effect; provided that if such amendment would have such result, such amendment may

only be made if the Issuer has obtained the consent of the Debtholders affected by such amendment by Ordinary Resolution.

Regarding amendments to the Master Trust Indenture or a Supplemental Indenture, see "— *Amendments to Master Trust Indenture*".

Consolidation; Sale of Assets

The Issuer may not consolidate with or merge into any other person, or sell, convey, exchange, transfer or otherwise dispose of any of its properties or assets included in the Collateral to any person (each, a "**transaction**"), unless:

(a) the entity formed by or surviving the consolidation or merger (if other than the Issuer) or the entity that acquires by conveyance or transfer formed by or surviving the consolidation or merger, by conveyance or transfer, as applicable: (i) is a financing entity; (ii) is organized under the laws of Canada or any province or territory thereof; (iii) is not a non-resident for purposes of the *Income Tax Act* (Canada); (iv) is not subject to regulation as an "investment company" under the Investment Company Act, (v) expressly assumes, pursuant to an assignment and/or assumption agreement or supplement, the due and punctual payment of all Obligations Secured then outstanding and the performance or observance of all of the Issuer's agreements and covenants under each of the Program Agreements to which the Issuer is a party; and (vi) in the case of a conveyance or transfer only, expressly agrees, pursuant to such assignment and/or assumption agreement or supplement, that (A) all right, title and interest conveyed or transferred is subject and subordinate to the security interest of the Indenture Trustee and (B) it will make all filings required by applicable securities laws in connection with any Notes;

(b) no Event of Default has occurred and is continuing immediately after the transaction;

(c) the Issuer has delivered to the Indenture Trustee an officer's certificate and an opinion of counsel, each stating that (i) such transaction and the agreements delivered in connection with such transaction comply with the terms and conditions in the Master Trust Indenture, (ii) all conditions precedent in the Master Trust Indenture relating to the transaction have been complied with, and (iii) each agreement delivered in connection with such transaction has been duly authorized, executed and delivered, and are valid, binding and enforceable against the surviving entity or transferee, as applicable;

(d) the Rating Agency Condition has been satisfied with respect to such transaction; and

(e) any action as is necessary to maintain the first priority perfected security interest in the Collateral has been taken.

No Borrowing; Guarantees, Loans; Restricted Payments

The Issuer will not issue, incur, assume, guarantee or otherwise become liable for any indebtedness except for Funding Obligations. Additionally, the Issuer will not, except as contemplated by the Master Trust Indenture or the Declaration of Trust, make any loan or advance or credit to, or guarantee, endorse or otherwise become contingently liable in connection with the obligations of, or own, purchase or acquire any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other person.

The Issuer is permitted to declare or make payable any amounts to the owner of units in the Issuer as permitted by and in accordance with the Declaration of Trust, and redeem, purchase, retire or otherwise acquire for value any units in the Issuer, provided that the Issuer may only satisfy the distribution declared or made payable, or the redemption or purchase price of such units to the extent that cash or property is available for such purpose, subject to the payment waterfalls provided for in the Master Trust Indenture. If the Issuer is restricted from satisfying the foregoing amounts in cash or property, then the Issuer will satisfy such amounts through the issuance of additional units and/or a promissory note to its unitholders in accordance with the Declaration of Trust.

Subordinated Funding Obligations and Junior Subordinated Funding Obligations

Notwithstanding anything in a Funding Obligation Agreement to the contrary, the Issuer may not redeem any Series or Tranche of Subordinated Funding Obligations or Junior Subordinated Funding Obligations unless the following conditions are satisfied: (i) no Default or Event of Default has occurred and is continuing; (ii) all Issuer Accounts are fully funded in accordance with the Master Trust Indenture and any applicable Funding Obligation Agreement; and (iii) the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations after giving effect to such redemption will not be less than 35% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations.

The Issuer will not permit (i) the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be less than 35% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations, or (ii) the aggregate outstanding principal amount of Junior Subordinated Funding Obligations to be less than 10% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations.

Security Matters

The Issuer will not (i) permit any lien, charge, excise, claim, security interest, mortgage or other encumbrance (other than permitted liens) to be created on or extend to the Collateral, (ii) release any security or guarantee in respect of the Collateral, (iii) sell, transfer, exchange or otherwise dispose of any of the Collateral except as expressly permitted under the Master Trust Indenture, or (vi) change its name, jurisdiction of formation or type of organization, unless it has provided the Indenture Trustee and each Rating Agency with prior written notice and it has first made all filings and taken all actions necessary to continue and maintain the Indenture Trustee's first priority security interest in the Collateral.

Other Covenants

In addition to the covenants contained in any Supplemental Indenture or any other Funding Obligation Agreement and the other covenants described in this section, the Issuer agrees that:

- upon the written request of the Indenture Trustee, it will use reasonable commercial efforts, following any (i) termination or resignation of the Servicer, the Manager or the Paying Agent, or (ii) termination, non-renewal or expiry of a liquidity agreement or a credit enhancement agreement, to appoint and enter into an agreement with a successor to such Servicer, Manager or Paying Agent, or replace or renew such liquidity agreement or credit enhancement agreement, in form and substance the same as the previously existing Program Agreement;

- it will not claim any credit on or make any deduction from the principal and interest payable on the Notes or Borrowings (other than amounts withheld or deducted in accordance with the Master Trust Indenture); or

- it will not take any action that would cause it to be treated as engaged in a "trade or business within the United States" for U.S. federal income tax purposes.

Amendments to Master Trust Indenture

Amendments not Requiring Consent of Specified Creditors

The Issuer and the Indenture Trustee may amend, supplement or otherwise modify the Master Trust Indenture or any Supplemental Indenture without the consent of any Specified Creditor upon prior notice to each Rating Agency and the Province of Ontario and delivery by the Issuer to the Indenture Trustee of an officer's certificate to the effect that the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect. Such amendments to the Master Trust Indenture or any Supplemental Indenture may:

- evidence the succession or successive successions of another Financing Entity to the Issuer, and the assumption by such successor of the covenants of the Issuer in the Master Trust Indenture and the Notes;

- add to the covenants of the Issuer, or have the Issuer surrender any of its rights or powers under the Master Trust Indenture (or any Supplemental Indenture), for the benefit of the Debtholders of any or all Classes, Series or Tranches of Issuer Funding Obligations;

- cure any ambiguity, correct or supplement any provision in the Master Trust Indenture which may be inconsistent with any other provision in the Master Trust Indenture (or any Supplemental Indenture), to correct a clear clerical or administrative error, or make any other provisions for matters or questions arising under the Master Trust Indenture;

- provide for the issuance of any Series or Tranche of Notes and to set forth the terms thereof, and/or to add to the rights of the Noteholders of any Class, Series or Tranche;

- provide for the acceptance of a successor Indenture Trustee under the Master Trust Indenture;

- add any Events of Default relating to any or all Classes, Series or Tranches of Issuer Funding Obligations;

- provide for the consolidation of any financing entity and the Issuer into a single entity or the transfer of assets in any financing entity to the Issuer;

- if the IESO is replaced under the Master Transfer and Servicing Agreement, make any necessary changes to the Master Trust Indenture;

- provide for additional forms of credit enhancement for any Class, Series or Tranche of Issuer Funding Obligations;

- facilitate the issuance of foreign currency Issuer Funding Obligations;

- comply with any regulatory, accounting or tax laws, or changes to any ratings criteria;

- enable the Issuer to file a registration statement for the offering of securities registered under the Securities Act and to comply with Regulation AB thereunder; or

- qualify for sale treatment under generally accepted accounting principles.

The Master Trust Indenture or any Supplemental Indenture may also be amended by the Issuer and the Indenture Trustee without the consent of any Specified Creditor (but with prior notice to each Rating Agency and the Province of Ontario) in the following circumstances, provided that the Issuer delivers to the Indenture Trustee an officer's certificate to the effect that (i) the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect, and (ii) such amendment is required to comply with law, or to conform or be consistent with the statements contained in this confidential shelf offering memorandum:

- to facilitate compliance with changes in laws or regulations applicable to the Issuer or the transactions governed by the Program Agreements; or

- to cause the provisions of the Master Trust Indenture to conform to or be consistent with or in furtherance of the statements made in this confidential shelf offering memorandum with respect to the Master Trust Indenture or any Supplemental Indenture.

Additionally, the Master Trust Indenture or any Supplemental Indenture may also be amended by the Issuer and the Indenture Trustee without the consent of any Specified Creditor (but with prior notice to each Rating Agency and the Province of Ontario) in the following circumstances, provided that (i) the Issuer delivers to the Indenture

Trustee an officer's certificate to the effect that the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect and (ii) the Rating Agency Condition is satisfied with respect to such amendment:

- to add provisions to, or change in any manner or eliminate any of the provisions of, the Master Trust Indenture or any Supplemental Indenture;

- to modify in any manner the rights of the Specified Creditors under the Master Trust Indenture or any Supplemental Indenture; or

- to provide for those changes necessary for compliance with securities law requirements or banking laws or regulations.

The Indenture Trustee may, but is not obligated to, enter into any amendment which adversely affects its rights, duties, benefits, protections, privileges or immunities under the Master Trust Indenture (or any Supplemental Indenture).

Amendments Requiring Consent of Debtholders

The Issuer and the Indenture Trustee may amend, supplement or otherwise modify and amend the Master Trust Indenture or any Supplemental Indenture for reasons other than those stated in the prior section ("— *Amendments not Requiring Consent of Specified Creditors*"), with prior notice to each Rating Agency and the Province of Ontario, the consent of Debtholders of each Class, Series or Tranche of Issuer Funding Obligations affected by that amendment, supplement or other modification by Ordinary Resolution, and satisfaction of the Rating Agency Condition. However, if the amendment, supplement or other modification would result in any of the following events occurring, it may be made only with the consent of each Debtholder of Issuer Funding Obligations affected thereby and satisfaction of the Rating Agency Condition:

- a change in an Interest Payment Date, Principal Payment Date or Principal Payment Default Date for any Issuer Funding Obligation;

- a reduction in the principal amount of, or interest rate on, any Note, or a change in the method of computing the outstanding principal amount in a manner that is adverse to any Debtholder;

- a reduction in the amount of a discount note payable upon its acceleration;

- a reduction in the percentage in outstanding principal amount of Issuer Funding Obligations of any Class, Series or Tranche, the consent of whose holders is required for modification or amendment of the Master Trust Indenture, any Supplemental Indenture or any related agreement or for waiver of compliance with provisions of the Master Trust Indenture or for waiver of defaults and their consequences provided for in the Master Trust Indenture;

- a modification of any of the provisions governing the amendment of the Master Trust Indenture or any Supplemental Indenture, or waivers of past defaults, except to increase any percentage of Debtholders required to consent to any such amendment or waiver, or to provide that certain other provisions of the Master Trust Indenture cannot be modified or waived without the consent of each Debtholder affected by such modification;

- a change in the city or political subdivision so designated with respect to any Class, Series or Tranche of Notes where any principal of, or interest on, any Note is payable; or

- a change in the method of computing the amount of principal of, or interest on, any Note on any date.

Debtholder Approvals and Meetings

Access to Debtholder Lists

The Indenture Trustee will preserve the names and addresses of all Specified Creditors received by it in its capacity as Note registrar and those which it has received from the Issuer in accordance with the Master Trust Indenture. Three or more Debtholders of any Series or Tranche, each of whom has owned an Issuer Funding Obligation of such Series or Tranche for at least six months, may, by application to the Indenture Trustee in the prescribed form, obtain access to the current list of Debtholders held by the Indenture Trustee for purposes of communicating with other Debtholders concerning their rights under the Master Trust Indenture (or any Supplemental Indenture) or under the applicable Program Agreement.

Debtholder Meetings

The Master Trust Indenture sets out the mechanics for meetings of Debtholders. The Master Trust Indenture provides for meetings of Debtholders of any Class, Series or Tranche of Issuer Funding Obligations, of all Issuer Funding Obligations, of Controlling Class Obligations of a Series or of all Controlling Class Obligations (each of such groups of Debtholders being a "**Debtholder Group**"). The Indenture Trustee will call a meeting of a Debtholder Group upon request of the Issuer or Debtholders of at least 25% in aggregate outstanding principal amount of the applicable Issuer Funding Obligations. If the Indenture Trustee fails to convene, or cause to be convened, such a meeting after 30 days, the Issuer or those Debtholders may convene the meeting. The Indenture Trustee may call a meeting of a Debtholder Group at any time for any purpose. The quorum for any meeting is one or more persons holding (personally or as proxies) not less than 25% of the outstanding principal amount of the Issuer Funding Obligations of the Debtholder Group entitled to vote at such meeting. Each Debtholder who is present, whether in person or by proxy, will have one vote for every $1,000 of outstanding principal amount of applicable Issuer Funding Obligations of which he or she shall be the holder.

Every question submitted to a meeting, except those matters requiring an Extraordinary Resolution, shall be decided by a majority of the votes (an "**Ordinary Resolution**"). Any matter requiring an Extraordinary Resolution shall be decided by the affirmative vote of Controlling Class Creditors holding not less than 66⅔% of the outstanding principal amount of all Controlling Class Obligations (an "**Extraordinary Resolution**"). Such matters include:

- after the security has become enforceable, authorizing the Indenture Trustee to accept, in satisfaction or partial satisfaction, all or any part of the Collateral;
- after the security has become enforceable, sanctioning the selling of the Collateral or any part thereof or interest therein;
- after the security has become enforceable, authorizing the Indenture Trustee or any other person to bid or tender at any sale of the Collateral or any part thereof and take such actions in connection with such sale as it determines to be in the best interests of all Controlling Class Creditors;
- consenting to any compromise or arrangement by the Issuer with any creditor, creditors or class or classes of creditors or with the holders of any securities of the Issuer whose claims are payable from the Collateral;
- restraining any Debtholder from taking or instituting any suit, action or proceeding for the purpose of realizing on the Collateral or for the execution of any trust or power hereunder or for the appointment of a liquidator, receiver or trustee in bankruptcy or to have the Issuer liquidated or for any other remedy hereunder and to direct such Debtholder to waive any Event of Default on which any suit or proceeding is founded;
- requiring the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any other powers conferred upon it by the Master Trust Indenture of general application to all Classes of Issuer Funding Obligations, including the exercise of

any rights of the Issuer under any of the Program Agreements upon the occurrence and during the continuance of an Event of Default, or cancel any declaration of acceleration made pursuant to the Master Trust Indenture upon such terms and/or conditions as may be decided;

- authorizing the Indenture Trustee, for and on behalf of all Debtholders, to file and prove a claim or debt against the Issuer or its property for an amount equivalent to the aggregate amount which may be payable in respect of all Issuer Funding Obligations, to value the Collateral, and to vote such claim or debt at meetings of creditors and generally act for and on behalf of all Debtholders in such proceedings as such Extraordinary Resolution may provide; and

- appointing a committee to exercise, on behalf of all Controlling Class Creditors, any powers of such Controlling Class Creditors as are exercisable by Extraordinary Resolution or other resolution (as specified in the Extraordinary Resolution appointing such committee).

Any resolution or instrument signed by the requisite number of Debtholders or Controlling Class Creditors, as applicable, shall have the same force and effect as a resolution duly passed at a meeting of such Debtholders or Controlling Class Creditors.

Any action or vote taken at a meeting (including by way of written instrument) of Debtholders of a Debtholder Group duly held in accordance with the Master Trust Indenture will be binding on all Debtholders of that Debtholder Group. An Extraordinary Resolution shall bind all Debtholders and all other Specified Creditors.

In determining whether Noteholders of the requisite principal amount have taken any action under the Master Trust Indenture, (i) Senior Notes owned by the Issuer, the Manager or any affiliate of either of them, and (ii) any Class of Notes (or portion thereof) in which the Province of Ontario has an interest will, in each case, be disregarded and deemed not to be outstanding at any time that a Specified Creditor other than the Province of Ontario has an interest in such Class of Notes. In determining whether the Indenture Trustee will be protected in relying upon any such action, only Senior Notes (or, in the case of the Province of Ontario, any Notes) which a responsible officer of the Indenture Trustee knows to be owned by the Issuer, OPG or any affiliate of either of them, or with respect to which the Province of Ontario has an interest pursuant to the Change of Law Protection Agreement, will be so disregarded.

Whenever an action may be taken by Debtholders of a specified percentage of outstanding principal amount of Issuer Funding Obligations and at such time there are outstanding Issuer Funding Obligations of any relevant Series denominated in a foreign currency, then the principal amount of the Issuer Funding Obligations of such Series which will be deemed to be outstanding for purposes of taking such action will be the amount of Canadian dollars which could be obtained for such principal amount at the market exchange rate on the applicable date.

Events of Default

General

Each of the following events is an "**Event of Default**":

(a) the Issuer's failure, for a period of 5 days, to pay interest on any Controlling Class Obligations when such interest becomes due and payable;

(b) the Issuer's failure to pay the principal of any Controlling Class Obligations at the Principal Payment Default Date;

(c) any representation or warranty in the Master Trust Indenture proves to be incorrect in any material respect when made and if capable of remedy, such incorrect representation or warranty is not remedied for a period of 60 days after the Indenture Trustee or Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer requesting remedy of that default and stating that as a result of such default, the interests of such Controlling Class Creditors are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(d) the Issuer's default in the performance, or breach, of any other of its covenants or warranties in the Master Trust Indenture, for a period of 60 days after the Indenture Trustee or Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer requesting remedy of that default and stating that as a result of such default, the interests of such Controlling Class Creditors are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(e) certain events of bankruptcy or insolvency of the Issuer, or the Issuer fails to maintain its existence or status as a Financing Entity;

(f) the Change of Law Protection Agreement ceases to be in full force and effect against the Province of Ontario, or the validity thereof, or the applicability thereof to the Province of Ontario or any Controlling Class Obligations is disaffirmed by the Province of Ontario;

(g) an Acceleration Event has occurred and Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer and the Indenture Trustee specifying the default;

(h) the Issuer's default in the performance of its covenant to deliver payment instructions for a period of three days after the Indenture Trustee has provided written notice thereof;

(i) at any time, the amounts withdrawn from the Program Cash Reserve Account prior to such time exceed the aggregate of (x) 0.50% of the largest outstanding principal amount of all Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations on or prior to such time, (y) the sum of all amounts deposited to the Program Cash Reserve Account, and (z) all interest and earnings (net of losses and investment expenses), if any, on funds credited to the Program Cash Reserve Account; or

(j) a Servicer Default occurs.

If Controlling Class Obligations constituting 25% or more of the outstanding principal amount of all Controlling Class Obligations have been accelerated in accordance with their Funding Obligation Agreements, the thresholds required in clauses (c), (d) or (g) will be deemed to have been met.

Waiver of Default

Subject to the summary provided for below under "*— Acceleration and Remedies — General*", Controlling Class Creditors may, by Ordinary Resolution, waive any past Default under the Master Trust Indenture so long as the Rating Agency Condition in respect of each Series or Tranche of Controlling Class Obligations has been satisfied.

Acceleration and Remedies

General

If an Event of Default (other than an Event of Default described in paragraph (e) or (f)) occurs and is continuing, either the Indenture Trustee or Controlling Class Creditors holding not less than 50% of the outstanding principal amount of all Controlling Class Obligations (treated as one class) may declare the outstanding principal amount of all Issuer Funding Obligations (other than Derivative Funding Obligations) to be immediately due and payable. If Controlling Class Obligations constituting 50% or more of the outstanding principal amount of all Controlling Class Obligations have been accelerated in accordance with their Funding Obligation Agreements, the 50% threshold required will be deemed to have been met. The occurrence of an Event of Default described in paragraph (e) or (f) results in an automatic acceleration of all Issuer Funding Obligations (other than Derivative Funding Obligations).

A declaration of acceleration or an automatic acceleration may be rescinded by Extraordinary Resolution if (i) the Issuer has paid all overdue interest, principal that has become due (other by reason of acceleration) on

Controlling Class Obligations and other amounts set out in the Master Trust Indenture, and (ii) all Events of Default (other than non-payment of principal) have been cured or waived.

If Controlling Class Obligations are accelerated, the Indenture Trustee may amongst other things, (i) apply to a court for an order of sequestration and payment of amounts in respect of the Clean Energy Adjustment in accordance with the FHPA, (ii) take possession of the Collateral, (iii) appoint a receiver with respect to the Collateral, (iv) initiate proceedings in any court for the appointment of a receiver or for sale or foreclosure, (v) exercise rights, remedies, powers, privileges and claims under any Program Agreement, including the right to terminate and replace the Manager or the Servicer, or (vi) take any other action, suit, remedy or proceeding authorized or permitted by the Master Trust Indenture or by applicable law. The Indenture Trustee is not obligated to exercise any of its rights or powers under the Master Trust Indenture at the request or direction of any Controlling Class Creditors unless Controlling Class Creditors offer the Indenture Trustee a reasonable indemnity.

See *"Risk Factors — Risks Associated with the Unusual Nature of the Investment Asset" and "Risk Factors — Insolvency-Related Risks Relating to the Issuer"*.

Limitation on Available Amounts on Acceleration

If all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable after the Moratorium Period and before its scheduled payment date, maturity date or redemption date, then the estimated Finance Amount used by the Financial Services Manager to determine the Clean Energy Adjustment for a period will be determined without regard to the fact that such amount has become due and payable, unless and only to the extent that the amount of the Clean Energy Adjustment is capable of being increased based on the Fair Allocation Amount for such period. See *"Ontario's Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*. However, upon such acceleration, all accelerated Senior Notes will be repaid in full before any further payments of principal are made to holders of subordinated indebtedness, including the subordinated debt held by OPG; therefore, collections of the Clean Energy Adjustment that would otherwise have been available to repay the principal amount of subordinated indebtedness in the absence of acceleration of the Senior Notes will instead be applied to repay accelerated Senior Notes. See *"Capital Markets Platform"*.

Payment Waterfall Upon Acceleration

After acceleration of the Issuer Funding Obligations (other than derivative agreements), any money or other property standing to the credit of an Issuer Account (except as set out below) or otherwise collected by the Indenture Trustee will be applied in the following priority:

(a) first, to the payment or remittance of taxes for which a governmental authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(b) second, to pay fees, expenses and reimbursement amounts owing to the Issuer Trustee and the Indenture Trustee;

(c) third, *pari passu* (i) to pay interest, fees and other amounts (other than principal) owing in respect of Senior Funding Obligations and (ii) to pay all Derivative Funding Obligations (other than termination payments);

(d) fourth, to pay interest, fees and other amounts (other than principal) owing in respect of Subordinated Funding Obligations;

(e) fifth, to pay interest, fees and other amounts (other than principal) owing in respect of Junior Subordinated Funding Obligations;

(f) sixth, to pay principal owing in respect of Warehouse Obligations;

(g) seventh, *pari passu* (A) to pay principal owing in respect of Senior Funding Obligations (other than Warehouse Obligations) and (B) to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is not the defaulting party or the sole affected party;

(h) eighth, to pay fees, expenses and reimbursement amounts owing to the Manager;

(i) ninth, to pay principal owing in respect of Subordinated Funding Obligations;

(j) tenth, to pay principal owing in respect of Junior Subordinated Funding Obligations;

(k) eleventh, to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is the defaulting party or the sole affected party;

(l) twelfth, to pay all indemnity amounts owing to the Manager;

(m) thirteenth, *pari passu* (i) to the payment or remittance of taxes not previously paid pursuant to paragraph (a), and (ii) to pay all amounts owing to Specified Creditors not specifically referred to above; in each case, including, for each referenced party, any amounts payable to their respective affiliates under the terms of any relevant indemnity; and

(n) fourteenth, to pay any remaining amounts to the Issuer.

However, amounts on deposit in a Series Account will first be used to satisfy all obligations owing to the Debtholders or Derivative Counterparties for whom such Series Account was established. Thereafter, such amounts will be applied in accordance with the priorities set out above. In addition, amounts on deposit in the Protection Account will only be used to satisfy the obligations for which those amounts were deposited.

Rights of Specified Creditors

No Specified Creditor will have the right to institute any proceeding, judicial or otherwise, with respect to the Master Trust Indenture, or for the appointment of a receiver or trustee or similar official, or for any other remedy under the Master Trust Indenture. A Controlling Class Creditor may exercise such rights if:

(a) the Issuer or a Controlling Class Creditor has previously given to the Indenture Trustee written notice of a continuing Event of Default;

(b) Controlling Class Creditors, by Ordinary Resolution, have made written request of the Indenture Trustee to institute the proceeding in its own name as Indenture Trustee;

(c) Controlling Class Creditors have offered the Indenture Trustee a satisfactory indemnity; and

(d) the Indenture Trustee has, for 60 days, failed to institute the proceeding.

Subject to certain powers which may only be exercised by Extraordinary Resolution, Controlling Class Creditors, by Ordinary Resolution, will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to all Issuer Funding Obligations. However, the Indenture Trustee may decline to follow such direction if it determines (based on advice from counsel) that such direction (i) conflicts with applicable law or the Master Trust Indenture, (ii) has a substantial likelihood of involving the Indenture Trustee in personal liability or (iii) is unjustly prejudicial to Controlling Class Creditors not taking part such direction. See "*— Debtholder Approvals and Meetings — Debtholder Meetings*" for a description of certain powers which may only be exercised by Extraordinary Resolution. Specified Creditors (other than Debtholders) do not have any right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee. Specified Creditors (other than Debtholders) will only have the right to receive proceeds following an Event of Default.

Limited Recourse

The obligation of the Issuer to pay principal of and interest on the Issuer Funding Obligations or any other amount payable to any Specified Creditor is subject to the allocation and payment provisions in the Master Trust Indenture and the applicable Funding Obligation Agreement and limited to amounts available from the Collateral. Neither the Indenture Trustee, the Manager nor the Issuer Trustee in its individual capacity, nor any holder of any unit in the Issuer, nor any of their respective owners, beneficiaries, agents, officers, directors, employees, successors or assigns will, in the absence of an express agreement to the contrary, be personally liable for the payment of the principal of or interest on the Notes or any other Issuer Funding Obligation, or for the Issuer's covenants and agreements contained in the Master Trust Indenture.

No Petition

Each Specified Creditor, by accepting its rights as a beneficiary under the Master Trust Indenture, agrees that until one year and one day following repayment in full of all Issuer Funding Obligations, it will not commence (or join in commencing) a bankruptcy, insolvency or similar proceeding under the laws of any jurisdiction against the Issuer.

Force Majeure

The Indenture Trustee and the Issuer Trustee will not be responsible or liable for any failure or delay in the performance of their obligations under the Master Trust Indenture arising out of or caused by, directly or indirectly, forces beyond their control, including loss or malfunctions of utilities, communications or computer services.

Satisfaction and Discharge

The Master Trust Indenture will cease to be of further effect with respect to any Class, Series or Tranche of Issuer Funding Obligations when:

(a) (x) in the case of Notes, all Notes of that Class, Series or Tranche which had been outstanding, with certain exceptions set forth in the Master Trust Indenture, have been delivered to the Indenture Trustee for cancellation or been cancelled, or (y) in the case of all other Issuer Funding Obligations, all Issuer Funding Obligations of that Class, Series or Tranche have been paid in full, as certified by the Issuer;

(b) the Issuer has paid all other sums payable by it under the Master Trust Indenture with respect to that Class, Series or Tranche of Issuer Funding Obligations; and

(c) the Issuer has delivered to the Indenture Trustee an officer's certificate and an opinion of external counsel each stating that the conditions precedent in the Master Trust Indenture relating to the satisfaction and discharge with respect to that Class, Series or Tranche of Issuer Funding Obligations have been complied with.

The Master Trust Indenture will cease to be of further effect when all Issuer Funding Obligations have been satisfied and discharged in accordance with the previous paragraph and all other Obligations Secured have been paid in full, as certified by the Issuer.

DESCRIPTION OF SENIOR NOTES

The following description of the Senior Notes is a summary of certain of their material attributes and characteristics, and does not purport to be complete. The terms and conditions set forth in this *"Description of Senior Notes"* section will apply to each Senior Note unless otherwise specified in the Term Sheet applicable to such Offering. For further particulars, reference should be made to the Master Trust Indenture and the Supplemental Indenture and Terms Document, if any, relating to the particular Series or Tranche of Senior Notes.

General

The Senior Notes will be issued under the Master Trust Indenture and will be Funding Obligations issued in connection with the financing program described under the heading "*Capital Markets Platform*". The specific terms and conditions of each Series of Senior Notes will be set forth in the Supplemental Indenture authorizing that Series and the specific terms and conditions of any Tranche of Senior Notes will be set forth in the Supplemental Indenture or the Terms Document authorizing that Tranche.

Under the Master Trust Indenture, the Issuer may issue an unlimited principal amount of Senior Notes. See "*Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations*". The Senior Notes will be direct obligations of the Issuer and secured in the manner provided for under the Master Trust Indenture. See "*Capital Markets Platform — Security*".

The Supplemental Indenture or Terms Document will describe the following terms of the Senior Notes:

- the Series designation;
- stated principal amount of the Senior Notes;
- whether such Senior Notes are of a particular Tranche of Senior Notes;
- the currency or currencies in which such Senior Notes will be denominated and in which payments of principal of, and interest on, such Senior Notes will or may be payable;
- the price at which such Series or Tranche of Senior Notes will be issued;
- the times at which such Series or Tranche of Senior Notes may, pursuant to any optional redemption provisions, be redeemed, and the other terms and provisions of any such redemption;
- the rate per annum at which such Series or Tranche of Senior Notes will bear interest, if any, or the formula or index on which such rate will be determined;
- each Interest Payment Date, each Principal Payment Date and the Principal Payment Default Date for such Series or Tranche of Senior Notes;
- the Principal Accumulation Date(s), if any, and Principal Accumulation Amount(s) for such Series of Senior Notes;
- the initial principal amount of such Senior Notes, and the means for calculating the outstanding principal amount of such Series or Tranche of Senior Notes;
- whether or not application will be made to list such Series or Tranche of Notes on any securities exchange;
- any events of default with respect to such Series or Tranche of Senior Notes;
- if such Series or Tranche of Senior Notes will be issued in whole or in part in the form of a global note, the terms and conditions, if any, upon which such global note may be exchanged for other individual Senior Notes, and the depository for such global note;
- if such Class, Series or Tranche of Senior Notes will be issued in whole or in part in registered form, bearer form or both, and if such Senior Notes will be issued with or without coupons;
- if such Class, Series or Tranche will have the benefit of a credit enhancement agreement or liquidity agreement, and the terms and provisions of the applicable agreement;

- the record date for any Interest Payment Date or Principal Payment Date of such Series or Tranche of Senior Notes, if different from the last of the month before the related Interest Payment Date or Principal Payment Date; and

- whether and under what conditions, additional amounts will be payable to Noteholders of such Series or Tranche of Notes.

Limitations

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*.

Payments of Principal and Interest

Interest will accrue on the principal balance of each Series or Tranche of Senior Note at the interest rate specified in the related Term Sheet and will be payable on the Interest Payment Date(s) specified in the related Term Sheet. Principal of each Series or Tranche of Senior Notes will be payable in the amounts and on the Principal Payment Date(s) specified in the related Term Sheet. The Term Sheet applicable to a Series or Tranche of Senior Notes will also set out the Principal Payment Default Date for such Senior Notes, which is the date on which failure to pay the principal amount of such Senior Notes will result in an Event of Default.

On each Payment Date, the Issuer will, to the extent funds are available therefor from the Collection Account (see "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account*"), transfer to the Interest Accumulation Account the aggregate amount of interest that has accrued on each Series of Senior Notes (together with all other amounts to be accrued for other Issuer Funding Obligations). On each Interest Payment Date for a Series or Tranche of Senior Notes, the Paying Agent will pay to the holders of such Senior Notes interest then due on such Senior Notes using amounts available therefor from the Interest Accumulation Account, the Principal Accumulation Account, the IESO Cash Reserve Account, the Program Cash Reserve Account and the Protection Account. See "*Change of Law Protection Agreement*" and "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration*".

On each Payment Date, the Issuer will, to the extent funds are available therefor from the Collection Account (see "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account*"), transfer to the Principal Accumulation Account the aggregate of the amounts the Issuer is required to accumulate for each Series of Senior Notes (together with all other amounts to be accumulated for other Issuer Funding Obligations). The Term Sheet applicable to a Series or Tranche of Senior Notes will set out the Principal Accumulation Amount(s) and the Payment Dates on which such amount are to be accumulated for such Senior Notes. On each Principal Payment Date for a Series or Tranche of Senior Notes, the Paying Agent will pay to the holders of such Senior Notes the principal then due on such Senior Notes using amounts available therefor from the Principal Accumulation Account, the Program Cash Reserve Account and the Protection Account. See "*Change of Law Protection Agreement*" and "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration*". Holders of Senior Notes may receive principal payments earlier than an expected Principal Payment Date if an optional redemption occurs and may receive principal payments later than an expected Principal Payment Date if there are insufficient Available Collections. See "*Risk Factors*" for a discussion of factors that may affect the timing of principal payments on a Series or Tranche of Senior Notes. It is not an Event of Default if the stated principal amount of a Series or Tranche of Senior Notes is not paid in full on an expected Principal Payment Date. If the stated principal amount of a Senior Note is not paid in full by its Principal Payment Default Date, an Event of Default will occur. See "*Capital Markets Platform — Events of Default*".

Unless otherwise specified in a Term Sheet, the Issuer has designated the Indenture Trustee as its Paying Agent for all Senior Notes having a place of payment in Toronto, Ontario.

Optional Redemption of Senior Notes

If a Supplemental Indenture for any Series or Tranche of Senior Notes states that such Senior Notes will be redeemable, in whole at any time or in part from time to time, such Senior Notes will be redeemable at the option of the Issuer at the redemption price specified in the Supplemental Indenture. If less than all the Senior Notes of any Series or Tranche are to be redeemed at one time, the Senior Notes of such Series or Tranche to be redeemed will be selected by the Indenture Trustee on a pro rata basis according to the principal amount of such Senior Notes registered in the name of each holder thereof, or in such other manner as the Indenture Trustee may consider equitable.

Notice of any redemption will be delivered to each holder of the Senior Notes to be redeemed, electronically or by mail (postage prepaid) at the address of such holder appearing in the Note register (or published in an authorized newspaper in the case of Senior Notes held in bearer form) or otherwise in accordance with the procedures of the depository, at least 15 days but not more than 30 days before the redemption date, except that redemption notices may be delivered more than 30 days prior to the redemption date if the notice is issued in connection with a satisfaction and discharge of the Master Trust Indenture with respect to such Series or Tranche of Senior Notes. The notice of redemption will state (i) the portion of the principal amount thereof to be redeemed (provided that no Senior Notes in an aggregate principal amount of 1,000 units of the applicable currency or less will be redeemed in part), (ii) the redemption date and (iii) the redemption price. Unless the Issuer defaults in payment of the redemption price, on and after the redemption date, interest will cease to accrue on the Senior Notes or portions of the Senior Notes called for redemption. A replacement note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original note; provided, however, that, in the case of a global note, an appropriate notation may instead be made on such note to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof.

The Term Sheet for each Offering will identify the redemption provisions of the applicable Notes at the time of such Offering.

Purchase for Cancellation

The Issuer may purchase or otherwise acquire, at any time or from time to time, all or any of the outstanding Senior Notes of any Series or Tranche in the market or by invitation for tenders or by private contract at such prices as it may determine in its sole discretion. All such Senior Notes purchased by the Issuer will be cancelled. If, upon a tender, more Senior Notes of a Series or Tranche are tendered at the same lowest price than the Issuer is prepared to accept, the Senior Notes of such Series or Tranche to be purchased will be selected by the Indenture Trustee on a pro rata basis according to the principal amount of such Senior Notes registered in the name of each holder thereof, or in such other manner as the Indenture Trustee may consider equitable.

DEPOSITORY SERVICES

Except as otherwise provided below, the Senior Notes will be issued in "book-entry only" form and must be purchased, transferred, redeemed or exchanged through participants ("**Participants**") in the depository service of a depository chosen by the Issuer (the "**depository**") or its nominee, which include securities brokers and dealers, banks and trust companies. On the closing date of an Offering, the Issuer will cause a global certificate representing the Senior Notes to be delivered to, and registered in the name of, the depository or its nominee. Except as described below, no purchaser of Senior Notes will be entitled to a certificate or other instrument from the Issuer or the depository evidencing that purchaser's ownership thereof, and no purchaser will be shown on the records maintained by the depository except through a book-entry account of a Participant acting on behalf of such purchaser. Each purchaser of Senior Notes will typically receive a customer confirmation of purchase from the registered dealer from which the Senior Notes are purchased in accordance with the practices and procedures of that registered dealer. The practices of registered dealers may vary, but generally, customer confirmations are issued promptly after execution of a customer order. The depository will be responsible for establishing and maintaining book-entry accounts for its Participants having interests in the Senior Notes.

Neither the Issuer, the Indenture Trustee nor the Agents will assume any liability for: (i) any aspect of the records relating to the beneficial ownership of the Senior Notes held by the depository or the payments relating thereto; (ii) maintaining, supervising or reviewing any records relating to the Senior Notes; or (iii) any advice or representation

made by or with respect to the depository or those contained in this confidential shelf offering memorandum and relating to the rules governing the depository or any action to be taken by the depository or at the direction of its Participants. The rules governing the depository provide that it acts as the agent and depository for the Participants. As a result, Participants must look solely to the depository and persons, other than Participants, having an interest in the Senior Notes must look solely to Participants for payments made by or on behalf of the Issuer to the depository in respect of the Senior Notes.

If: (i) required by applicable law; (ii) the depository notifies the Issuer in writing that the depository is no longer willing or able to discharge properly the responsibilities of a depository with respect to the Senior Notes and the Issuer is unable to locate a qualified successor; (iii) the Issuer determines the Senior Notes in book-entry only form should be exchanged for definitive certificates and the Issuer delivers a written notice to such effect to the Indenture Trustee; (iv) an Event of Default has occurred and Noteholders holding more than 50% of the Controlling Class Obligations of any Series of Senior Notes determine such book-entry system is no longer in the best interests of the holders of that Series; or (v) the book-entry system is terminated, then certificates representing the Senior Notes will be issued to the beneficial owners of Senior Notes.

Interest on the Senior Notes will be paid directly to CDS while the book-entry only system is in effect. If definitive certificates are issued, interest will be paid by wire transfer of immediately available funds to the accounts specified by the holders thereof or, if no such account is specified, by mailing a cheque to each such holder's registered address. Payment of principal, and the interest due, at maturity, will be paid directly to CDS while the book-entry only system is in effect. If definitive certificates are issued, payment of principal, and interest due, at maturity, will be paid upon surrender thereof at any office of the Trustee or as otherwise specified in the Indenture.

Manner of Effecting Transfer or Redemption

A transfer or redemption of Senior Notes held in "book-entry form" only will be effected through records maintained by the depository or its nominee with respect to interests of Participants, and on the records of Participants with respect to interests of persons other than Participants. Purchasers of such Senior Notes who are not Participants, but who desire to purchase, sell or otherwise transfer ownership of or other interests in the Senior Notes, may do so only through Participants.

DTC, Euroclear and Clearstream, Luxembourg

Where CDS acts as depository for a series of Senior Notes, to the extent the Issuer makes such series of Senior Notes eligible with The Depositary Trust Company ("**DTC**"), Euroclear Bank S.A./N.V., as operator of the Euroclear System ("**Euroclear**") and Clearstream Banking, société anonyme ("**Clearstream, Luxembourg**"), and the Issuer specifies as such in the Term Sheet with respect to the particular series of Senior Notes, holders may hold such series of Senior Notes through the accounts maintained by DTC, Euroclear or Clearstream, Luxembourg, as applicable, as participants in CDS only if they are participants of those systems, or indirectly through organizations which are participants of those systems.

In such case, DTC, Euroclear and Clearstream, Luxembourg will hold omnibus book-entry positions on behalf of their participants through customers' securities accounts in their respective depositaries which in turn will hold such positions in customers' securities accounts in the names of the nominees of the depositaries on the books of CDS. All securities in DTC, Euroclear and Clearstream, Luxembourg are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts.

Transfers of such Senior Notes by persons holding through Euroclear or Clearstream, Luxembourg participants, as applicable, will be effected through CDS, in accordance with CDS rules, on behalf of the relevant European international clearing system by its depositaries; however, such transactions will require delivery of transfer instructions to the relevant European international clearing system by the participant in such system in accordance with its rules and procedures and within its established deadlines (European time). The relevant European international clearing system will, if the transfer meets its requirements, deliver instructions to its depositaries to take action to effect the transfer of the Senior Notes on its behalf by delivering Senior Notes through CDS and receiving payment in accordance with its normal procedures for next-day funds settlement. Payments with respect to the Senior Notes held through Euroclear or Clearstream, Luxembourg will be credited to the cash accounts of Euroclear participants or

Clearstream, Luxembourg participants in accordance with the relevant system's rules and procedures, to the extent received by its depositaries.

All information in this confidential shelf offering memorandum concerning CDS, DTC, Euroclear and Clearstream, Luxembourg, reflects the Issuer's understanding of the policies of such organizations which may change at any time without notice.

PLAN OF DISTRIBUTION

The Senior Notes may be sold by the Issuer directly pursuant to applicable statutory exemptions or through agents designated by the Issuer from time to time. Each Term Sheet will identify the Agents engaged in connection with the applicable Offering of Senior Notes and will also set forth the terms of the Offering of Senior Notes, including the net proceeds to the Issuer and, to the extent applicable, any fees payable to the Agents. The Agents will conditionally offer the Senior Notes for sale on a "best efforts" basis, if, as and when issued and delivered by the Issuer in accordance with the conditions contained in an agency agreement (the "**Agency Agreement**") between the Issuer, OPG and the Agents to be entered into on or about the date of each Term Sheet. The Agents will be paid a fee by the Issuer for their services rendered to the Issuer in connection with the offering, issue and sale of the Senior Notes. The obligations of the Agents under the Agency Agreement may be terminated upon the occurrence of certain stated events. The Agents may over-allot or effect transactions which stabilize or maintain the market price of the Senior Notes at a level different than that which might otherwise prevail in the open market. Such transactions, if commenced, may be discontinued at any time.

The Senior Notes may not be offered or sold, directly or indirectly, in Canada or to or for the account of any Canadian resident except, in the case of sales made in any province of Canada, pursuant to an exemption from the prospectus requirements in Section 2.3 of NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(2) of the *Securities Act* (Ontario), also known as the "accredited investor" exemption. In addition, Senior Notes will not be offered or sold, directly or indirectly, to individuals unless those individuals are also "permitted clients" within the meaning of NI 31-103.

Resale of the Senior Notes will be subject to restrictions under applicable securities legislation which vary depending on the relevant jurisdictions. **The Senior Notes may only be sold on a basis that is exempt from the prospectus requirements of applicable securities legislation through an appropriately registered dealer or pursuant to an exemption from the registration requirements of applicable securities legislation**. See *"Restrictions on Resale"*.

This confidential shelf offering memorandum does not constitute an offer to sell or a solicitation of an offer to buy any of the Senior Notes in the United States. The Senior Notes have not been and will not be registered under the U.S. Securities Act or any state securities laws and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as such term is defined in Regulation S under the U.S. Securities Act) unless the Senior Notes are registered under the U.S. Securities Act and applicable state securities laws or an exemption therefrom is available. In addition, until 40 days after the commencement of an Offering, any offer or sale of the Senior Notes within the United States by any dealer (whether or not participating in an Offering) may violate the registration requirements of the U.S. Securities Act if such offer or sale is made otherwise than in accordance with an exemption from the registration requirements of the U.S. Securities Act. Each Agent has agreed that, except as permitted by an Agency Agreement, it will not offer or sell the Senior Notes as part of the distribution of the Senior Notes at any time within the United States or to, or for the account or benefit of, U.S. persons.

RISK FACTORS

An investment in Senior Notes involves certain risks. Prospective investors in the Senior Notes should carefully consider all the information included in this confidential shelf offering memorandum, including the risks described below, before deciding to invest in the Senior Notes. This section does not describe all risks applicable to the Issuer and is intended only as a summary of certain material risks. In addition, prospective investors should consult their own financial and other legal and tax advisors, and should carefully consider, among other matters, the following discussion of risks before deciding whether to purchase Senior Notes.

Judicial, Legislative or Regulatory Risks

Future legal action might challenge or invalidate the FHPA and materially adversely affect a holder's investment in the Senior Notes.

The Investment Asset is a creation of the FHPA, which became effective on June 1, 2017. The Issuer will be the first Financing Entity under the FHPA to issue Funding Obligations as contemplated under the FHPA. The FHPA or any provisions thereof might be directly contested in courts or otherwise become the subject of litigation. The FHPA is novel legislation in Canada and therefore there are no precedents to rely on to support the validity of the FHPA.

As of the date of this confidential shelf offering memorandum, no such litigation has arisen; however, there can be no assurance that a lawsuit challenging the validity of some portion or all of the FHPA will not be filed in the future or that, if filed, such lawsuit will not be successful. If such a lawsuit were successful, and an invalidation of any relevant underlying legislative or regulatory provision were to result that did not constitute a Protection Event under the Change of Law Protection Agreement, a holder of Senior Notes may lose some or all of their investment in the Senior Notes or experience significant delays in recovering their investment in the Senior Notes. Even if the successful lawsuit constitutes a Protection Event, under the terms of the Change of Law Protection Agreement, the Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include any amount in respect of an amount due and payable to a Specified Creditor under the Limited Guarantee).

Future legislative action to change the FHPA, the Change of Law Protection Agreement or the electricity market might materially adversely affect a holder's investment in the Senior Notes.

The FHPA provides that no act or omission of the Crown shall be effective to reduce, impair, postpone or terminate the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment or to impair or postpone the invoicing, collection or remittance of the Clean Energy Adjustment. Ontario does not have a referendum or initiative process by which the FHPA may be amended or repealed. Therefore, the only way for such provisions of the FHPA to be amended or repealed would be through a subsequent legislative action by the Province of Ontario. A determination by the Province of Ontario that, for political or other reasons, the FHPA should no longer be law in Ontario or that the FHPA should be amended to limit or delay the recovery of Clean Energy Adjustments, could result in a decision to make such an amendment, repeal or revocation. Any such action that adversely affects the ability of the Issuer to receive amounts in respect of the Investment Interest so that it can pay Approved Obligations when due and payable (determined after taking into account certain factors described above in the definition of "Protection Event") would be subject to the Change of Law Protection Agreement. Under the Change of Law Protection Agreement, the Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include any amount in respect of an amount due and payable to a Specified Creditor under the Limited Guarantee). See *"Change of Law Protection Agreement"*. However, future legislative action by the Province of Ontario could also be taken that would have the effect of voiding or otherwise rendering invalid the Change of Law Protection Agreement.

Canada does not have any constitutional protection of property rights. While an adverse impact of statutory measures on private property has, in some circumstances, been judicially held to entitle property owners to compensation, such entitlements themselves can also be extinguished by legislation. Accordingly, if the provisions of the FHPA referenced in the previous paragraph were amended or repealed through subsequent legislative action of the Province of Ontario and future legislative action was also taken by the Province of Ontario that had the effect of voiding or otherwise rendering invalid the Change of Law Protection Agreement, a holder of Senior Notes may lose some or all of their investment in the Senior Notes or experience significant delays in recovering their investment in the Senior Notes.

Future judicial action could reduce the value of a holder's investment in the Senior Notes.

The Investment Asset is the creation of the FHPA. There is uncertainty associated with investing in Senior Notes payable from an interest in an asset that depends on legislation for its existence because there is no juridical or regulatory experience implementing and interpreting the legislation or similar legislation in Canada. Because the

Investment Asset is a creation of the FHPA, any judicial determination interpreting the FHPA or the Investment Asset might have an adverse effect on a holder of Senior Notes' investment in the Senior Notes.

Potential difficulties in enforcing civil liabilities against the Province of Ontario may arise.

Under the *Proceedings Against the Crown Act* (Ontario), the remedies of injunction and specific performance are not available against the Crown, nor may an order for execution or attachment be made against the Crown, although the remedy of damages is available. Nothing in the Change of Law Protection Agreement or the Program Agreements affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario). As a result, if the Province of Ontario fails to comply with the Change of Law Protection Agreement, the Indenture Trustee's ability to obtain an effective remedy against the Province of Ontario is limited and holders of Senior Notes may lose some or all of their investments in the Senior Notes or experience significant delays in recovering their investments.

Risks Associated with the Unusual Nature of the Investment Asset

Clean Energy Adjustments will not be payable until May 1, 2021 and until such time the IESO will be the sole source of funds for payment on the Senior Notes. Amounts paid by the IESO are not available to pay principal on the Senior Notes.

During the Moratorium Period, no Clean Energy Adjustments are permitted to be collected from Specified Consumers. During the Moratorium Period, a holder of Senior Notes must rely for payment by the Issuer of interest on the Senior Notes, and the Issuer must rely for payment of all of its Carrying Costs, upon the IESO who is obligated under the Regulations to pay these Carrying Costs. The amounts paid by the IESO cannot be applied on account of principal on the Senior Notes. The IESO has granted the Issuer a first-priority security interest in all its accounts receivable from Electricity Vendors, which includes the amounts receivable by the IESO from Electricity Vendors with respect to the global adjustment charge, as security for the performance of its regulatory obligation to pay the Issuer's Carrying Costs. The IESO also has a $2 billion unsecured credit facility agreement with the Ontario Financing Authority, expiring September 30, 2022, which can be used to pay the Issuer's Carrying Costs. There can be no assurance that the IESO will continue to have sufficient funds available to pay the Issuer's Carrying Costs during the Moratorium Period. If the Issuer enforces the security granted to the Issuer by the IESO during this period, there can be no assurance that the IESO's accounts receivable from Electricity Vendors will be sufficient to pay the Issuer's Carrying Costs and a holder of Senior Notes may suffer material payment delay on the Senior Notes during the Moratorium Period.

The Issuer's ability to enforce security granted by the IESO may be significantly impaired or delayed.

Under various Canadian bankruptcy, insolvency and restructuring statutes or Canadian federal or provincial receivership laws, including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Canada Business Corporations Act*, the *Winding-up and Restructuring Act*, and various provincial corporate statutes (collectively, "**Canadian Insolvency and Restructuring Laws**"), the Issuer's ability to enforce security granted by the IESO may be significantly impaired or delayed. In view of the broad discretionary powers of courts under Canadian Insolvency and Restructuring Laws, it is not possible to predict how long payments of Carrying Costs by the IESO or enforcement of any letter of credit or performance guarantee provided by the IESO could be delayed following commencement of a proceeding under Canadian Insolvency and Restructuring Laws by the IESO or whether or when the Issuer would be able to repossess or dispose of the assets over which it holds a security interest. Canadian Insolvency and Restructuring Laws also contemplate the granting of super priority security interests or charges (which could be in priority to the security of existing secured creditors) on the assets of the debtor company to secure the repayment of any amounts to be borrowed to facilitate the insolvency proceeding, any amounts owing for the fees and costs of professionals involved in the insolvency proceeding, obligations of directors of the company with respect to their statutory liabilities and sometimes other amounts.

Canadian Insolvency and Restructuring Laws also contain provisions enabling an obligor to prepare and file a proposal or a plan of arrangement or reorganization for consideration by all or some of its creditors, to be voted on by the various classes of creditors affected thereby. Such a restructuring proposal or plan of arrangement or reorganization, if accepted by the requisite majority of each class of affected creditors and if approved by the relevant Canadian court, would be binding on all creditors of the applicable obligor within the affected classes, including the Issuer, whether

or not the Issuer votes in favour of the restructuring proposal or plan of arrangement or reorganization. Such a proposal or plan of arrangement or reorganization may have the effect of compromising certain rights available to the Issuer with respect to the payment of Carrying Costs or enforcement of any security provided by the IESO.

A holder of Senior Notes may experience material payment delays because the source of funds for payment after the Moratorium Period is limited.

A holder of Senior Notes may suffer material payment delays on the Senior Notes if the collateral securing the Senior Notes is insufficient to pay the accrued interest on and the principal amount of those Senior Notes in full. During the Moratorium Period, a holder of Senior Notes must rely for payment by the Issuer of interest on the Senior Notes, and the Issuer must rely for payment of its Carrying Costs, upon the IESO who is obligated under the Regulations to pay these Carrying Costs. Amounts paid by the IESO are not available to pay principal on the Senior Notes. After the Moratorium Period, the only source of funds for payments of interest on and principal of the Senior Notes will be the collateral. The collateral for the Senior Notes will include:

- the Investment Interest, including the right to impose, bill, collect and receive Clean Energy Adjustment amounts, inclusive of the True-up Amount;
- the cash and investments on deposit in the accounts held by the Indenture Trustee; and
- the Issuer's rights under various contracts described in this confidential shelf offering memorandum and under the FHPA.

The Senior Notes will not be insured or guaranteed by the Province of Ontario, the IESO, OPG or any of their respective affiliates, the Indenture Trustee or any other person or entity, except pursuant to the Limited Guarantee provided by the Province of Ontario upon the occurrence of a Protection Event. See *"Change of Law Protection Agreement"*. The Senior Notes will be nonrecourse obligations, secured only by the collateral. Delays in payment on the Senior Notes might result in a reduction in the market value of the Senior Notes and, therefore, the value of a holder's investment in the Senior Notes.

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt or general obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. However, insofar as the Province of Ontario or any such political subdivision, agency or instrumentality is a Specified Consumer, such governmental entity will be obligated, in its capacity as a Specified Consumer, to pay Clean Energy Adjustment amounts that will be collected and remitted to the Issuer in respect of its Investment Interest securing the Senior Notes.

A holder of Senior Notes must rely for payment of principal of and interest on the Senior Notes solely upon the FHPA, rights to enforcement of the FHPA and of various agreements described in this confidential shelf offering memorandum, collections of Clean Energy Adjustment amounts and cash and investments on deposit in the related accounts held pursuant to the Master Trust Indenture.

The Clean Energy Adjustment may not be billed after April 30, 2047, unless further regulations to extend that date are passed.

The Clean Energy Adjustment may not be billed to Specified Consumers after April 30, 2047, unless further regulations to extend that date are passed. If Clean Energy Adjustment amounts billed through this period are not sufficient to repay the Senior Notes in full and further regulations to extend this date are not passed, apart from amounts in the capital accounts, if any, no other funds will be available to pay the unpaid balance due on the Senior Notes.

Foreclosure of the Indenture Trustee's lien on the Investment Interest securing the Senior Notes might not be practical and acceleration of the Senior Notes before maturity might have little practical effect.

Under the Master Trust Indenture, the Indenture Trustee on behalf of the holders of Senior Notes and other creditors has the right to foreclose or otherwise enforce the lien granted to the Indenture Trustee by the Issuer on the collateral securing the Senior Notes. However, in the event of foreclosure, there is likely to be a limited market, if any, for the

collateral. Therefore, foreclosure might not be a realistic or practical remedy. Moreover, although principal of the Senior Notes will be due and payable upon acceleration of the Senior Notes before maturity, under the Regulations, the amount of the Clean Energy Adjustment may not be increased to take into account such acceleration (subject to limited exceptions depending on the Fair Allocation Amount at the time). As a result, this limitation on increases to the Clean Energy Adjustment at the time of any acceleration of the Senior Notes prior to maturity will result in principal of the Senior Notes being paid on acceleration as funds become available. However, upon such acceleration, the priority of principal payments to creditors of the Issuer will result in all accelerated Senior Notes being repaid in full before any further payments of principal are made to holders of subordinated indebtedness of the Issuer.

The Issuer may issue multiple Series of Senior Notes secured by the Investment Interest and some decisions affecting holders of Senior Notes may require the approval of all Series.

The Issuer may issue multiple Series of Senior Notes all of which will be secured by the collateral securing the Senior Notes. The Issuer may not issue additional Series of Senior Notes if the issuance would not satisfy the Rating Agency Condition and certain other conditions precedent in the Master Trust Indenture. See *"Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations"*. If additional Series of Senior Notes are issued, Clean Energy Adjustment amounts collected by or for the benefit of the Issuer will be prorated among the Series of Senior Notes based on the respective amounts of interest and principal due and payable or required to be accumulated in respect of each Series of Senior Notes. Any issuance of additional Series of Senior Notes by the Issuer could cause reductions or delays in payment on the Senior Notes. In addition, some matters relating to the Senior Notes issued by the Issuer may require the vote of the holders of all Series of Senior Notes. The interests of holders of a particular Series of Senior Notes in these votes might conflict with the interests of the holders of another Series of Senior Notes. Thus, these votes could result in an outcome that is materially unfavorable to holders of a particular Series of Senior Notes.

The Master Trust Indenture contains Events of Default (other than those pertaining to the insolvency of the Issuer or invalidity of the Change of Law Protection Agreement) that can only be declared by Debtholders who hold at least 25% of the outstanding Controlling Class Obligations. If any such Event of Default has occurred and is continuing, Debtholders who hold at least 50% of the outstanding Controlling Class Obligations may accelerate all Issuer Funding Obligations (other than Derivative Funding Obligations). However, it is possible for individual Series of Senior Notes to have their own acceleration events such that those individual Series of Senior Notes may be accelerated while other Series of Issuer Funding Obligations would not be accelerated. In such a case, (i) the allocation of Available Collections to the holders of accelerated Series of Issuer Funding Obligations in a Class would be higher relative to the non-accelerated Series of Issuer Funding Obligations of that Class than it would otherwise be, and (ii) after payment in full of accelerated Senior Notes and other Senior Funding Obligations and once all amounts due and payable on non-accelerated Senior Notes and other Senior Funding Obligations have been satisfied on any principal payment date, amounts remaining for payment of principal would be allocated to the repayment of principal on both accelerated and non-accelerated subordinated debt, as applicable. In certain cases, a declaration of acceleration or an automatic acceleration may also be rescinded by Extraordinary Resolution if (i) the Issuer has paid all overdue interest, principal that has become due (other than by reason of acceleration) on Controlling Class Obligations and other amounts set out in the Master Trust Indenture, and (ii) all Events of Default (other than non-payment of principal) have been cured or waived. See *"Capital Markets Platform — Acceleration and Remedies — General"*.

If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected.

Under certain circumstances it is possible that all outstanding Senior Notes will be accelerated as a Class or that certain Series of Senior Notes will be accelerated while other Series of Senior Notes will not be accelerated. See *"Capital Markets Platform – Acceleration and Remedies"*. The possibility of certain Series of Senior Notes accelerating while other Series of Senior Notes do not accelerate would arise if (i) an Event of Default occurs but Noteholders holding at least 50% of all outstanding Senior Notes do not approve the acceleration of all outstanding Senior Notes, and (ii) holders of Senior Notes of a particular Series approve the acceleration of the Senior Notes of that Series by the requisite majority of holders of that Series as set out in the applicable supplemental indenture for that Series.

If all Senior Notes are accelerated the application of available funds will be as described under *"Capital Markets Platform -- Acceleration and Remedies"* for all Senior Notes. It is possible that holders of 50% or more of the

outstanding principal balance of all Senior Notes will approve the acceleration of all Senior Notes even if holders of a particular Series of Senior Notes do not vote in favour of the acceleration of the Senior Notes of that Series.

If only certain Series of Senior Notes are accelerated, then the outstanding principal balance of those Series of Senior Notes will become immediately due and payable but the payment due dates of those Series of Senior Notes that have not been accelerated will not change. In this case, the application of available funds will continue as described under *"Capital Markets Platform -- Payment Waterfalls Prior to Acceleration"*.

Where all Series of Senior Notes or only certain Series of Senior Notes are accelerated, available funds that would otherwise be used to pay the principal amount of subordinated indebtedness will be applied to repay principal of the accelerated Senior Notes. This could result in a holder of Senior Notes that have been accelerated receiving payment of principal sooner than expected. If a Series of Senior Notes has not been accelerated, the payment of principal on such Senior Notes should not occur earlier than expected as the payment due dates for such Senior Notes will not have been accelerated.

Where all Series of Senior Notes or only certain Series of Senior Notes are accelerated, available funds that would otherwise be used to pay the principal amount of the Senior Notes in accordance with the original repayment schedules of such Senior Notes may be applied to repay principal of the accelerated Senior Notes *pari passu* with the principal due on all outstanding Senior Notes (subject to the payment priority given to Warehouse Obligations). If accelerated Senior Notes were not expected to be repaid before a particular Series of Senior Notes at the time the accelerated Senior Notes were issued, the acceleration of such Senior Notes could result in the holder of a particular Series of Senior Notes receiving payment of principal later than expected.

The Issuer may have a co-ownership interest in the Investment Asset with other Financing Entities.

The FHPA authorizes the establishment of one or more Financing Entities that may incur Funding Obligations for the purpose of acquiring Investment Interests. The Master Trust Indenture does not contain any restrictions on the establishment of other Financing Entities or any restrictions on the Transfer by the IESO of specified portions of the Regulatory Asset to other Financing Entities. If additional Funding Obligations are incurred by other Financing Entities to acquire an Investment Interest, the Investment Asset will be co-owned by all Financing Entities (including the Issuer) and consequently Clean Energy Adjustment amounts collected by or for the benefit of the Financing Entities will be prorated among all Investment Interest owners based on the respective amounts of Clean Energy Adjustment amounts invoiced and not yet paid. Any issuance of Funding Obligations by other Financing Entities could cause reductions or delays in payment on the Senior Notes.

If the Clean Energy Adjustment amounts and other funds held in the Issuer Accounts results in investment losses or the investments become illiquid, a holder of Senior Notes might receive payment of principal of and interest on the Senior Notes later than expected.

Funds held in the Issuer Accounts will be invested in Eligible Investments. Eligible Investments include, among other categories, money market funds having a rating in the highest investment category from each applicable Rating Agency. Although investments in these money market funds have traditionally been viewed as highly liquid with a low probability of principal loss, illiquidity and principal losses have been experienced by investors in certain of these funds as a result of disruptions in the financial markets in recent years. If investment losses or illiquidity are experienced, a holder of Senior Notes might experience a delay in payments of principal and interest and a decrease in the value of their investment in the Senior Notes.

Servicing, Operating and Consumer Risks

Payments on the Senior Notes depend on the performance of Electricity Vendors and the IESO.

The Issuer's receipt of Clean Energy Adjustment amounts, which will be used to make payments on the Senior Notes, will depend in part on the skill and diligence of Electricity Vendors and the IESO and their respective successors in performing their respective duties under the FHPA and, with respect to the IESO, the Master Transfer and Servicing Agreement.

The FHPA and the Master Transfer and Servicing Agreement impose new duties and obligations of the IESO and Electricity Vendors. There can be no assurances that the new duties and obligations of the IESO and the Electricity Vendors will be assumed and implemented without difficulty and in accordance with the provisions of the FHPA and the Master Transfer and Servicing Agreement. If the IESO ceases to perform, or inadequately performs, its collection, remittance, forecasting and other functions under the terms of the FHPA and the Master Transfer and Servicing Agreement, it might be difficult to enforce these obligations against the IESO. While the Indenture Trustee has the right to replace the IESO, as servicer, on an Event of Default upon receipt of an Ordinary Resolution, it might be difficult to find a replacement for the IESO or a successor servicer. Also, any successor servicer might have less experience and ability than the IESO and might experience difficulties in collecting Clean Energy Adjustment amounts or providing forecast information, resulting in delays or disruptions to the setting and collection of the Clean Energy Adjustment. Any successor servicer would likely charge fees for the provision of such services and such fees could be material.

If an Electricity Vendor fails to collect or remit sufficient Clean Energy Adjustment amounts for any reason, then the IESO's payments to the Issuer in respect of the Clean Energy Adjustments might be delayed or reduced. In that event, payments on the Senior Notes might be delayed or reduced. In addition, any person into which the IESO may be merged, converted or amalgamated or that may succeed to the properties and assets of the IESO substantially as a whole will assume the role of servicer under the Master Transfer and Servicing Agreement, subject only to the satisfaction of the conditions set forth therein. These conditions do not include either the consent of holders of Senior Notes or satisfaction of the Rating Agency Condition.

Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and as Manager.

The FHPA imposes new duties and obligations of OPG, as Financial Services Manager, and the Program Agreements impose new duties and obligations of OPG, as Manager. There can be no assurances that the new duties and obligations of OPG will be assumed and implemented without difficulty and in accordance with the provisions of the FHPA and the Program Agreements. If OPG, as Financial Services Manager, ceases to perform, or inadequately performs, its statutory duties under the FHPA, including determining the Clean Energy Adjustment (inclusive of the True-up Amount), the Indenture Trustee will have no right to replace OPG as Financial Services Manager. If OPG ceases to perform, or inadequately performs, its management duties under the Management Agreement, the Indenture Trustee has the right to replace the Manager on an Event of Default upon receipt of an Ordinary Resolution but it might be difficult to find a replacement for OPG or a successor manager. Also, any successor manager might have less experience and ability than OPG, resulting in delays or disruptions to the setting and collection of the Clean Energy Adjustment. Any successor manager would likely charge fees for the provision of such services and such fees could be materially higher than the fees charged by OPG.

Inaccurate consumption forecasting or unanticipated delinquencies or write-offs might reduce or delay scheduled payments on the Senior Notes.

Clean Energy Adjustment amounts will be calculated based upon a forecast of Specified Consumer usage to be newly developed based on forecast information provided by the IESO. Under the Regulations, the IESO is required to provide a forecast of electricity consumption of Specified Consumers. The amount of the Clean Energy Adjustment collected in any period will depend in part on actual electricity usage by Specified Consumers and the amount of collections and write-offs for Specified Consumers. If the IESO or a successor inaccurately forecasts electricity consumption or if OPG uses inaccurate consumer delinquency or write-off data when setting or adjusting the Clean Energy Adjustment, there could be a shortfall or material delay in collections, which might result in missed or delayed payments of principal and interest on the Senior Notes.

Inaccurate forecasting of electricity consumption by the IESO might result from, among other things unanticipated weather, resulting in less electricity consumption than forecast; general economic conditions being worse than expected, causing Specified Consumers to reduce their electricity consumption; the occurrence of a natural disaster, wind storm or an act of terrorism, cyber-attack or other catastrophic event unexpectedly disrupting electrical service and reducing electricity consumption; unanticipated changes in the market structure of the electric industry; Specified Consumers unexpectedly ceasing business or departing from the Province of Ontario; dramatic and unexpected changes in energy prices resulting in decreased electricity consumption; Specified Consumers consuming less electricity than anticipated because of increased energy prices, unanticipated increases in conservation efforts or

unanticipated increases in electricity consumption efficiency; differences or changes in forecasting methodology; or Specified Consumers switching to alternative sources of energy, including self-generation or co-generation of electric power in some cases without using Ontario's transmission or distribution system. Self-generators that receive no transmission or distribution service from the Province of Ontario are not liable for the Clean Energy Adjustment. The FHPA does not require exit fees to be charged to any Specified Consumers that might leave the grid to self-generate.

Inaccurate forecasting of delinquencies or write-offs by OPG could result from, among other things unexpected deterioration of the economy, the occurrence of a natural disaster, an act of war or terrorism or other catastrophic events causing greater write-offs than expected or forcing Electricity Vendors to grant additional payment relief to Specified Consumers; the failure of Electricity Vendors to submit accurate and timely information regarding their collections and write-offs; an unexpected change in law that makes it more difficult for Electricity Vendors to terminate service to nonpaying Specified Consumers, or that requires Electricity Vendors to apply more lenient credit standards for Specified Consumers.

Changes to billing and collection practices may reduce the amount of funds available for payments on the Senior Notes.

The methodology for determining the amount of the Clean Energy Adjustment invoiced to each Specified Consumer is specified in FHPA. None of OPG, the IESO or any Electricity Vendor, as it performs its billing and collection functions on the Issuer's behalf, may change this methodology. However, subject to applicable law, tariff and regulatory requirements, billing and collection arrangements with each Specified Consumer may be changed in a manner that delays or reduces the payments to the Issuer in respect of the Clean Energy Adjustment.

Limits on rights to terminate service to Specified Consumers might make it more difficult to collect the Clean Energy Adjustment.

To the extent that Specified Consumers do not pay for their electricity service, Electricity Vendors will not be able to collect the Clean Energy Adjustment from these Specified Consumers. Electricity Vendors have the ability to terminate service for non-payment subject to the terms of their conditions of service, which conditions must be consistent with the OEB's rules regarding disconnection. Under OEB rules, Electricity Vendors are prohibited from disconnecting or threatening to disconnect homes for non-payment during the winter from November 15 to April 30 every year. Historical rates of non-payment are included in the calculations of the Clean Energy Adjustment, but increases in the rates of non-payment would reduce the Clean Energy Adjustment until it is adjusted through the True-up Amount in a subsequent Reference Period.

It might be difficult for the Issuer to collect the Clean Energy Adjustment from Specified Consumers

Under the FHPA, the Issuer may bring an action against a Specified Consumer for non-payment of the Clean Energy Adjustment, but only an Electricity Vendor may terminate service for failure to pay the Clean Energy Adjustment. The FHPA provides that partial payment of electricity invoices shall be allocated pro rata among the Clean Energy Adjustment and other charges on the invoice. Since the Issuer does not have the threat of termination of service available to enforce payment of the Clean Energy Adjustment, it would need to rely on the Electricity Vendor to threaten to terminate service for nonpayment of other portions of the electricity invoice. This inability might reduce the value of a holder's investment in the Senior Notes.

Delinquent or partial payments of electricity bills may make payments on the Senior Notes occur later than expected.

The amount and the rate of collection of the Clean Energy Adjustment, including the True-up Amount, will impact whether there is a delay in the scheduled payments on the Senior Notes. If the Clean Energy Adjustment amounts are collected at a slower rate than expected, OPG might have to make adjustments to the Clean Energy Adjustment for a subsequent Reference Period through the True-up Amount. If those adjustments are not timely and accurate, there may be a delay in payments of principal and interest and a decrease in the value of the Senior Notes.

Indemnification obligations of OPG and the IESO are limited and might not be sufficient to protect the investments in the Senior Notes.

OPG will be obligated under the Management Agreement to indemnify the Issuer and the Indenture Trustee only in specified circumstances. Likewise, the IESO will be obligated under the Master Transfer and Servicing Agreement and the Acknowledgement and Indemnity Agreement to indemnify the Issuer and the Indenture Trustee only in specified circumstances.

Furthermore, neither OPG nor the IESO may have sufficient funds available to satisfy its indemnification obligations, and the amount of any indemnification paid by OPG or the IESO, as applicable, might not be sufficient for holders of Senior Notes to recover all of their investment in the Senior Notes. In addition, if OPG or the IESO becomes obligated to provide indemnification, the ratings on the Senior Notes might be downgraded as a result of the circumstances causing the breach.

Power outages could impair payment of the Senior Notes.

Ontario experiences seasonal conditions typical of southeastern Canada. Summers are usually hot with high temperatures in excess of 20°C. Winters include snow and icing conditions that can be damaging to overhead power lines. Transmission and/or distribution and generation facilities could be damaged depending on weather conditions and usage of electricity could be interrupted temporarily or for long periods of time, reducing the Clean Energy Adjustment amounts collected in one or more Reference Periods.

Technological changes that make alternative energy sources more attractive in the future or significant population fluctuations may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment.

Technological developments and/or tax or other economic incentives might result in the introduction of economically attractive, more fuel-efficient, more environmentally-friendly and/or more cost-effective alternatives to purchasing electricity through Electricity Vendors for increasing numbers of Specified Consumers. Manufacturers of self-generation facilities may develop smaller-scale, more fuel-efficient on-site generating and/or storage units that can be cost-effective options for a greater number of Specified Consumers. Moreover, an increase in self-service power may result if extreme weather conditions result in regular shortages of grid-supplied energy or if other factors cause grid-supplied energy to be less reliable. Specified Consumers who self-generate their electricity may use it to offset, or eliminate, their consumption from the grid thereby reducing, or eliminating, the Clean Energy Adjustment amounts payable by such Specified Consumers. Technological developments might allow greater numbers of Specified Consumers to reduce or even altogether avoid the payment of Clean Energy Adjustment amounts under such provisions through on-site generation, including where coupled with on-site storage capacity. This might reduce the kilowatt-hours of electric energy delivered to Specified Consumers by means of an Electricity Vendor's system, thereby causing Clean Energy Adjustment charges to the remaining Specified Consumers to increase. Such increases may reduce the collectability of the Clean Energy Adjustment.

Unexpected significant population decreases in the Province of Ontario or Specified Consumers unexpectedly ceasing business or departing from the Province of Ontario may adversely affect the amount of the Clean Energy Adjustment to be invoiced, collected and recovered from Specified Consumers. The decrease in the population of the Province of Ontario may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment. The increased impact on the remaining Specified Consumers could lead to increased potential consumer defaults and delays, billing lags and write-offs or variations in billing due to variations in electricity consumption.

Insolvency-Related Risks

If the Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed.

Trusts such as the Issuer ordinarily cannot seek protection under the principal Canadian Insolvency and Restructuring Laws (other than a receivership). However, in view of the broad discretionary powers of courts under Canadian Insolvency and Restructuring Laws, the courts' inherent jurisdiction and otherwise, it is not possible to state with certainty that the Issuer could not become subject to Canadian Insolvency and Restructuring Laws. If the Issuer were

to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed. It is not possible to predict how long payments under the Senior Notes could be delayed following commencement of a proceeding under Canadian Insolvency and Restructuring Laws by the Issuer or whether or when the Indenture Trustee would be able to enforce upon or dispose of the assets over which it holds a security interest. Canadian Insolvency and Restructuring Laws also contemplate the granting of super priority security interests or charges (which could be in priority to the security of existing secured creditors) on the assets of the debtor company to secure the repayment of any amounts to be borrowed to facilitate the insolvency proceeding, any amounts owing for the fees and costs of professionals involved in the insolvency proceeding, obligations of directors of the company with respect to their statutory liabilities and sometimes other amounts.

Canadian Insolvency and Restructuring Laws also contain provisions enabling an obligor to prepare and file a proposal or a plan of arrangement or reorganization for consideration by all or some of its creditors, to be voted on by the various classes of creditors affected thereby. Such a restructuring proposal or plan of arrangement or reorganization, if accepted by the requisite majority of each class of affected creditors and if approved by the relevant Canadian court, would be binding on all creditors of the applicable obligor within the affected classes, including the Indenture Trustee and the Noteholders, whether or not the Indenture Trustee or any holders of Senior Notes votes in favour of the restructuring proposal or plan of arrangement or reorganization. Such a proposal or plan of arrangement or reorganization may have the effect of compromising certain rights available to the Indenture Trustee and the holders of Senior Notes under the Master Trust Indenture or in respect of the collateral.

If the IESO were to become subject to Canadian Insolvency and Restructuring Laws, the Transfers of specified portions of the Regulatory Asset by the IESO may not be respected as true sales of the Regulatory Asset.

Ordinarily, the interests of the Issuer as acquirer of an Investment Interest may be subordinate to statutory deemed trusts and other non-consensual liens, trusts and claims created or imposed by statute or rule of law on the property of the IESO arising prior to the time the corresponding Regulatory Asset was Transferred to the Issuer. This could reduce the amounts that may be available to the Issuer in respect of the Investment Interest and, consequently, the holders of Senior Notes. Section 27(3) of the FHPA provides that at the time of the Transfer of the Regulatory Asset to a Financing Entity, such Transfer shall be deemed to have been perfected, vested, valid and binding against the IESO and all other persons who have claims of any kind against the IESO. Section 27(4) of the FHPA provides that section 27(3) applies regardless of whether the persons who have claims have received notice of the Transfer and the property rights and interests acquired by the Transferee shall have priority over any liens in favour of those persons. However, in the event that the IESO becomes insolvent, its insolvency would be subject to federal bankruptcy and insolvency legislation and the effect of these provisions of the FHPA in such circumstances is untested. The Transfers of the Regulatory Asset to the Issuer will be made in accordance with section 26 of the FHPA. Section 27(1) of the FHPA provides that a Transfer of a specified portion of the Regulatory Asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the Transferee. Therefore, the Investment Interest would not form part of the assets of the IESO and would not be available to the creditors of the IESO. However, with respect to certain insolvency events relating to the IESO, it is possible that an insolvency administrator or a creditor of the IESO may attempt to argue that the transactions between the IESO and the Issuer are not true sales of the Regulatory Asset. This position, if accepted by a court applying federal bankruptcy and insolvency laws, could prevent timely or ultimate payment of amounts due to the Issuer and, consequently, due from the Issuer to holders of Senior Notes.

These risks are in addition to the insolvency risks of the IESO noted above under *"Risks Associated with the Unusual Nature of the Investment Asset"*.

If the IESO or any Electricity Vendor were to become subject to Canadian Insolvency and Restructuring Laws, collections that have been commingled may be unrecoverable and the Issuer's ability to enforce its rights against the IESO or such Electricity Vendor may be significantly impaired or delayed.

Under the Master Transfer and Servicing Agreement, collections received by the IESO are to be held by the IESO in a segregated account. Until Clean Energy Adjustments are remitted to the IESO by Electricity Vendors, amounts collected by the Electricity Vendors are to be held by Electricity Vendors in segregated accounts. If the IESO or any Electricity Vendor fails to hold collections in a segregated account, then to the extent that funds are commingled and

used for the benefit of the IESO or such Electricity Vendor prior to making required deposits, in the event of the liquidation, insolvency, receivership or administration or other proceeding under Canadian Insolvency and Restructuring Laws of the IESO or the Electricity Vendor, the ability of the Issuer to enforce its rights to the collections in a timely manner may be adversely affected and collections that have been commingled may be unrecoverable. In the event of the insolvency of the IESO, the right of the Issuer under the Master Transfer and Servicing Agreement to appoint a replacement servicer may be stayed or prevented.

These risks are in addition to the insolvency risks of the IESO noted above under *"Risks Associated with the Unusual Nature of the Investment Asset"*.

If OPG were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to enforce its rights against the Manager may be significantly impaired or delayed and the Issuer's assets and liabilities may be substantively consolidated with those of OPG.

Section 53.1 of the *Electricity Act, 1998* (Ontario), as amended by the *Fair Hydro Act, 2017* (Ontario), provides that, regardless of whether a Financing Entity is or is not a subsidiary of OPG: (a) the assets and liabilities of the Financing Entity shall not form part of the assets and liabilities of OPG or any of its subsidiaries (excluding the Financing Entity if it is a subsidiary); and (b) the assets and liabilities of OPG or any of its subsidiaries (excluding the Financing Entity if it is a subsidiary) shall not form part of the assets and liabilities of the Financing Entity. However, in the event that OPG becomes insolvent, its insolvency would be subject to federal bankruptcy and insolvency legislation and the effect of these provisions of the *Electricity Act, 1998* (Ontario), as amended by the *Fair Hydro Act, 2017* (Ontario), in such circumstances is untested. In particular, in the event of the liquidation, insolvency, receivership or administration or other proceeding under Canadian Insolvency and Restructuring Laws of OPG, the ability of the Issuer to enforce certain of its rights in and to the Investment Interest in a timely manner may be adversely affected. Such affected rights may include the right to appoint a replacement Manager. It is possible that the creditors of OPG may attempt to substantively consolidate the assets and liabilities of OPG and the Issuer. The Issuer and OPG have taken steps to minimize this risk. However, no assurance can be given that, in the case of the insolvency of OPG, a court would not order that the Issuer's assets and liabilities be substantively consolidated with those of OPG. Such substantive consolidation would result in all creditors of OPG and the Issuer being paid out of a common pool of assets, with no distinction as to which assets are property of OPG and which assets are property of the Issuer, and could cause payment of the claims of the beneficial owners of the Senior Notes to be subject to substantial delay and to adjustment in timing and amount.

If the Issuer Trustee were to become subject to Canadian Insolvency and Restructuring Laws, the assets and liabilities of the Issuer may be substantively consolidated with the Issuer Trustee.

In the case of the insolvency of the Issuer Trustee, it is possible that the creditors of the Issuer Trustee may attempt to argue that the assets of the Issuer are held by the Issuer Trustee in its personal capacity (and not as trustee of the Issuer) and are to be available to the creditors of the Issuer Trustee. Assuming that the Issuer Trustee deals with the assets of the Issuer in accordance with the provisions of the Declaration of Trust, the assets of the Issuer would not constitute property of the Issuer Trustee available for distribution to the creditors of the Issuer Trustee. An insolvency administrator appointed with respect to the Issuer Trustee may be able to recover from the property of the Issuer a portion of its costs that are incurred until a replacement for the Issuer Trustee, as trustee of the Issuer, is appointed or pending any proceeding in respect of the property of the Issuer. Such costs may exceed the compensation provided for in the Declaration of Trust.

If a Specified Consumer were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to collect Clean Energy Adjustment amounts from such Specified Consumer may be adversely affected.

The application to a Specified Consumer of Canadian Insolvency and Restructuring Laws and related provincial laws could also affect the ability to collect the Clean Energy Adjustments due for the period prior to the insolvency. Federal bankruptcy laws generally discharge bankrupt Specified Consumers who are individuals of their obligation to pay Clean Energy Adjustment amounts due for the period prior to the individual being discharged from bankruptcy.

If amounts in the Issuer Accounts for any Series are invested with entities that become subject to insolvency proceedings, the Issuer's ability to make payments to holders of Senior Notes may be adversely affected.

Amounts that are on deposit from time to time in the Issuer Accounts for any Series may be invested in Eligible Investments. If insolvency proceedings were to be commenced by or against any entity with which an Eligible Investment is made or which is an issuer, obligor or guarantor of any Eligible Investment, the ability of the Indenture Trustee to enforce its rights in respect of any such Eligible Investment and the ability of the Issuer to make payments to holders of Senior Notes in a timely manner may be adversely affected. In order to reduce this risk, the Eligible Investments must satisfy certain ratings criteria. See *"Rating Agency Condition"*.

Other Risks

The credit ratings are not an indication of the expected rate of payment of principal on the Senior Notes.

The Senior Notes will be rated by one or more established rating agencies. A rating is not a recommendation to buy, sell or hold the Senior Notes. The ratings merely analyze the probability that the Issuer will repay the total principal amount of each series of Senior Notes at its final principal payment date (which is later than the Principal Payment Date(s)) and will make timely interest payments. The ratings are not an indication that the rating agencies believe that principal payments are likely to be paid on time according to any expected sinking fund schedule. Thus, the Issuer might repay the principal of a holder of Senior Notes later than expected, which might materially reduce the value of a holder's investment in the Senior Notes.

If the ratings on the Senior Notes are withdrawn or revised downward, the value of a holder's investment in the Senior Notes may be adversely affected.

There is no assurance that any credit rating will remain in effect for any given period of time. The ratings on the Senior Notes may be withdrawn or revised downward at any time without notice, which may have an adverse effect on the market price of the Senior Notes. A rating is not a recommendation to buy, sell or hold the Senior Notes. The ratings merely analyze the probability that the Issuer will repay the total principal amount of each series of Senior Notes at its final principal payment date (which is later than the Principal Payment Date(s)) and will make timely interest payments. The ratings are not an indication that the rating agencies believe that principal payments are likely to be paid on time according to any expected sinking fund schedule. Ratings on the Senior Notes may be lowered, qualified or withdrawn at any time without notice.

The credit ratings of the IESO, OPG and the Province of Ontario might affect the market value of the Senior Notes.

The Senior Notes will not be insured or guaranteed by the Province of Ontario, IESO, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*. Although neither the IESO nor OPG are obligors in respect of the Senior Notes, a downgrading of the current credit ratings of the IESO, OPG or the Province of Ontario might have an adverse effect on the market value of the Senior Notes, particularly, with respect to the IESO, during the Moratorium Period when no Clean Energy Adjustments are permitted to be collected from Specified Consumers. Credit ratings might change at any time. A rating agency has the authority to revise or withdraw its rating based solely upon its own judgment.

The absence of an established market for the Senior Notes might limit the ability to resell or refinance the Senior Notes.

There is no public market for the Senior Notes, and the Issuer does not intend to apply for a listing of the Senior Notes on any stock exchange. There can be no assurance as to the liquidity of the trading market for the Senior Notes or that a trading market for the Senior Notes will develop.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of such Senior Notes with liquidity for their investment or that it will continue for the term of such Senior Notes. Accordingly, purchasers of the Senior Notes may be required to bear the financial risk of investing in the Senior Notes until the maturity date of the Senior Notes.

If an active market does develop for the Senior Notes, the market price on the Senior Notes will depend on many factors including, but not limited to, (i) the Issuer's credit rating and the credit rating of the Senior Notes; (ii) the prevailing interest rates being paid on similar securities; (iii) the Issuer's financial condition and future prospects; and (iv) the overall condition of the economy and the financial markets. The condition of the financial markets and prevailing interest rates have fluctuated in the past and are likely to fluctuate in the future. Fluctuations could have an adverse effect on the market price of the Senior Notes.

The Financial Services Manager has the ability to determine whether to refinance Senior Notes maturing after May 2024 through the issuance of another Series of Senior Notes. However, there can be no assurance that Senior Notes can be refinanced on or before their applicable Principal Payment Default Date.

Restrictions on resale might limit the ability to resell the Senior Notes.

The Senior Notes may not be offered or sold, directly or indirectly, in Canada or to or for the account of any Canadian resident except, in the case of sales made in any province of Canada, pursuant to an exemption from the prospectus requirements under applicable securities laws. The Issuer currently does not intend to file a prospectus or similar document with any securities regulatory authority in Canada qualifying the resale of the Senior Notes to the public in any province of Canada in connection with any Offering of Senior Notes. As a result, the Senior Notes purchased pursuant to this confidential shelf offering memorandum will be subject to restrictions on resale, and may only be resold if a further statutory exemption may be relied upon by the investor or if an appropriate discretionary order or consent is obtained pursuant to applicable securities laws. See "Restrictions on Resale".

REPRESENTATIONS AND AGREEMENTS OF PURCHASERS

The distribution of the Senior Notes in Canada is being made on a private placement basis. By purchasing Senior Notes and accepting a purchase confirmation in respect thereof, a purchaser in Canada will be deemed to have represented to the Issuer and the Agents that, as at the date of such purchaser's purchase of Senior Notes:

(a) none of the Issuer, the Agents or any person representing the Issuer or the Agents has made any representations to it (written or oral) with respect to the Issuer, any Offering or sale of the Senior Notes, other than the information contained in this confidential shelf offering memorandum which has been delivered to it;

(b) it is resident in a province of Canada (each an "**Offering Jurisdiction**") and is entitled under applicable securities laws of such Offering Jurisdiction to purchase the Senior Notes without the benefit of a prospectus qualified under those securities laws and any act, solicitation, conduct or negotiation directly or indirectly in furtherance of such purchase and sale has occurred only in one of the provinces of Canada;

(c) the purchaser has been provided the opportunity to receive a copy of the Master Trust Indenture and each of the Supplemental Indentures;

(d) the purchaser has reviewed and acknowledges the terms referred to below under the section entitled "Restrictions on Resale";

(e) it is basing its investment decision solely on this confidential shelf offering memorandum and not on any other information or statement concerning the Issuer or any Offering and it has not become aware of any advertisement in printed media of general and regular paid circulation (or other printed public media), radio, television or telecommunications or other form of advertisement (including electronic display) with respect to the distribution of the Senior Notes;

(f) it has been independently advised as to restrictions with respect to trading in the Senior Notes imposed by applicable securities laws in the jurisdiction in which it resides, confirms that no representation (written or oral) has been made to it by or on behalf of the Issuer or an Agent with respect thereto, acknowledges that it is aware of the characteristics of the Senior Notes, the risks relating to an investment in the Senior Notes and of the fact that it may not be able to resell the

Senior Notes except in accordance with limited exemptions under applicable securities legislation and regulatory policy and compliance with the other requirements of applicable law; and it agrees that any certificates representing the Senior Notes will bear a legend indicating that the resale of such Senior Notes is restricted; the purchaser further acknowledges that it has been advised to consult its own legal counsel in its jurisdiction of residence for full particulars of the resale restrictions applicable to it and has reviewed and acknowledges the terms referred to under the heading "Restrictions on Resale"; and the purchaser further acknowledges that if it resells the Senior Notes in compliance with applicable law it will give notice to the subsequent transferee during the restricted period noted under the heading "Restrictions on Resale" of such restrictions;

(g) it acknowledges the risks relating to an investment in the Senior Notes and it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its prospective investment in the Senior Notes, it and any accounts for which it is acting have the ability to bear the economic risks of the prospective investment and can afford the complete loss of such investment and it acknowledges that it and any accounts for which it is acting may be required to bear the financial risks of this investment for an indefinite period of time;

(h) it acknowledges that: (i) no securities commission or similar regulatory authority has reviewed or passed on the merits of the Senior Notes; and (ii) there is no government or other insurance covering the Senior Notes;

(i) it acknowledges that no person has made any oral or written representation to it that any person will re-sell or re-purchase the Senior Notes, or refund any part or all of the purchase price of the Senior Notes, or that the Senior Notes will be listed on any exchange or quoted on any quotation and trade reporting system, or that any application has been or will be made to list the Senior Notes on any exchange or quote the notes on any quotation and trade reporting system, and no person has given any undertaking to such purchaser relating to the future value or price of the Senior Notes;

(j) none of the funds being used to purchase the Senior Notes are, to the best of the purchaser's knowledge, (i) proceeds obtained by or derived, directly or indirectly, as a result of illegal activities, or (ii) being tendered on behalf of a person or entity who has not been identified to the purchaser;

(k) the funds being used to purchase the Senior Notes and advanced by or on behalf of the purchaser to the Agents do not represent proceeds of crime for the purposes of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada);

(l) the purchaser is responsible to obtain independent investment, legal and tax advice with respect to its purchase of the Senior Notes and accordingly has had the opportunity to acquire an understanding of the transaction described in this confidential shelf offering memorandum and the meanings of all the terms contained herein relevant to such purchase for the purpose of giving acknowledgements, representations and agreements under this confidential shelf offering memorandum;

(m) it (i) is an "accredited investor" (as such term is defined in NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) that is not an individual, unless such individual is also a "permitted client" (as such term is defined in NI 31-103); (ii) is either (A) purchasing the Senior Notes as principal, (B) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation of a jurisdiction of Canada (other than a trust company or trust corporation registered solely under the laws of the Province of Prince Edward Island) or a foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be, or (C) a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or foreign jurisdiction; and (iii) was not created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in NI 45-106;

(n) the purchaser has provided applicable certifications and/or other information or documentation to the Agents and the Issuer to evidence its status and criteria for compliance with the relevant category of "accredited investor," understands that the Agents and the Issuer may be required to verify that the purchaser satisfies such criteria, and that the purchaser may be required to provide additional information or documentation to the Agents and the Issuer to evidence such compliance;

(o) the purchaser, if resident in the Province of Québec, has agreed that all documents relating to such purchase be in English only, as more particularly described under the heading "Language of Documents". *L'acquéreur, s'il réside dans la Province de Québec, accepte que tous les documents liés à son acquisition soient en langue anglaise uniquement, tel qu'il est plus amplement décrit sous la rubrique «Langue des documents»*;

(p) it will execute, deliver and file such reports, undertakings and other documents relating to his, her or its purchase of the Senior Notes as may be required by applicable securities laws, regulations and rules, or assist the Issuer and the Agents, as applicable, in obtaining and filing such reports, undertakings and other documents;

(q) it is not a U.S. person (as such term is defined in Regulation S under the U.S. Securities Act), none of the Senior Notes are being or will be acquired, directly or indirectly, for the account or benefit of a U.S. person, the purchaser was not offered any of the Senior Notes in the United States, the purchaser did not execute or deliver any agreement in connection herewith in the United States, and the purchaser is aware that the Senior Notes have not been and will not be registered under the U.S. Securities Act or the securities laws of any State of the United States and that the Senior Notes may not be offered or sold in the United States without registration under the U.S. Securities Act or except in compliance with the requirements of an exemption from registration;

(r) if the purchaser is acquiring any Senior Notes as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such account and that it has full power to make the acknowledgements, representations and agreements contained herein on behalf of each such account;

(s) the offer and sale of the Senior Notes is conditional upon the offer and sale being exempt from the prospectus filing requirements of applicable securities law;

(t) the purchaser acknowledges that the Issuer may be required to disclose to applicable securities regulatory authorities the identity of the purchaser and any person with a beneficial interest in the Senior Notes;

(u) except for any rating reports that may have been issued by the applicable Rating Agencies, no agency, governmental authority, regulatory body, stock exchange or other entity has made any finding or determination as to the merit for investment of, nor have any such agencies or governmental authorities, regulatory bodies, stock exchanges or other entities made any recommendation or endorsement with respect to the Senior Notes;

(v) if the purchaser is:

(i) a corporation, it is duly incorporated and is validly subsisting under the laws of its jurisdiction of incorporation and has all requisite legal and corporate power and authority to purchase the Senior Notes and to make such representations and agreements as contemplated herein and has obtained all necessary approvals in respect thereof;

(ii) a partnership, syndicate or other form of unincorporated organization, it has the necessary legal capacity and authority to purchase the Senior Notes and to make such representations and agreements as contemplated herein and has obtained all necessary approvals in respect thereof; or

(iii) an individual, he or she is of the full age of majority, is a "permitted client" as such term is defined in NI 31-103 and is legally competent to purchase the Senior Notes and to make such representations and agreements as contemplated herein;

(w) the purchaser is not an "insider" of the Issuer (within the meaning of Canadian securities laws) and is not registered or required to be registered as a dealer, adviser or otherwise under the securities laws of any province of Canada (unless in either case it has specifically provided written advice to the contrary to the Issuer and to the Agents);

(x) it will, if requested by the Issuer or the Agent from whom the purchase confirmation is received, provide evidence of the basis of its above representations; and

(y) the Issuer, the Agents and others will rely upon the truth and accuracy of the foregoing acknowledgements, representations and agreements and it agrees that if any of the acknowledgements, representations or agreements deemed to have been made by its purchase of the Senior Notes are no longer accurate, it shall promptly notify the Issuer and the Agents for the applicable Offering of Senior Notes.

In addition, each purchaser of Senior Notes, by purchasing Senior Notes and accepting a purchase confirmation in respect thereof, represents to the Issuer and the Agents for the applicable Offering of Senior Notes that the purchaser:

(a) has been notified by the Issuer:

(i) that the Issuer is required to provide information pertaining to the purchaser of Senior Notes required to be disclosed in Schedule 1 of Form 45-106F1 under NI 45-l06 (including its name, address, telephone number and the number and value of securities purchased), which Form 45-106F1 the Issuer is required to file under NI 45-106;

(ii) that such personal information will be delivered to the applicable Canadian securities regulatory authorities (the "**Commissions**") in accordance with NI 45-106;

(iii) that such personal information is being collected indirectly by the applicable Commission under the authority granted to it in securities legislation;

(iv) that such personal information is being collected for the purposes of the administration and enforcement of securities legislation; and

(v) that the public official in the provinces of Canada who can answer questions about the indirect collection of such personal information is set out in Schedule A of this confidential shelf offering memorandum, and

(b) has authorized the indirect collection of the personal information by the applicable Commission.

By purchasing Senior Notes, the purchaser also acknowledges that its name and other specified information, including the number of Senior Notes it has purchased, may be disclosed to other Canadian securities regulatory authorities and become available to the public in accordance with the requirements of applicable laws and consents to the disclosure of that information. Furthermore, by purchasing the Senior Notes, the purchaser acknowledges that certain information as to its status as an "accredited investor" that the purchaser may have provided to any Agent involved in the trade may be required to be delivered by such Agent to the Issuer under the terms of an Agency Agreement between the Issuer, OPG and the Agents referred to under "Plan of Distribution". By purchasing the Senior Notes, the purchaser consents to the disclosure of such information.

LANGUAGE OF DOCUMENTS

Upon receipt of this confidential shelf offering memorandum, each purchaser hereby confirms that it has expressly requested that all documents evidencing or relating in any way to the sale of the Senior Notes described herein (including for greater certainty any purchase confirmation or any notice) be drawn up in the English language only. *En recevant le présent document, chaque acquéreur confirme par les présentes qu'il a expressément demandé que tous les documents qui attestent la vente des débentures décrites dans les présentes ou qui s'y rapportent de quelque manière que ce soit (y compris, plus particulièrement, une confirmation d'achat ou un avis) soient rédigés en langue anglais seulement.*

RESTRICTIONS ON RESALE

The distribution of the Senior Notes in the provinces of Canada is being made on a private placement basis and is therefore exempt from the requirement that the Issuer prepare and file a prospectus with the relevant Canadian securities regulatory authorities. Accordingly, any resale of the Senior Notes must be made: (a) through an appropriately registered dealer or pursuant to an exemption from the dealer registration requirements of applicable provincial securities laws; and (b) in accordance with, or pursuant to an exemption from, the prospectus requirements of applicable provincial securities laws. These resale restrictions may in some circumstances apply to resales made outside of Canada. Purchasers are advised to seek legal advice prior to any resale of the Senior Notes.

Purchasers are advised that the Issuer does not intend to file a prospectus or similar document with any securities regulatory authority in Canada qualifying the resale of the Senior Notes to the public in any province of Canada in connection with any Offering.

Furthermore, each purchaser of Senior Notes, by its purchase thereof, will be deemed to have represented, acknowledged or confirmed, as the case may be, to the Issuer and any dealer who is involved in the sale of the Senior Notes to such purchaser that such purchaser understands that the Senior Notes are subject to transfer and resale restrictions in Canada and that the certificates representing the Senior Notes (or the relevant ownership statement under a direct registration system or other book-entry system) or other applicable document or notice (including this document) will bear or will notify the purchaser of the following legend:

> "EXCEPT IN THE PROVINCE OF MANITOBA, IN ACCORDANCE WITH NATIONAL INSTRUMENT 45-102 — RESALE OF SECURITIES, UNLESS OTHERWISE PERMITTED UNDER CANADIAN SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS FOUR MONTHS AND A DAY AFTER THE LATER OF (I) THE DATE ON WHICH THE SECURITY IS ISSUED; AND (II) THE DATE THE ISSUER BECOMES A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY OF CANADA.
>
> IN THE PROVINCE OF MANITOBA, UNLESS OTHERWISE PERMITTED UNDER APPLICABLE CANADIAN SECURITIES LAWS OR WITH THE PRIOR WRITTEN CONSENT OF THE APPLICABLE REGULATORS, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS TWELVE MONTHS AND A DAY AFTER THE DATE THE PURCHASER ACQUIRED THE SECURITY."

The Issuer is not and does not intend to become a reporting issuer.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of such Series of Senior Notes with liquidity for their investment or that it will continue for the life of such Senior Notes. Accordingly, purchasers of the Senior Notes may be required to bear the financial risk of investing in the Senior Notes until the maturity date.

REPORTING REQUIREMENTS

The Issuer is not a reporting issuer or the equivalent thereof under the securities legislation in any jurisdiction. Accordingly, the Issuer is not subject to the continuous reporting and disclosure requirements prescribed by such securities legislation. Therefore, there is no requirement that the Issuer comply with such requirements, including, without limitation, the requirements to provide prompt notification of material changes by way of press releases, to formally file disclosure documents with applicable securities regulatory authorities or to prepare and file annual audited financial statements or quarterly unaudited financial statements. However, the Issuer will provide audited annual financial statements and unaudited quarterly financial statements in accordance with the terms of the Master Trust Indenture. See *"Capital Markets Platform — Covenants of the Issuer — Financial Statements; Statement as to Compliance"*.

STATUTORY RIGHTS OF ACTION

Securities legislation in certain of the provinces of Canada provides purchasers, in addition to any other rights they may have at law, with a remedy for rescission or damages where an offering memorandum or any amendment to it, and in some cases, advertising and sales literature used in connection therewith, contains a misrepresentation. These remedies, or notice with respect thereto, must be exercised or delivered, as the case may be, by the purchaser within the time limit prescribed, and are subject to the defences contained, in the applicable securities legislation. Purchasers should refer to the applicable provisions of the securities legislation of their province for the particulars of these rights or consult with a legal advisor. The following is a summary of the rights of rescission or rights to damages available to purchasers of the Senior Notes.

Rights for Purchasers in Ontario

Section 5.2 of Ontario Securities Commission Rule 45-501 — *Ontario Prospectus and Registration Exemptions* provides that when an offering memorandum, such as this confidential shelf offering memorandum, is delivered to an investor to whom securities are distributed in reliance upon the "accredited investor" prospectus exemption in section 73.3 of the *Securities Act* (Ontario) or a predecessor exemption to section 73.3 of the *Securities Act* (Ontario) the right of action referred to in section 130.1 of the *Securities Act* (Ontario) ("**Section 130.1**") is applicable, unless the prospective purchaser is:

(a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act;

(b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

(c) a Schedule III bank, meaning an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

(d) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada); or

(e) a subsidiary of any person referred to in paragraphs (a), (b), (c) or (d), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by the directors of the subsidiary.

Section 130.1(1) provides such investors who purchase securities offered by an offering memorandum with a statutory right of action against the Issuer of securities for rescission or damages in the event that the offering memorandum and any amendment to it contains a "misrepresentation". The term "misrepresentation" is defined to mean an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make any statement not misleading in the light of the circumstances in which it was made. These

remedies, or notice with respect to these remedies, must be exercised or delivered, as the case may be, by the purchaser within the time limits prescribed by applicable securities laws.

Where this confidential shelf offering memorandum is delivered to a prospective purchaser of Senior Notes in connection with a trade made in reliance on section 73.3 of the *Securities Act* (Ontario), and this document contains a misrepresentation, the purchaser will have, without regard to whether the purchaser relied on the misrepresentation, a statutory right of action against the Issuer for damages or, while still the owner of Senior Notes, for rescission, in which case, if the purchaser elects to exercise the right of rescission, the purchaser will have no right of action for damages, provided that the right of action for rescission will be exercisable by the purchaser only if the purchaser commences the action not more than 180 days after the date of the transaction that gave rise to the cause of action; or, in the case of any action other than an action for rescission, the earlier of: (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or (ii) three years after the date of the transaction that gave rise to the cause of action.

The Issuer will not be liable for a misrepresentation if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation.

In an action for damages, the Issuer will not be liable for all or any portion of the damages that the Issuer proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

In no case will the amount recoverable for the misrepresentation exceed the price at which the Senior Notes were offered.

The liability of all persons and companies referred to above is joint and several. The Issuer, however, shall not be liable where it is not receiving any proceeds from the distribution of the securities being distributed and the misrepresentation was not based on information provided by the Issuer, unless the misrepresentation, (a) was based on information that was previously publicly disclosed by the Issuer, (b) was a misrepresentation at the time of its previous public disclosure and (c) was not subsequently publicly corrected or superseded by the Issuer prior to the completion of the distribution of the securities being distributed.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express provisions of the *Securities Act* (Ontario) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Saskatchewan

Section 138 of *The Securities Act, 1988* (Saskatchewan), as amended (the "**Saskatchewan Act**") provides that where an offering memorandum (such as this confidential shelf offering memorandum) or any amendment to it is sent or delivered to a purchaser and it contains a misrepresentation (as defined in the Saskatchewan Act), a purchaser who purchases a security covered by the offering memorandum or any amendment to it has, without regard to whether the purchaser relied on the misrepresentation, a right of action for rescission against the Issuer or a selling security holder on whose behalf the distribution is made or has a right of action for damages against:

(a) the Issuer or a selling security holder on whose behalf the distribution is made;

(b) every promoter and trustee of the Issuer or the selling security holder, as the case may be, at the time the offering memorandum or any amendment to it was sent or delivered;

(c) every person or company whose consent has been filed respecting the offering, but only with respect to reports, opinions or statements that have been made by them;

(d) every person who or company that, in addition to the persons or companies mentioned in (a) to (c) above, signed the offering memorandum or the amendment to the offering memorandum; and

(e) every person who or company that sells securities on behalf of the Issuer or selling security holder under the offering memorandum or amendment to the offering memorandum.

Such rights of rescission and damages are subject to certain limitations including the following:

(a) if the purchaser elects to exercise its right of rescission against the Issuer or selling security holder, it will have no right of action for damages against that party;

(b) in an action for damages, a defendant will not be liable for all or any portion of the damages that he, she or it proves do not represent the depreciation in value of the securities resulting from the misrepresentation relied on;

(c) no person or company, other than the Issuer or a selling security holder, will be liable for any part of the offering memorandum or any amendment to it not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, unless the person or company failed to conduct a reasonable investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation or believed that there had been a misrepresentation;

(d) in no case will the amount recoverable exceed the price at which the securities were offered; and

(e) no person or company is liable in an action for rescission or damages if that person or company proves that the purchaser purchased the securities with knowledge of the misrepresentation.

In addition, no person or company, other than the Issuer or selling security holder, will be liable if the person or company proves that:

(a) the offering memorandum or any amendment to it was sent or delivered without the person's or company's knowledge or consent and that, on becoming aware of it being sent or delivered, that person or company immediately gave reasonable general notice that it was so sent or delivered; or

(b) with respect to any part of the offering memorandum or any amendment to it purporting to be made on the authority of an expert, or purporting to be a copy of, or an extract from, a report, an opinion or a statement of an expert, that person or company had no reasonable grounds to believe and did not believe that: (i) there had been a misrepresentation, or (ii) the part of the offering memorandum or any amendment to it did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or an extract from, the report, opinion or statement of the expert.

Not all defences upon which the Issuer or others may rely are described herein. Please refer to the full text of the Saskatchewan Act for a complete listing.

The liability of all persons and companies referred to above is joint and several.

Similar rights of action for damages and rescission are provided in section 138.1 of the Saskatchewan Act in respect of a misrepresentation in advertising and sales literature disseminated in connection with an offering of securities.

Section 138.2 of the Saskatchewan Act also provides that, subject to certain limitations and defences, where an individual makes a verbal statement to a purchaser that contains a misrepresentation relating to the security purchased and the verbal statement is made either before or contemporaneously with the purchase of the security, the purchaser has, without regard to whether the purchaser relied on the misrepresentation, a right of action for damages against the individual who made the verbal statement.

Section 141(1) of the Saskatchewan Act provides a purchaser with the right to void the purchase agreement and to recover all money and other consideration paid by the purchaser for the securities if the securities are sold in

contravention of the Saskatchewan Act, the regulations to the Saskatchewan Act or a decision of the Saskatchewan Financial Services Commission.

Section 141(2) of the Saskatchewan Act also provides a right of action for rescission or damages to a purchaser of securities to whom an offering memorandum or any amendment to it was not sent or delivered prior to or at the same time as the purchaser enters into an agreement to purchase the securities, as required by Section 80.1 of the Saskatchewan Act.

The rights of action for damages or rescission under the Saskatchewan Act are in addition to and do not derogate from any other right which a purchaser may have at law.

Section 147 of the Saskatchewan Act provides that no action will be commenced to enforce any of the foregoing rights more than:

(a) in the case of an action for rescission or cancellation, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of any other action, other than an action for rescission or cancellation, the earlier of:

  (i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action; or

  (ii) six years after the date of the transaction that gave rise to the cause of action.

The Saskatchewan Act also provides that a purchaser who has received an amended offering memorandum delivered in accordance with subsection 80.1(3) of the Saskatchewan Act has a right to withdraw from the agreement to purchase the securities by delivering a notice to the person who or company that is selling the securities, indicating the purchaser's intention not to be bound by the purchase agreement, provided such notice is delivered by the purchaser within two business days of receiving the amended offering memorandum.

This summary is subject to the express provisions of the Saskatchewan Act and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Nova Scotia

The right of action for rescission or damages described herein is conferred by section 138 of the *Securities Act* (Nova Scotia). Section 138 provides, in the relevant part, that in the event that this confidential shelf offering memorandum, together with any amendments hereto, or any advertising or sales literature (as defined in the *Securities Act* (Nova Scotia)) contains an untrue statement of material fact or omits to state a material fact that is required to be stated or that is necessary in order to make any statements contained herein or therein not misleading in light of the circumstances in which it was made (a "misrepresentation"), a purchaser of Senior Notes is deemed to have relied upon such misrepresentation if it was a misrepresentation at the time of purchase and has, subject to certain limitations and defences, a statutory right of action for damages against the Issuer, its trustees, any person who signed this confidential shelf offering memorandum, any selling security holder and the directors of any such selling security holder at the date of this confidential shelf offering memorandum or, alternatively, while still the owner of the Senior Notes, may elect instead to exercise a statutory right of rescission against the Issuer, in which case the purchaser will have no right of action for damages against any person listed above, including the Issuer, provided that, among other limitations:

(a) no action will be commenced to enforce the right of action for rescission or damages by a purchaser resident in Nova Scotia under Section 138 later than 120 days after the date payment was made for the Senior Notes (or after the date on which initial payment was made for the Senior Notes where payments subsequent to the initial payment are made pursuant to a contractual commitment assumed prior to, or concurrently with, the initial payment);

(b) no person will be liable if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation;

(c) no person or company, other than the Issuer, is liable under Section 138 if the person or company proves that:

(i) this confidential shelf offering memorandum, or any amendment hereto, was sent or delivered to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its delivery, the person or company gave reasonable general notice that it was delivered without the person's or company's knowledge or consent;

(ii) after delivery of this confidential shelf offering memorandum, or the amendment hereto, and before the purchase of the Senior Notes by the purchaser, on becoming aware of any misrepresentation in this confidential shelf offering memorandum, or the amendment hereto, or any record incorporated or deemed incorporated by reference therein, the person or company withdrew the person's or company's consent to this confidential shelf offering memorandum, or amendment hereto, or such record, and gave reasonable general notice of the withdrawal and the reason for it; or

(iii) with respect to any part of this confidential shelf offering memorandum, or amendment hereto, or any record incorporated or deemed to be incorporated by reference therein, purporting to be made on the authority of an expert, or to be a copy of, or an extract from a report, an opinion or a statement of an expert, the person or company had no reasonable grounds to believe and did not believe that there had been a misrepresentation, or that the relevant part of this confidential shelf offering memorandum, or amendment hereto, or such record, did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or extract from, the report, opinion or statement of the expert;

(d) no person or company, other than the Issuer, is liable under Section 138 with respect to any part of this confidential shelf offering memorandum, or amendment hereto, or any record incorporated or deemed incorporated by reference therein, not purporting to be made on the authority of an expert, or to be a copy of or an extract from, a report, opinion or statement of an expert, unless the person or company failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation, or believed that there had been a misrepresentation;

(e) in the case of an action for damages, no person will be liable for all or any portion of the damages that it proves do not represent the depreciation in value of the Senior Notes resulting from the misrepresentation; and

(f) in no case will the amount recoverable under Section 138 in any action exceed the price at which the Senior Notes were offered to the purchaser.

The liability of all persons or companies referred to above is joint and several with respect to the same cause of action. A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person or company who is jointly and severally liable to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.

The foregoing statutory right of action for rescission or damages conferred by Section 138 of the Securities Act (Nova Scotia) is in addition to and without derogation from any other right or remedy available at law or otherwise to the purchaser. This summary is subject to the express provisions of the *Securities Act* (Nova Scotia) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions may have at law.

Rights for Purchasers in New Brunswick

Section 2.1 of New Brunswick Securities Commission Rule 45-802 provides that the statutory rights of action in rescission or damages referred to in Section 150 of the *Securities Act* (New Brunswick) ("**Section 150**") apply to information relating to an offering memorandum, such as this confidential shelf offering memorandum, that is provided to a purchaser of securities in connection with a distribution made in reliance on the "accredited investor" prospectus exemption in Section 2.3 of NI 45-106. Section 150 provides investors who purchase securities offered for sale in reliance on an exemption from the prospectus requirements of the *Securities Act* (New Brunswick) with a statutory right of action for damages against (i) the Issuer; (ii) the selling security holder on whose behalf the distribution was made; (iii) every person who was a director of the Issuer as at the date of the offering memorandum; and (iv) every person who signed the offering memorandum in the event that an offering memorandum provided to such investor contains a "misrepresentation". Alternatively, if the investor purchased the securities from a person referred to in (i) or (ii) above, an investor may elect a right of rescission, in which case the investor shall have no right of action for damages. "Misrepresentation" means an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

Where this confidential shelf offering memorandum is delivered to a prospective purchaser of Senior Notes in connection with a trade made in reliance on Section 2.3 of NI 45-106, and this document (including any documentation incorporated or deemed to be incorporated by reference) contains a misrepresentation, a purchaser who purchases the securities will be deemed to have relied on the misrepresentation and will have, subject to certain limitations and defences, a statutory right of action against the Issuer for damages or, while still the owner of Senior Notes, for rescission. If the purchaser elects to exercise the right of rescission, the purchaser will have no right of action for damages. The right of action for rescission will be exercisable by the purchaser only if the purchaser commences the action against the defendant, not more than 180 days after the date of the transaction that gave rise to the cause of action; or, in the case of any action other than an action for rescission, the earlier of: (i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action, or (ii) six years after the date of the transaction that gave rise to the cause of action.

No person other than the Issuer or the selling security holder is liable under Section 150 if the person proves that:

(a) the offering memorandum was delivered to the purchaser without the person's knowledge or consent and that, on becoming aware of its delivery, the person gave written notice to the Issuer that it was delivered without the person's knowledge or consent;

(b) upon becoming aware of a misrepresentation in the offering memorandum the person withdrew the person's consent to the offering memorandum and gave written notice to the Issuer of the withdrawal and the reason for the withdrawal; or

(c) with respect to any part of the offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, the person had no reasonable grounds to believe and did not believe there had been a misrepresentation or that the relevant part of the offering memorandum did not fairly represent the report, opinion or statement of the expert or was not a fair copy of, or extract from, the report, opinion or statement of the expert.

In addition, no person other than the Issuer or the selling security holder is liable under Section 150 with respect to any part of an offering memorandum not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert unless (i) the person failed to conduct such reasonable investigations as to provide reasonable grounds for a belief that there had been no misrepresentation or (ii) the person believed that there had been misrepresentation.

The defendant will not be liable for a misrepresentation if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation.

In an action for damages, the defendant will not be liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

In no case will the amount recoverable for the misrepresentation exceed the price at which the Senior Notes were offered.

The liability of all persons referred to above is joint and several.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express provisions of the Securities Act (New Brunswick) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Prince Edward Island

The right of action for rescission or damages described herein is conferred by Section 112 of the *Securities Act* (Prince Edward Island). Section 112 provides, that in the event that this confidential shelf offering memorandum contains a "misrepresentation", a purchaser who purchased the Senior Notes during the period of distribution, without regard to whether the purchaser relied upon such misrepresentation, has a statutory right of action for damages against the Issuer, the selling security holder on whose behalf the distribution was made, every trustee of the Issuer as at the date of the confidential shelf offering memorandum, and every person who signed the confidential shelf offering memorandum. Alternatively, the purchaser while still the owner of the Senior Notes may elect to exercise a statutory right of action for rescission against the Issuer. "Misrepresentation" means an untrue statement of material fact, or an omission to state a material fact that is required to be stated by the *Securities Act* (Prince Edward Island), or an omission to state a material fact that needs to be stated so that a statement is not false or misleading in light of the circumstances in which it is made. Statutory rights of action for rescission or damages by a purchaser are subject to the following limitations:

(a) no action will be commenced to enforce the right of action for rescission by a purchaser, resident in Prince Edward Island, later than 180 days after the date of the transaction that gave rise to the cause of action;

(b) in the case of any action other than an action for rescission, the earlier of;

  (i) 180 days after the purchaser first had knowledge of the facts given rise to the cause of action; or

  (ii) three years after the date of the transaction giving rise to the cause of action;

(c) no person will be liable if the person proves that the purchaser purchased the security with knowledge of the misrepresentation;

(d) no person other than the Issuer will be liable if the person proves that

  (i) the confidential shelf offering memorandum was sent to the purchaser without the person's knowledge or consent and that, on becoming aware of it being sent, the person had promptly given reasonable notice to the Issuer that it had been sent without the knowledge and consent of the person;

  (ii) the person, on becoming aware of the misrepresentation in the confidential shelf offering memorandum, had withdrawn the person's consent to the confidential shelf offering memorandum and had given reasonable notice to the Issuer of the withdrawal and the reason for it; or

(iii) with respect to any part of the confidential shelf offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, statement or opinion of an expert, the person had no reasonable grounds to believe, and did not believe that;

(A) there had been a misrepresentation; or

(B) the relevant part of the confidential shelf offering memorandum:

a. did not fairly represent the report, statement or opinion of the expert, or

b. was not a fair copy of, or an extract from, the report, statement, or opinion of the expert.

Not all defences upon which the Issuer or others may rely are described herein. Please refer to the full text of the *Securities Act* (Prince Edward Island) for a complete listing.

If the purchaser elects to exercise a right of action for rescission, the purchaser will have no right of action for damages.

In no case will the amount recoverable in any action exceed the price at which the Senior Notes were offered to the purchaser.

In an action for damages, the defendant will not be liable for any damages that the defendant proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express conditions of the *Securities Act* (Prince Edward Island) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Manitoba

Pursuant to section 141.1(1) of *The Securities Act* (Manitoba) (the "**Manitoba Act**"), where this confidential shelf offering memorandum, or any amendment to this confidential shelf offering memorandum, is sent or delivered to a purchaser in the Province of Manitoba and such document contains a misrepresentation, a purchaser who purchases Senior Notes offered by this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum is deemed to have relied on that misrepresentation, if it was a misrepresentation at the time of purchase and, subject to the defenses described in the Manitoba Act, has:

(a) a right of action for damages against:

(i) the Issuer;

(ii) each of its trustees at the date of this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum; and

(iii) every person or company who signed this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum; and

(b) a right of rescission against the Issuer;

provided that:

(c) no person or company is liable if the person or company proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation;

(d) in an action for damages, the defendant is not liable for all or any portion of the damages that he, she or it proves do not represent the depreciation in value of the Senior Notes resulting from the misrepresentation relied on; and

(e) in no case will the amount recovered exceed the price at which the Senior Notes were offered to the public.

Where a purchaser elects to exercise a right of rescission against the Issuer, the purchaser will have no right of action for damages against the Issuer or against a person or company referred to in (a)(ii) or (iii) above.

No person or company other than the Issuer is liable:

(a) if the person or company proves that this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum was sent without the person's or company's knowledge or consent and that, after becoming aware of its being sent, the person or company promptly gave reasonable notice to the Issuer that it was so sent;

(b) if the person or company proves that after becoming aware of any misrepresentation in this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum, the person or company withdrew the person's or company's consent to it and gave reasonable notice to the Issuer of the person's or company's withdrawal and the reason for it;

(c) if the person or company proves that with respect to any part of this confidential shelf offering memorandum or of any amendment to this confidential shelf offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, the person or company had no reasonable grounds to believe and did not believe that:

(i) there had been a misrepresentation; or

(ii) the relevant part of this confidential shelf offering memorandum or of the amendment to this confidential shelf offering memorandum:

(A) did not fairly represent the report, opinion or statement of the expert; or

(B) was not a fair copy of or extract from the report, opinion or statement of the expert; or

(d) with respect to any part of this confidential shelf offering memorandum or of the amendment to this confidential shelf offering memorandum not purporting to be made on an expert's authority and not purporting to be a copy of, or an extract from, the expert's report, opinion or statement, unless the person or company:

(i) did not conduct an investigation, sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; or

(ii) believed that there had been a misrepresentation.

Pursuant to section 141.4 of the Manitoba Act, but subject to the other provisions thereof, no action shall be commenced to enforce any of the foregoing rights more than:

(a) in the case of an action for rescission, 180 days from the date of the transaction that gave rise to the cause of action, or

(b) in the case of an action for damages, the earlier of:

(i) 180 days after the date that the plaintiff first had knowledge of the facts giving rise to the cause of action, or

(ii) two years after the date of the transaction that gave rise to the cause of action.

In an action for damages, the Issuer will not be liable for all or any part of the damages that the Issuer proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

The rights of action for rescission or damages under the Manitoba Act are in addition to and do not derogate from any other right that the purchaser may have at law.

This summary is subject to the express provisions of the Manitoba Act and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for purchasers in Newfoundland and Labrador

In accordance with section 130.1 of the *Securities Act* (Newfoundland and Labrador, hereinafter the "**NL Act**"), in the event this confidential shelf offering memorandum contains a misrepresentation, a purchaser who purchases Senior Notes shall be deemed to have relied upon such misrepresentation if it was a misrepresentation at the time of purchase, in which event the purchaser has, subject to the defences and limitations set out in the NL Act: (a) a right of action for damages against the Issuer and, every trustee of the Issuer at the date of this confidential shelf offering memorandum and every person or company who has signed this confidential shelf offering memorandum; and (b) a right of rescission against the Issuer. Where a right of rescission is exercised, a purchaser shall have no right of action for damages against any other person or company.

For the purposes of the NL Act "misrepresentation" means: (a) an untrue statement of material fact, or (b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

A person or company is not liable under section 130.1 of the NL Act: (a) if the person or company proves the purchaser had knowledge of the misrepresentation; or (b) in an action for damages, for all or any portion of the damages that the person or company proves do not represent the depreciation in value of the security as a result of the misrepresentation. Additionally, in an action for damages, the amount recoverable under the right of action shall not exceed the purchase price at which the security was offered.

In addition no person or company, other than the Issuer, is liable under section 130.1 of the NL Act if:

(a) the person or company proves that this confidential shelf offering memorandum was sent to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its being sent, the person or company promptly gave reasonable notice to the Issuer that it was sent without the person's or company's knowledge or consent;

(b) the person or company proves that on becoming aware of any misrepresentation in this confidential shelf offering memorandum, the person or company withdrew the person's or company's consent to this confidential shelf offering memorandum, and gave reasonable notice to the Issuer of the withdrawal and the reason for it;

(c) with respect to any part of this confidential shelf offering memorandum purporting to be made on the authority of an expert (or purporting to be a copy of or an extract from a report, opinion or statement of an expert), the person or company proves they had no reasonable grounds to believe and did not believe that: (i) there had been a misrepresentation; or (ii) the relevant part of this confidential shelf offering memorandum did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or an extract from, the report, opinion or statement of the expert; or

(d) with respect to any part of this confidential shelf offering memorandum not purporting to be made on the authority of an expert (and not purporting to be a copy of or an extract from a report, opinion or statement of an expert), unless the person or company: (i) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; (ii) or believed there had been a misrepresentation.

If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into this confidential shelf offering memorandum, the misrepresentation is deemed to be contained in this confidential shelf offering memorandum.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law. The liability of all persons and companies referred to above is joint and several.

Pursuant to section 138 of the NL Act, no action shall be commenced to enforce the rights conferred by section 130.1 thereof unless commenced:

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of an action, other than an action for rescission, the earlier of:

(i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action; or

(ii) three years after the date of the transaction that gave rise to the cause of action.

Rights for Purchasers in Alberta, British Columbia, and Québec

By purchasing Senior Notes hereunder, purchasers in Alberta, British Columbia and Québec not entitled to the statutory rights described above, in consideration of their purchase of Senior Notes and upon accepting a purchase confirmation in respect thereof, are hereby granted a contractual right of action for damages or rescission that is the same as the statutory right of action, if any, provided to residents of Ontario who purchase Senior Notes.

General

The foregoing summaries are subject to the express provisions of the applicable securities law of each jurisdiction, and the regulations, rules and policy statements thereunder and reference is made thereto for the complete text of such provisions.

The rights of action described in this confidential shelf offering memorandum are in addition to and without derogation from any other right or remedy that the purchaser may have at law.

INDENTURE TRUSTEE

The Indenture Trustee, BNY Trust Company of Canada, will be the registrar for the Senior Notes, and the register for the transfer of Senior Notes will be kept at its principal office in Toronto, Ontario.

LEGAL MATTERS

Certain Canadian legal matters in connection with the offering of Senior Notes will be passed upon by Torys LLP on behalf of the Issuer and by Osler, Hoskin & Harcourt LLP on behalf of the Agents.

GLOSSARY

The following glossary contains definitions of certain terms that are used throughout this confidential shelf offering memorandum.

"**Acceleration**" means, (a) a portion of the principal amount owing in respect of the Funding Obligation has become due and payable by a Financing Entity before the scheduled payment date, maturity date or redemption date, or (b) a party to a derivative agreement in respect of the Funding Obligation has elected to close-out or terminate the agreement, resulting in an obligation on a Financing Entity to pay a termination amount, close-out amount or similar amount.

"**Acceleration Event**" means the acceleration of any Series of Controlling Class Obligations pursuant to and in accordance with its Funding Obligation Agreement.

"**Adherence Compliance Certificate**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Adverse Effect**" has the meaning set out under *"Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations"*.

"**Agency Agreement**" has the meaning set out under *"Plan of Distribution"*.

"**Agents**" has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**Approved Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Available Collections**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Collection Account"*.

"**Borrowing**" means a borrowing or drawing by the Issuer pursuant to a liquidity agreement, a loan agreement or a credit enhancement agreement.

"**Canadian Insolvency and Restructuring Laws**" has the meaning set out under *"Risk Factors — Risks Associated with the Unusual Nature of the Investment Asset"*.

"**Carrying Costs**" has the meaning ascribed to the term "carrying costs" in the Regulations.

"**CDS**" means has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**Certified Primary Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Change of Law Protection Agreement**" means the change of law protection agreement dated as of December 21, 2017 among the Province, the Issuer and the Indenture Trustee, as amended, supplemented, restated or otherwise modified from time to time.

"**Class**" has the meaning set out under *"Capital Markets Platform — Subordination Provisions"*.

"**Clean Energy Adjustment**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Clean Energy Benefits**" means the value of the benefits determined to be derived by or accruing to Specified Consumers as a result of the Clean Energy Initiative, including as a result of Clean Energy Costs.

"**Clean Energy Costs**" means the value of the costs allocated to Specified Consumers as a result of the Clean Energy Initiative, including as a result of past, present and expected costs incurred in respect of

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* (Ontario) or any provision that is the successor to that provision, which relate to contracts or amounts for

(i) renewable energy generation or capacity;

(ii) conservation and demand management;

(iii) energy storage;

(iv) energy efficiency; and

(v) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed;

(b) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(c) such other costs or estimated costs as may be prescribed by the Regulations.

"**Clean Energy Initiative**" means the policies of the Ontario government related to

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies;

(b) removing barriers to and promoting opportunities for clean and renewable energy sources and technologies;

(c) promoting conservation, demand management and energy efficiency; and

(d) investing in energy infrastructure to ensure a clean, modern and reliable system.

"**Clearstream, Luxembourg**" has the meaning set out under *"Depository Services . — DTC, Euroclear and Clearstream, Luxembourg"*.

"**Collateral**" has the meaning set out under *"Capital Markets Platform — Security"*.

"**Collection Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Collection Account"*.

"**Collection Account Waterfall**" has the meaning set out under *"Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account"*.

"**Commission**" has the meaning set out under *"Representations and Agreements of Purchasers"*.

"**Confidential Information**" has the meaning set out under *"Confidentiality"*.

"**Controlling Class Creditors**" means the Debtholders holding Controlling Class Obligations.

"**Controlling Class Obligations**" means: (a) Senior Funding Obligations until such time as all Senior Funding Obligations have been paid in full; then (b) if all Senior Funding Obligations have been paid in full, Subordinated Funding Obligations until such time as all Subordinated Funding Obligations have been paid in full; and finally (c)

if all Senior Funding Obligations and Subordinated Funding Obligations have been paid in full, Junior Subordinated Funding Obligations until such time as all Junior Subordinated Funding Obligations have been paid in full.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by the FHPA.

"**DBRS**" means DBRS Limited and its successors.

"**Debtholder**" means a Noteholder or a Lender.

"**Debtholder Group**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Declaration of Trust**" means the declaration of trust made as of December 20, 2017 under which the Issuer was established, as amended, supplemented, restated or otherwise modified from time to time.

"**Default**" means the occurrence of any event which, after the passage of time, the required notification to the Indenture Trustee and, if required, approval by the required Controlling Class Creditors, would become an Event of Default.

"**depository**" has the meaning set out under *"Depository Services"*.

"**Derivative Counterparty**" means any party to any derivative agreement other than the Issuer or the Indenture Trustee.

"**Derivative Funding Obligations**" means Funding Obligations arising under, or in connection with, derivative agreements.

"**DTC**" has the meaning set out under *"Depository Services . — DTC, Euroclear and Clearstream, Luxembourg"*.

"**Electricity Vendor**" means

(a) a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a "distribution system" within the meaning of that Act;

(b) a person licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity;

(c) the IESO in circumstances where it directly invoices a Specified Consumer for electricity used in Ontario; or

(d) such other person as may be prescribed by the Regulations.

"**Eligible Deposit Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Eligible Institution**" means (a) a trust company or Schedule I chartered bank (or an affiliate thereof) incorporated under the laws of Canada or any province thereof (i) which has either (x) a long-term unsecured debt rating of "A" or better by DBRS, or (y) a short-term deposit rating of "R-1 (low)" or better by DBRS, and (ii) which has either (x) a long-term unsecured debt rating of "A2" or better by Moody's, or (y) a short-term deposit rating of "P-1" or better by Moody's, or (b) any institution that otherwise satisfies the Rating Agency Condition.

"**Eligible Investments**" means instruments or investment property that evidence:

(a) direct obligations of, or obligations fully and unconditionally guaranteed as to timely payment by, Canada or the United States of America;

(b) demand or time deposits of, unsecured certificates of deposit of, money market deposit accounts of, bank deposit products of or bankers' acceptances issued by, any depository institution (including, but not limited to, bank deposit products of the Indenture Trustee, acting in its commercial capacity) incorporated or organized under the laws of the United States of America, Canada or any state or province thereof and subject to supervision and examination by applicable banking authorities, so long as the commercial paper or other short-term debt obligations of such depository institution are, at the time of deposit, rated at least "R-1 (low)" and "P 1" by each of DBRS and Moody's, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(c) commercial paper (including commercial paper of the Indenture Trustee, acting in its commercial capacity), which at the time of purchase is rated at least "R-1 (low)" and "P-1" by each of DBRS and Moody's, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(d) investments in money market funds having a rating in the highest investment category granted thereby (including funds for which the Indenture Trustee or any of its affiliates is investment manager or advisor) from DBRS and Moody's;

(e) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States of America, Canada or their respective agencies or instrumentalities, entered into with Eligible Institutions;

(f) repurchase obligations with respect to any security or whole loan entered into with an Eligible Institution or with a registered broker/dealer acting as principal and that meets the ratings criteria set forth below:

(i) a broker/dealer (acting as principal) registered as a broker or dealer under the *Securities Act* (Ontario) (any such broker/dealer being referred to in this definition as a "**broker/dealer**"), the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's and "R-1" by DBRS at the time of entering into such repurchase obligation; or

(ii) an unrated broker/dealer, acting as principal, that is a wholly-owned subsidiary of a non-bank or bank holding company the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's and "R-1" by DBRS at the time of purchase so long as the obligations of such unrated broker/dealer are unconditionally guaranteed by such non-bank or bank holding company; and

(g) any other investment permitted by each of the Rating Agencies;

in each case maturing not later than the business day preceding the next Payment Date, Interest Payment Date or Principal Payment Date, as applicable (for the avoidance of doubt, investments in money market funds or similar instruments that are redeemable on demand shall be deemed to satisfy the foregoing requirement). Notwithstanding the foregoing, no securities or investments that mature in 30 days or more shall be "Eligible Investments" unless the issuer thereof has (x) either a short-term unsecured debt rating of at least "P-1" from Moody's or a long-term unsecured debt rating of at least "A2" from Moody's and also has (y) either a short-term unsecured debt rating of at least "R-1 (low)" from DBRS or a long-term unsecured debt rating of at least "A" from DBRS.

"**Eligible Securities Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Euroclear**" has the meaning set out under *"Depository Services . — DTC, Euroclear and Clearstream, Luxembourg"*.

"**Event of Default**" has the meaning set out under *"Capital Markets Platform — Event of Default"*.

"**Extraordinary Resolution**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Fair Adjustment**" has the meaning set out under *"Ontario's Fair Hydro Plan — Background"*.

"**Fair Allocation Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*.

"**FHPA**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Finance Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Financial Services Manager**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Financing Entity**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Financing Plan**" means the written plan entitled "Financing Plan" prepared by the Financial Services Manager as required under the FHPA to be used by the Financial Services Manager to evaluate whether potential Funding Obligations should be incurred for the purposes of a Financing Entity acquiring and financing an Investment Interest in accordance with the FHPA or for the purposes of a Refinancing, and includes any amendments thereto.

"**Funding Obligations**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Funding Obligation Agreement**" means any Note, any Supplemental Indenture (including any Terms Document), any liquidity agreement, any liquidity agreement, any credit enhancement agreement or any derivative agreement.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**HOEP**" has the meaning set out under *"The Electricity Industry in Ontario — Electricity Prices"*.

"**IESO**" means the Independent Electricity System Operator.

"**IESO Cash Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — IESO Cash Reserve Account"*.

"**IESO Cash Reserve Deposit Amount**" means an amount equal to the aggregate of:

(a) 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations determined as of the Payment Date occurring in April, 2021; and

(b) an amount estimated by the Manager, acting reasonably, as the amount of Carrying Costs payable by the Issuer during May, June and July, 2021 on outstanding Issuer Funding Obligations and any Issuer Funding Obligations to be issued in accordance with the Financing Plan, provided that such estimate satisfies the Rating Agency Condition.

"**IESO Cash Reserve Required Amount**" means, on any Payment Date on or after the Payment Date in November, 2021, the amount, if any, by which (a) an amount equal to 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations, exceeds (b) the amount on deposit in the Program Cash Reserve Account, determined after giving effect to all settlements on such Payment Date.

"**IESO Security Agreement**" means the security agreement made by the IESO in favour of the Issuer to secure its obligations to pay the Issuer's Carrying Costs pursuant to the Master Transfer and Servicing Agreement.

"**Indemnity Agreement**" means the Indemnity Agreement dated December 21, 2017 by OPG in favour of the Indenture Trustee.

"**Indenture**" means the Master Trust Indenture, as supplemented by any Supplemental Indenture.

"**Indenture Trustee**" means BNY Trust Company of Canada and its successors.

"**Interest Accrual Amount (Junior Subordinated)**" means, in respect of any Payment Date and all Junior Subordinated Funding Obligations, the amount of interest that accrued on such Junior Subordinated Funding Obligations during the period from and including the issuance date of such Junior Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Junior Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accrual Amount (Senior)**" means, in respect of any Payment Date and all Senior Funding Obligations, the amount of interest that accrued on such Senior Funding Obligations during the period from and including the issuance date of such Senior Funding Obligations or the last date to which interest has been paid in respect of such Senior Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accrual Amount (Subordinated)**" means, in respect of any Payment Date and all Subordinated Funding Obligations, the amount of interest that accrued on such Subordinated Funding Obligations during the period from and including the issuance date of such Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accumulation Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Interest Accumulation Account"*.

"**Interest Payment Date**" means each business day on which interest is due and payable in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as set out in the related Funding Obligation Agreement.

"**Investment Asset**" has the meaning set out under *"Ontario's Fair Hydro Plan — Investment Interest"*.

"**Investment Interest**" has the meaning set out under *"Ontario's Fair Hydro Plan — Investment Interest"*.

"**Investor Presentation**" has the meaning set out on page (iii) of this confidential shelf offering memorandum.

"**Issuer**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Issuer Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Issuer Funding Obligation**" means Funding Obligations of the Issuer.

"**Issuer Trustee**" means Computershare Trust Company of Canada.

"**Junior Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Junior Subordinated" in the related Funding Obligation Agreement.

"**Junior Subordinated Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**LDCs**" has the meaning set out under *"The Electricity Industry in Ontario"*.

"**Lender**" means any Person providing credit facilities, note purchase facilities or advances under a liquidity agreement, liquidity agreement or credit enhancement agreement, as applicable.

"**Limited Guarantee**" has the meaning set out under *"Change of Law Protection Agreement"*.

"**Management Agreement**" means the management agreement dated as of December 20, 2017 between the Manager and the Issuer, and acknowledged by the Indenture Trustee, as amended, supplemented, restated or otherwise modified from time to time.

"**Manager**" means OPG, as manager of the Issuer appointed under the Management Agreement.

"**Manitoba Act**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in Manitoba"*.

"**Master Agreement**" means an agreement in the form of a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated as of December 21, 2017 between the Issuer and the IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Master Trust Indenture**" means the trust indenture dated as of December 21, 2017 between the Issuer, as issuer, and the Indenture Trustee, as amended, supplemented, restated or otherwise modified from time to time.

"**Material Effect**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Moody's**" means Moody's Investors Service, Inc. and its successors.

"**Moratorium Period**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**MTSA Acknowledgement**" means the acknowledgement and indemnity agreement dated December 21, 2017 by the IESO in favour of the Indenture Trustee.

"**NI 31-103**" has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**NI 45-106**" has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**NL Act**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in Newfoundland and Labrador"*.

"**Non-Investment Grade Rated Electricity Vendor**" has the meaning set out under *"The Transferor and Servicer"*.

"**Note**" means any note of any Class, Series or Tranche created pursuant to a Supplemental Indenture and authenticated and delivered from time to time under the Master Trust Indenture.

"**Noteholders**" means a Person in whose name a Note is registered in the Note register or the bearer of any Note held in bearer form (including a global note in bearer form), as the case may be.

"**Obligations Secured**" means all present and future debts, expenses and liabilities, direct or indirect, absolute or contingent, due, owing or accruing due or owing from time to time by the Issuer to the Specified Creditors in their capacity as such. For greater certainty, amounts owing to any Specified Creditors by the Issuer at any time shall include (a) the unpaid face amount of any Notes issued on a discount basis; (b) the principal amount owing at such time, together with the accrued and unpaid interest on interest bearing Notes or Borrowings; (c) accrued fees, whether

or not then due and payable; and (d) any evidence of indebtedness issued pursuant to or in respect of an amount owing under a Program Agreement (other than amounts payable by the Issuer to its beneficiaries pursuant to the Declaration of Trust or a promissory note issued by the Issuer to a beneficiary as contemplated in the Declaration of Trust).

"**OEB**" means the Ontario Energy Board.

"**Offering**" has the meaning set out on page (ii) of this confidential shelf offering memorandum.

"**Offering Jurisdiction**" has the meaning set out under *"Representations and Agreements of Purchasers"*.

"**OPA**" has the meaning set out under *"The Electricity Industry in Ontario — Key Industry Participants — The IESO*.

"**OPG**" means Ontario Power Generation Inc.

"**Ordinary Resolution**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Participants**" has the meaning set out under *"Depository Services"*.

"**Paying Agent**" means any Person authorized by the Issuer to pay any Obligations Secured on behalf of the Issuer.

"**Payment Date**" means the 15th day of each calendar month.

"**Person**" means any individual, corporation, limited liability company, unlimited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Post-Suspension Refinancing**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Pre-Approved Refinancing**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Predecessor IESO**" has the meaning set out under *"The Electricity Industry in Ontario — Key Industry Participants — The IESO"*.

"**Primary Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Principal Accumulation Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Principal Accumulation Account"*.

"**Principal Accumulation Amount**" means, in respect of any Series of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations and a Payment Date, the amount specified for such Payment Date in the related Funding Obligation Agreement plus any amounts specified in the related Funding Obligation Agreement in respect of prior Payment Dates which were not deposited to the Principal Accumulation Account; provided that if the Issuer has delivered a refinancing notice in respect of such Series, the Principal Accumulation Amounts in respect of such Series shall be adjusted as provided for in such refinancing notice.

"**Principal Accumulation Date**" means, in respect of any Series of Issuer Funding Obligations, other than Derivative Funding Obligations, the date, if any, specified in the related Funding Obligation Agreement.

"**Principal Payment Date**" means each business day on which principal is due and payable in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as set out in the related Funding Obligation Agreement.

"**Principal Payment Default Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the related Funding Obligation Agreement.

"**Program Account**" means each of the Collection Account, the Principal Accumulation Account, the Interest Accumulation Account, the Program Cash Reserve Account, the IESO Cash Reserve Account, the Refinancing Account and the Protection Account.

"**Program Agreements**" means the Master Trust Indenture, each Supplemental Indenture, the Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, the MTSA Acknowledgement, the Indemnity Agreement, each transfer notice delivered under the Master Transfer and Servicing Agreement, any Co-Owner Agreements, the IESO Security Agreement, the Change of Law Protection Agreement, the Notes, any derivative agreements, credit enhancement agreements, liquidity agreements, loan agreements, underwriting agreements, agency agreements or note purchase agreements and all other documents and certificates delivered in connection therewith.

"**Program Cash Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Program Cash Reserve Account"*.

"**Program Cash Reserve Required Amount**" means (a) on each Payment Date prior to the Payment Date in May, 2021, nil, and (b) on each Payment Date thereafter, an amount equal to 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations after giving effect to all settlements on such Payment Date, or such lesser amount proposed by the Manager that satisfies the Rating Agency Condition.

"**Protection Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Protection Account"*.

"**Protection Event**" has the meaning set out under *"Change of Law Protection Agreement — Protection Event"*.

"**Rating Agency**" means, with respect to any Issuer Funding Obligation, each nationally recognized statistical rating organization or designated rating organization, as specified in the related Funding Obligation Agreement, selected by the Manager to rate such Issuer Funding Obligation.

"**Rating Agency Condition**" has the meaning set out under *"Rating Agency Condition"*.

"**Reference Period**" means:

(a) the period beginning on July 1, 2017 and ending on October 31, 2017; and

(b) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed by the Regulations

(i) every six-month period following the period mentioned in (a);

(ii) any period shorter than six months, as may be prescribed by the Regulations.

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the FHPA.

"**Refinancing Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Refinancing Account"*.

"**Regulated Price Plan**" or "**RPP**" has the meaning set out under *"The Electricity Industry in Ontario — Electricity Prices*.

"**Regulations**" means the regulations promulgated under the FHPA.

"**Regulatory Asset**" has the meaning set out under *"Ontario's Fair Hydro Plan — Regulatory Asset"*.

"**Required Principal Accumulation Amount (Senior)**" means, in respect of any Principal Payment Date, the aggregate of the Principal Accumulation Amounts in respect of all Senior Funding Obligations for all Payment Dates up to and including such Principal Payment Date, less all amounts that have been applied to principal repayments of Senior Funding Obligations on or prior to such Principal Payment Date.

"**Required Principal Accumulation Amount (Subordinated)**" means, in respect of any Principal Payment Date, the aggregate of the Principal Accumulation Amounts in respect of all Subordinated Funding Obligations for all Payment Dates up to and including such Principal Payment Date, less all amounts that have been applied to principal repayments of Subordinated Funding Obligations on or prior to such Principal Payment Date.

"**Saskatchewan Act**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in Saskatchewan"*.

"**Section 130.1**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in Ontario"*.

"**Section 150**" has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in New Brunswick"*.

"**Securities Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Securities Account"*.

"**Senior Funding Obligation**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Senior" in the related Funding Obligation Agreement.

"**Senior Notes**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Senior Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**Series**" means, with respect to any Class of Issuer Funding Obligations, the Series of the Class specified in the related Funding Obligation Agreement.

"**Series Account**" means each Series Finance Reserve Account and each Series Capital Reserve Account.

"**Series Capital Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Series Accounts — Series Capital Reserve Account"*.

"**Series Finance Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Series Accounts — Series Finance Reserve Account"*.

"**Servicer**" means the IESO, as servicer under the Master Transfer and Servicing Agreement.

"**Servicer Default**" means:

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of three business days after written notice of such failure is received by the Servicer from the Issuer or after discovery of such failure by a responsible officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, to duly observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in the Master Transfer and Servicing Agreement or in any other Program Agreement to which it is a party (other than as provided in (a) above), which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or (B) such failure is discovered by a responsible officer of the Servicer;

(c) any representation or warranty made by the Servicer in the Master Transfer and Servicing Agreement, any other Program Agreement to which it is a party, any transfer notice or any monthly servicer report shall prove to have been incorrect when made, which has a material adverse effect on the Issuer and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer by the Issuer or (ii) such failure is discovered by a responsible officer of the Servicer;

(d) an insolvency event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs.

"**Specified Claims**" has the meaning set out under *"Change of Law Protection Agreement"*.

"**Specified Consumer**" has the meaning set out under *"Ontario's Fair Hydro Plan — Background"*.

"**Specified Creditors**" means, collectively, Noteholders, Lenders, the Paying Agent, the Indenture Trustee, the Issuer Trustee, the Manager, the Servicer, the Province of Ontario, Derivative Counterparties, credit enhancers, Rating Agencies and counterparties to underwriting agreements, agency agreements or note purchase agreements, in each case, to the extent of their claims related to Program Agreements, and any other Person that is owed a payment obligation by the Issuer that gives rise to a Finance Amount in respect of the Issuer.

"**Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Subordinated" in the related Funding Obligation Agreement.

"**Subordinated Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**Supplemental Indenture**" means a supplemental indenture to the Master Trust Indenture between the Issuer and the Indenture Trustee.

"**Suspension Event**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Suspension Notice**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Term Sheet**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Terms Document**" means, with respect to any Tranche of Notes, a supplement to the related Supplemental Indenture.

"**Tranche**" means, with respect to any Series of Notes, Notes of such Series which have identical terms, conditions and Tranche designation. Notes of a single Tranche may be issued on different dates.

"**Transfer**" has the meaning specified in the *Ontario Fair Hydro Plan Act, 2017*, and "**Transferred**" and "**Transferee**" shall have corresponding meanings.

"**True-up Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Unitholders**" has the meaning set out under *"The Issuer"*.

"**U.S. Securities Act**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Warehouse Facilities**" has the meaning set out under *"Short Term Indebtedness"*.

"**Warehouse Obligations**" means Senior Funding Obligations incurred pursuant to a Funding Obligation Agreement that provide the Issuer with a revolving facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period and does not provide any other type of credit facility.

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SCHEDULE A – CANADIAN PROVINCIAL SECURITIES REGULATORY AUTHORITIES

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: (403) 297-2082
Public official contact regarding indirect collection of information: FOIP Coordinator

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Inquiries: (604) 899-6854
Toll free in Canada: 1-800-373-6393
Facsimile: (604) 899-6581
Email: FOI-privacy@bcsc.bc.ca
Public official contact regarding indirect collection of information: FOI Inquiries

The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: (204) 945-2561
Toll free in Manitoba 1-800-655-5244
Facsimile: (204) 945-0330
Public official contact regarding indirect collection of information: Director

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll free in Canada: 1-866-933-2222
Facsimile: (506) 658-3059
Email: info@fcnb.ca
Public official contact regarding indirect collection of information: Chief Executive Officer and Privacy Officer

Government of Newfoundland and Labrador Financial Services Regulation Division
P.O. Box 8700
Confederation Building
2nd Floor, West Block
Prince Philip Drive
St. John's, Newfoundland and Labrador A1B 4J6
Attention: Director of Securities
Telephone: (709) 729-4189
Facsimile: (709) 729-6187
Public official contact regarding indirect collection of information: Superintendent of Securities

Nova Scotia Securities Commission
Suite 400, 5251 Duke Street
Duke Tower
P.O. Box 458
Halifax, Nova Scotia B3J 2P8
Telephone: (902) 424-7768
Facsimile: (902) 424-4625
Public official contact regarding indirect collection of information: Executive Director

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Telephone: (416) 593-8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-8122
Email: exemptmarketfilings@osc.gov.on.ca
Public official contact regarding indirect collection of information: Inquiries Officer

Prince Edward Island Securities Office
95 Rochford Street, 4th Floor Shaw Building
P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: (902) 368-4569
Facsimile: (902) 368-5283
Public official contact regarding indirect collection of information: Superintendent of Securities

Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Telephone: (514) 395-0337 or 1-877-525-0337
Facsimile: (514) 873-6155 (For filing purposes only)
Facsimile: (514) 864-6381 (For privacy requests only)
Email: financementdessocietes@lautorite.qc.ca (For corporate finance issuers)
Public official contact regarding indirect collection of information: Corporate Secretary

Financial and Consumer Affairs Authority of Saskatchewan
Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5842
Facsimile: (306) 787-5899
Public official contact regarding indirect collection of information: Director

EXHIBIT 1

INVESTOR PRESENTATION

(See attached.)

Blackline_Fair Hydro Trust - Confidential Offering Memorandum.pdf

This confidential shelf offering memorandum constitutes an offering of these securities only in those jurisdictions and to those persons where and to whom they may be lawfully offered for sale. This confidential shelf offering memorandum is not, and in no circumstances is to be construed as, a prospectus or advertisement or public offering of these securities. ***No securities commission or similar authority in Canada or in any other jurisdiction has reviewed this material or in any way passed upon the merits of the securities offered hereunder and any representation to the contrary is an offence.*** *Persons who acquire securities pursuant to this confidential shelf offering memorandum will not have the benefit of the review of this material by any securities commission or similar authority. The information contained in this confidential shelf offering memorandum has been furnished or supplied by the Issuer based on the most accurate information available as at the date hereof and there is no representation or warranty by the Agents as to the accuracy or completeness of such information. These securities have not been and will not be registered under the United States Securities Act of 1933, as amended (the "****U.S. Securities Act****") or any state securities laws and may not be offered or sold within the United States or to, or for the account of, U.S. persons (within the meaning of Regulation S under the U.S. Securities Act) unless registered under the U.S. Securities Act and applicable state securities laws or an exemption from such registration is available. See "Plan of Distribution". This confidential shelf offering memorandum is confidential and contains certain information not publicly disclosed. No one is authorized to make any representation or give any warranty on behalf of the Issuer other than those representations and warranties made or referred to in this confidential shelf offering memorandum.*

The information contained in this confidential shelf offering memorandum and delivered in connection with the private placement of the Senior Notes by the Issuer is confidential, is for the confidential use of only those persons to whom it is delivered in connection with the offering solely for the purpose of considering the purchase of the Senior Notes and its use for any other purpose is prohibited. By accepting this confidential shelf offering memorandum, each prospective purchaser agrees that it will not transmit, reproduce or make available to anyone, other than their respective advisors (so long as they advise such advisors of the confidential nature of such document), this confidential shelf offering memorandum (including any Term Sheets) or any information contained herein, and will not use such information (or permit its advisors to use such information) for any purpose other than to evaluate an investment in the Senior Notes pursuant to an Offering.

CONFIDENTIAL SHELF OFFERING MEMORANDUM

New Issue By Way of Private Placement

January ■, 2018

FAIR HYDRO TRUST
Senior Secured Notes

Fair Hydro Trust (the "**Issuer**"), a special purpose trust ~~governed by~~**established under** the laws of the Province of Ontario~~, established~~ by Computershare Trust Company of Canada, acting as trustee of the Issuer, and caused to be established by Ontario Power Generation Inc. ("**OPG**"), as Financial Services Manager (as hereinafter defined), has created a program providing for the offering and issuance of senior secured notes (the "**Senior Notes**"), in one or several offerings. The Issuer was established in connection with the *Ontario Fair Hydro Plan Act, 2017* (**together with the regulations promulgated thereunder,** the "**FHPA**")~~, legislation [that reallocates certain electricity costs over time and provides immediate rate relief to Specified Consumers (a category of consumers that generally is comprised of residential consumers, small businesses and farms).]~~[1]**.** Under the FHPA, OPG is appointed as ~~the initial~~ financial services manager (in such capacity, the "**Financial Services Manager**") and is given the authority to, among other things, establish, or cause to be established, one or more financing entities (each, a "**Financing Entity**") to incur payment obligations (referred to as "**Funding Obligations**") for the purposes ~~of~~**prescribed under** the FHPA.[2] The Issuer is a Financing Entity under the FHPA and the Senior Notes are Funding Obligations being offered for the purposes of the FHPA.

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*. The Senior Notes will be limited

[1] ~~**Note:** This narrative should be removed or, if necessary, it should track the purposes of the FHPA set out in Section 3 of the Act.~~
[2] ~~**Note:** The statutory definition of "funding obligation" provides that the funding obligations have the purpose of funding ownership in an investment interest. Please consider revising the definition of "funding obligation" to more closely track that in the Act.~~

recourse obligations, secured only by the collateral described in this confidential shelf offering memorandum. See *"Capital Markets Platform — Acceleration and Remedies — Limited Recourse"* and *"Risk Factors"*.

The specific terms of any offering of Senior Notes, including, without limitation, the aggregate principal amount of Senior Notes being offered, the currency of the Senior Notes, the issue price (at par, at a discount or at a premium), the issue, delivery and maturity dates, any redemption or repayment provisions, the rating of the Senior Notes at the time of such offering, the interest (either fixed or floating and the circumstances, if any, under which the rate may be adjusted), the interest rate basis and interest payment dates, will be established by the Issuer and set forth in a term sheet (a "**Term Sheet**") that will accompany, be incorporated by reference in and form an integral part of this confidential shelf offering memorandum. Unless otherwise specified in a Term Sheet, the Senior Notes will not be listed on any securities exchange.

The offering of Senior Notes from time to time (each, an "**Offering**") will be made pursuant to exemptions from the prospectus requirements of applicable securities laws in each of the provinces of Canada only to "accredited investors" (as such term is defined in National Instrument 45-106 – *Prospectus Exemptions* ("**NI 45-106**") and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) that are purchasing the Senior Notes as principal and that are not individuals unless those individuals are also "permitted clients" (as such term is defined in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**")). Purchasers of Senior Notes will be obliged to establish their qualification to invest in accordance with the requirements of the securities laws of the jurisdiction in which they reside. See *"Representations and Agreements of Purchasers"*. As each Offering will be made pursuant to exemptions from prospectus requirements of applicable securities laws, there will be restrictions on the resale of the Senior Notes. See *"Risk Factors"* and *"Restrictions on Resale"*.

The Senior Notes may be sold by the Issuer directly pursuant to applicable statutory exemptions or through agents designated by the Issuer from time to time (the "**Agents**"). See *"Plan of Distribution"*. Each Term Sheet will identify the Agents engaged to conditionally offer the Senior Notes for sale on a best efforts basis, subject to prior sale, in connection with the applicable Offering of Senior Notes and will also set forth the terms of such Offering of Senior Notes, including the net proceeds to the Issuer and, to the extent applicable, any fees payable to the Agents.

Subscriptions for the Senior Notes will be received subject to rejection or allotment in whole or in part and the right is reserved to close the subscription books at any time without notice. The Senior Notes will be delivered and recorded in book-entry form through CDS Clearing and Depository Services Inc. ("**CDS**") or another depository selected by the Issuer in accordance with the master trust indenture governing the Senior Notes. The Senior Notes will be represented by fully registered book-entry notes held by, or on behalf of, such depository, or a successor thereof, as the custodian of the book-entry notes, in its name or the name of its nominee.

The Senior Notes will be issued under and will be entitled to the benefits of a master trust indenture dated as of December 21, 2017 between the Issuer, as issuer, and BNY Trust Company of Canada, as indenture trustee, as amended ~~or~~, supplemented ~~by supplemental indentures thereto~~**, restated or otherwise modified from time to time**.

In making an investment decision, prospective investors acknowledge that they have not relied on the Agents or any person affiliated with the Agents for investment or other advice and are relying on their own examination of the terms of an Offering, including the merits and risks involved and creditworthiness of the Issuer. Prospective investors are not to construe the contents of this document as legal, tax, accounting or investment advice. Prior to investing in the Senior Notes, prospective investors should consult with their legal, tax, accounting and investment advisors to determine the consequences of an investment in the Senior Notes. See *"Risk Factors"* for a discussion of certain factors that should be considered by prospective purchasers of Senior Notes.

The Issuer is not a "reporting issuer" (as such term is defined under applicable Canadian securities laws) in any jurisdiction. The Issuer will only distribute the Senior Notes in Canada under exemptions from the prospectus requirements of the securities laws of the provinces where they are sold. The Senior Notes may only be traded in Canada under exemptions from the prospectus requirements of the securities laws of the provinces in which they are traded and only through dealers registered or exempt from the dealer registration requirements of applicable Canadian securities laws. See *"Restrictions on Resale"*.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of Senior Notes with liquidity for their investment or that it will continue for the term of the applicable Senior Notes. Accordingly, purchasers of the Senior Notes may be required to bear the financial risk of investing in such Senior Notes until the maturity date of such Senior Notes.

No person is authorized to give any information or make any representation other than those contained in this confidential shelf offering memorandum in connection with an Offering and any decision to purchase Senior Notes should be based solely on the information contained herein. The Term Sheet applicable to such Offering and the investor presentation (the "**Investor Presentation**"), attached hereto as Exhibit 1, are incorporated by reference and included in, respectively, and form an integral part of, this confidential shelf offering memorandum. The information contained in the Investor Presentation is current only as of the date thereof. The Investor Presentation may be updated and replaced by the Issuer in connection with an Offering and such updated Investor Presentation will be attached as Exhibit 1, and will be included in, and form an integral part of, this confidential shelf offering memorandum delivered in respect of such Offering.

This confidential shelf offering memorandum, including the Investor Presentation attached hereto, and any Term Sheets, are provided on a confidential basis to prospective investors for informational use solely in connection with their consideration of the purchase of Senior Notes. Use for any other purpose is not authorized. Each Offering will be made solely on the basis of the information contained herein or incorporated by reference which has been furnished by the Issuer. No Agent makes any representation or warranty, express or implied, as to the accuracy, adequacy or completeness of such information. Furthermore, no Agent has independently verified the information in this confidential shelf offering memorandum and has no responsibility for the accuracy, adequacy or completeness of any such information.

This confidential shelf offering memorandum does not contain all of the information that would normally appear in a prospectus qualified under applicable Canadian securities laws. Neither the delivery of this confidential shelf offering memorandum, at any time, nor any sales made pursuant hereto, will imply that the information contained herein is correct as of any time subsequent to the date set forth on the face page hereof and the Issuer and the Agents will not update such information except as may be required by applicable law.

Capitalized terms used and not otherwise defined in this confidential shelf offering memorandum have the meanings ascribed to them in the glossary starting on page [92] of this confidential shelf offering memorandum. **An index of defined terms used in this confidential shelf offering memorandum is provided starting on page [104] of this confidential shelf offering memorandum.** All figures in this confidential shelf offering memorandum are in Canadian dollars unless otherwise noted.

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CAUTION REGARDING FORWARD-LOOKING INFORMATION

Some of the statements contained in this confidential shelf offering memorandum, including those relating to the Issuer's expectations, forecasts, strategic and other statements, are forward-looking information within the meaning of securities laws. Forward-looking information is contained in the summary and in the sections titled *"Ontario's Fair Hydro Plan — Fair Allocation Amount ~~&~~**and** Financing Plan"*, *"Subordinated Debt"*~~, "■"[3]~~ and *"Risk Factors"* of this confidential shelf offering memorandum and ***"Fair Allocation Amount",*** *"Financing Plan / Strategy"*, *"Financing Structure"*, *Aggregate Financing Program"*~~, "■"[4]~~ and *"Consumer Bill Forecast with FHP"* of the Investor Presentation. The forward-looking statements contained in this confidential shelf offering memorandum are presented for the purposes of assisting potential purchasers in making an investment decision regarding the Senior Notes and may not be appropriate for other purposes.

Often, but not always, forward-looking information can be identified by the use of forward-looking terminology such as "may", "will", "expect", "believe", "estimate", "plan", "could", "should", "would", "outlook", "forecast", "anticipate", "foresee", "continue" or the negative of these terms or variations of them or similar terminology. Forward-looking information is based on the reasonable assumptions, estimates, analysis and opinions of management of the Issuer made in light of its experience and perception of trends, current conditions and expected developments, as well as other factors that the Issuer believes to be relevant and reasonable at the date that such statements are made. A variety of factors, many of which are beyond the Issuer's control, may cause actual results to differ materially from the expectations expressed in the forward-looking statements. These factors include, but are not limited to, the following risks:

Judicial, Legislative or Regulatory Risks:

- Future legal action might challenge or invalidate the FHPA~~ or the Regulations~~ and materially adversely affect a holder's investment in the Senior Notes.
- Future legislative action to change the FHPA~~, the Regulations~~, the Change of Law Protection Agreement or the electricity market might materially adversely affect a holder's investment in the Senior Notes.
- Future regulatory action to change the rules applicable to the operation of the electricity market might materially adversely affect a holder's investment in the Senior Notes.
- Future judicial action could reduce the value of a holder's investment in the Senior Notes.
- Potential difficulties in enforcing civil liabilities against the Province of Ontario may arise.

Risks Associated with the Unusual Nature of the Investment Asset:

- Clean Energy Adjustments will not be payable until May 1, 2021 and until such time the IESO will be the sole source of funds for payment on the Senior Notes. **Amounts paid by the IESO are not available to pay principal on the Senior Notes.**
- The Issuer's ability to enforce security granted by the IESO may be **significantly** impaired or delayed.
- A holder of Senior Notes may experience material payment delays because the source of funds for payment after the Moratorium Period is limited.
- The Clean Energy Adjustment may not be billed after April 30, 2047, unless further regulations to extend that date are passed.
- Foreclosure of the Indenture Trustee's lien on the Investment Interest securing the Senior Notes might not be practical and acceleration of the Senior Notes before maturity might have little practical effect.
- The Issuer may issue multiple Series of Senior Notes secured by the Investment Interest and some decisions affecting holders of Senior Notes may require approval ~~by resolution of the holders~~ of all Series~~ of Senior Notes~~.
- If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected.
- The Issuer may have a co-ownership interest in the Investment Asset with other Financing Entities.

~~[3] **Note:** Please complete.~~
~~[4] **Note:** Please complete.~~

- If the Clean Energy Adjustment amounts and other funds held in the Issuer Accounts results in investment losses or the investments become illiquid, a holder of Senior Notes might receive payment of principal of and interest on the Senior Notes later than expected.

Servicing, Operating and Consumer Risks

- Payments on the Senior Notes depend on the performance of Electricity Vendors and the IESO.
- Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and as Manager ~~of the Issuer~~.
- Inaccurate consumption forecasting or unanticipated delinquencies or write-offs might reduce or delay scheduled payments on the Senior Notes.
- Changes to billing and collection practices may reduce the amount of funds available for payments on the Senior Notes.
- Limits on rights to terminate service to Specified Consumers might make it more difficult to collect the Clean Energy Adjustment.
- It might be difficult for the Issuer to collect the Clean Energy Adjustment from Specified Consumers.
- Delinquent or partial payments of electricity bills may make principal payments on the Senior Notes occur later than expected.
- Indemnification obligations of OPG and the IESO are limited and might not be sufficient to protect the investments in the Senior Notes.
- ~~Delinquent or partial payments of electricity bills may make principal payments on the Senior Notes occur later than expected.~~
- Power outages could impair payment of the Senior Notes.[5]
- Technological changes that make alternative energy sources more attractive in the future or significant population fluctuations may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment.

Insolvency-Related Risks

- If the Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed.
- If the IESO ~~or~~**were to become subject to Canadian Insolvency and Restructuring Laws, the Transfers of specified portions of the Regulatory Asset by the IESO may not be respected as true sales of the Regulatory Asset.**
- **If** any Electricity Vendor **or the IESO** were to become subject to Canadian Insolvency and Restructuring Laws, collections that have been commingled may be unrecoverable and the Issuer's ability to enforce its rights against **such Electricity Vendor or** the IESO may be significantly impaired or delayed.
- If OPG were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to enforce its rights against OPG may be significantly impaired or delayed and the Issuer's assets and liabilities may be substantively consolidated with those of OPG.
- If the Issuer Trustee were to become subject to Canadian Insolvency and Restructuring Laws, the assets and liabilities of the Issuer may be substantively consolidated with the Issuer Trustee.
- If a Specified Consumer were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to collect Clean Energy Adjustment amounts from such Specified Consumer may be adversely affected.
- If amounts in the Issuer Accounts for any Series are invested with entities that become subject to insolvency proceedings, the Issuer's ability to make payments to holders of Senior Notes may be adversely affected.

Other Risks:

- The credit ratings are not an indication of the expected rate of payment of principal on the Senior Notes.
- If the ratings on the Senior Notes are withdrawn or revised downward, the value of a holder's investment in the Senior Notes may be adversely affected.

[5] ~~Is this relevant? Is the concern that the CEA would be spread across a relatively smaller base due to lower usage in a period?~~

- The credit ratings of the IESO, OPG and the Province of Ontario might affect the market value of the Senior Notes.
- The absence of an established market for the Senior Notes might limit the ability to resell or refinance the Senior Notes.
- Restrictions on resale might limit the ability to resell the Senior Notes.

Please also see *"Risk Factors"*.

The Issuer does not intend, or assume any obligation, to update any forward-looking information except as may be required by applicable law.

CONFIDENTIALITY

~~PRIOR TO RECEIVING~~ THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM~~, EACH PROSPECTIVE PURCHASER MUST HAVE ENTERED INTO A CONFIDENTIALITY UNDERTAKING WITH THE ISSUER (IN A FORM ACCEPTABLE TO THE ISSUER) WHICH PROVIDES THAT~~ **IS FOR THE CONFIDENTIAL USE OF ONLY THOSE PERSONS, AND THEIR RESPECTIVE REPRESENTATIVES, TO WHOM IT IS TRANSMITTED, SOLELY TO ENABLE SUCH PERSONS TO EVALUATE AN INVESTMENT IN THE NOTES DESCRIBED IN THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM.** BY ACCEPTING A COPY OF THIS CONFIDENTIAL SHELF OFFERING MEMORANDUM, EACH PROSPECTIVE PURCHASER AGREES THAT ALL INFORMATION CONTAINED HEREIN, ALL DOCUMENTS DELIVERED IN CONNECTION HEREWITH AND ALL OTHER INFORMATION OBTAINED BY PROSPECTIVE PURCHASERS IN RELATION TO THE ISSUER (COLLECTIVELY, THE "**CONFIDENTIAL INFORMATION**") IS CONFIDENTIAL, THAT NONE OF THE CONFIDENTIAL INFORMATION WILL BE COPIED, TRANSCRIBED, RECORDED OR TRANSMITTED BY THE RECIPIENT FOR ANY REASON OR USED FOR ANY PURPOSE OTHER THAN EVALUATING AN INVESTMENT IN THE NOTES, AND THAT THE RECIPIENT WILL HOLD ALL OF THE CONFIDENTIAL INFORMATION IN CONFIDENCE AND WILL NOT PROVIDE ANY OF IT TO ANY THIRD PARTIES OTHER THAN PERSONS RETAINED TO ADVISE THE RECIPIENT WITH RESPECT TO THE PURCHASE OF THE NOTES (SO LONG AS THEY ADVISE SUCH PERSONS OF THE CONFIDENTIAL NATURE OF SUCH CONFIDENTIAL INFORMATION), WITHOUT THE PRIOR WRITTEN CONSENT OF THE ISSUER.~~ ~~*[NTD: Logistics to be discussed between Dealers and OPG.]*~~

DOCUMENTS INCORPORATED BY REFERENCE

A Term Sheet containing the specific variable terms in respect of an Offering will be delivered to prospective purchasers of Senior Notes together with this confidential shelf offering memorandum and will be deemed to be incorporated into this confidential shelf offering memorandum as of the date of such Term Sheet, solely for the purposes of the Senior Notes issued under such Term Sheet.

~~The information contained in the Investor Presentation is current only as of the date thereof. The Investor Presentation may be updated and replaced by the Issuer in connection with an Offering and such updated Investor Presentation will be attached as Exhibit 1, and will be included in, and form an integral part of, this confidential shelf offering memorandum delivered in respect of such Offering.~~

Any statement contained in the confidential shelf offering memorandum or in any document incorporated or deemed to be incorporated by reference in the confidential shelf offering memorandum shall be deemed to be modified or superseded, to the extent that a statement contained herein or in any other subsequent document which is or is deemed to be incorporated by reference in the confidential shelf offering memorandum, modifies or supersedes such prior statement. The modifying or superseding statement need not state that it has modified or superseded a prior statement or include any other information set forth in the document which it modifies or supersedes. The making of such a modifying or superseding statement shall not be deemed an admission for any purposes that the modified or superseded statement, when made, constituted a misrepresentation, an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not

misleading in light of the circumstances in which it was made. Any statement so modified or superseded shall not constitute a part of the confidential shelf offering memorandum, except as so modified or superseded.

The information contained in the Investor Presentation is current only as of the date thereof. The Investor Presentation may be updated and replaced by the Issuer in connection with an Offering and such updated Investor Presentation will be attached as Exhibit 1, and will be included in, and form an integral part of, this confidential shelf offering memorandum delivered in respect of such Offering.

MARKET AND INDUSTRY DATA

Certain of the information contained herein concerning the electricity industry in Ontario is based upon or derived from information provided by third party sources, including industry publications and other publicly available industry sources. Neither the Issuer nor the Agents guarantee the accuracy of such information and neither the Issuer nor the Agents have independently verified the assumptions upon which projections of future trends and performance are based. This information and data is subject to change and cannot always be verified with complete certainty due to limits on the availability and reliability of raw data, the voluntary nature of the data gathering process and other limitations and uncertainties inherent in any statistical survey of market or industry data. As a result, prospective purchasers should be aware that the information and data set forth herein, and estimates and beliefs based on such information and data, may not be reliable.

REFERENCES TO THE FHPA AND RELATED REGULATIONS

This confidential shelf offering memorandum describes certain provisions of the *Ontario Fair Hydro Plan Act, 2017* and the regulations made pursuant to that Act. These descriptions include simplified and summary descriptions of the terms and requirements of the legislation and do not purport to be comprehensive, definitive or determinative. All references in this confidential shelf offering memorandum to the terms and requirements of the *Ontario Fair Hydro Plan Act, 2017* and the regulations made pursuant to that Act are qualified in their entirety by reference to the specific terms and requirements set forth in such legislation, copies of which are available at ~~https://www.ontario.ca/laws/statute/17o16.~~**www.ontario.ca/laws/statute/17o16.**

SUMMARY

This summary does not contain all the information prospective purchasers should consider before investing in the Senior Notes. Prospective purchasers should read this entire confidential shelf offering memorandum carefully, including the section entitled "Risk Factors". Capitalized terms used and not otherwise defined in this summary have the meanings ascribed to them in the glossary starting on page [92] of this confidential shelf offering memorandum. ***An index of defined terms used in this summary is provided starting on page [104] of this confidential shelf offering memorandum.***

Issuer:	Fair Hydro Trust, a special purpose trust ~~governed by~~**established under** the laws of the Province of Ontario.
Manager:	Ontario Power Generation Inc. ("**OPG**"), pursuant to the terms of the Management Agreement.
Limitations:	The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not be insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"— Change of Law Protection Agreement"*.
Ontario Fair Hydro Plan Act:	On June 1, 2017, the Ontario Legislature passed the Ontario Fair Hydro Plan Act, 2017 (the "FHPA"). The FHPA was enacted to: (i) ensure that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers (a category of consumers that generally is comprised of residential consumers, small businesses and farms); (ii) recognize that Clean Energy Benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in Ontario; and (iii) align Clean Energy Costs with Clean Energy Benefits, in order to provide fairness for Specified Consumers over time. As a result, from July 1, 2017 until April 30, 2018, electricity rates payable by Specified Consumers will in effect be the rate that would result in a representative consumer being charged an invoice amount that is 25%[~~6~~**1**] less than the rate that would otherwise have been determined by the Ontario Energy Board (the "**OEB**") under its Regulated Price Plan[~~7~~**2**] for that period. Under the FHPA, OPG is appointed as ~~the initial financial services manager (in such capacity, the "~~Financial Services Manager~~")~~ and is given the authority to, among other things, establish, or cause to be established, one or more ~~financing entities (each, a "~~Financing ~~**Entity**")~~**Entities** to incur ~~payment obligations (referred to as "~~Funding Obligations~~")~~ for the purposes ~~of~~**prescribed under** the

[~~6~~**1**] The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax previously granted by the Ontario government.

[~~7~~**2**] Specified Consumers, as a class, are not a one-to-one equivalent class to the RPP consumer class.

FHPA ~~and the Regulations.~~[8] The Issuer is a Financing Entity[9] under the FHPA and the ~~Regulations and the~~ Notes are Funding Obligations being offered for the purposes of the FHPA ~~and the Regulations~~. See *"Ontario's Fair Hydro Plan — Background"*.

Summary of the Fair Hydro Financing Program:

The implementation of the Fair Hydro Plan is intended to be financed by the Issuer through the Fair Hydro financing program. The program provides for the offering and issuance by the Issuer of Senior Notes, in any number of ~~series (each a "~~Series~~")~~, in one or several ~~offerings (each, an "**Offering**")~~**Offerings**. A Term Sheet will describe particulars of the terms of each Series of Senior Notes and will be incorporated by reference and form an integral part of this confidential shelf offering memorandum. Each Series of Senior Notes will be issued under the ~~master trust indenture dated as of December 21, 2017 (as amended, supplemented, restated or otherwise modified from time to time, the "**Master Trust Indenture**") between the Issuer, as issuer, and BNY Trust Company of Canada, as indenture trustee (the "**Indenture Trustee**"), as supplemented by a supplemental indenture dated the date of the issuance of such Series between the Issuer and the Indenture Trustee (a "~~**Master Trust Indenture, as supplemented by a** Supplemental Indenture~~" and collectively with the Master Trust Indenture, the "**Indenture**")~~ authorizing that Series.

Transferor and Servicer:

The Independent Electricity System Operator (the "**IESO**") is a not-for-profit corporation established under the *Electricity Act, 1998* (Ontario). **As a non-share capital corporation, the IESO does not have any shareholders or owners and is governed by an independent board of directors appointed by the Minister of Energy.** The IESO manages the operation and reliability of Ontario's bulk power system and administers the wholesale electricity market.~~[10]~~

Each month, the IESO will determine the shortfall resulting from the rate reduction mandated by the FHPA and record the amount in a variance account. The IESO has the right, exercisable in accordance with the FHPA ~~and the Regulations~~, to recover the balance recorded in the variance account from Specified Consumers (such right, the "**Regulatory Asset**"). ~~However, the FHPA provides that the IESO is not permitted to exercise such right before May 1, 2021 is limited under the FHPA. The IESO has entered into a master transfer and servicing agreement with the Issuer dated as of December 21, 2017 (as amended, supplemented, restated or otherwise modified from time to time, the "~~**The FHPA provides that the OEB shall, from time to time and in accordance with the Regulations, determine and set rates payable by Specified Consumers to allow for the IESO to recover the balance recorded in the variance account and that the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from Specified Consumers before May 1, 2021. Pursuant to the** Master Transfer and Servicing

[8] ~~**Note:** The statutory definition of "funding obligation" provides that the funding obligations have the purpose of funding ownership in an investment interest. Please consider revising the definition of "funding obligation" to more closely track that in the Act.~~

[9] ~~**Note**: Elsewhere, the disclosure refers only to the Issuer without adverting to the possibility of other future Financing Entities. To the extent that this simplification suggests in a particular context that other future Financing Entities would not be permitted or similarly treated, references to the Trust should be broadened to encompass the possibility of future Financing Entities.~~

[10] ~~**Note:** Consider also referring to IESO's planning and procurement functions. They may be meaningful here to the extent they impact IESO objectives and governance generally.~~

Agreement~~") pursuant to which,~~ the IESO may, on a monthly basis, offer to ~~transfer a~~**Transfer** specified ~~portion~~**portions** of the Regulatory Asset to the Issuer in accordance with the FHPA. See *"**The** Transferor and Servicer"*.

Investment Interest:

Upon ~~acceptance~~**completion** of ~~the transfer~~**a Transfer** by the IESO of a specified portion of the Regulatory Asset, the Issuer will acquire an Investment Interest in the Investment Asset, which is a current and irrevocable property right consisting of the rights specified in the FHPA, including the right ~~and interest~~ to impose, invoice, collect, receive and recover the Clean Energy Adjustment from Specified Consumers in accordance with the FHPA ~~and the Regulations~~. See *"— Clean Energy Adjustment"* below and *"Ontario's Fair Hydro Plan — Regulatory Asset"*, *"Ontario's Fair Hydro Plan — Investment Interest"* and *"The Transferor and Servicer"*.

Clean Energy Adjustment:

The FHPA ~~and the Regulations impose~~**imposes** an irrevocable and non-bypassable charge referred to as the Clean Energy Adjustment that will be determined by the Financial Services Manager ~~based on the calculations and parameters set out in the FHPA. The OEB is required to determine the rates at which Specified Consumers are to be invoiced in order to recover the Clean Energy Adjustment in respected of a specified Reference Period (which is generally a six month period, or a shorter period in certain circumstances). The rates are to be determined by reference to forecasted electricity consumption of Specified Consumers for a period and are expressed as a cent per KWh rate~~**and will be converted by the OEB into a cent per kWh rate and added to the electricity invoices sent to Specified Consumers**. See *"— Statutory Duties of the OEB"* below.

The required Clean Energy Adjustment will be determined by the Financial Services Manager for each month in a Reference Period and consists of the sum (without duplication) of: (i) the estimated Finance Amount in respect of the Reference Period, which will include an estimate of all repayments, redemptions, funding costs, derivative payments, required deposits, Issuer expenses and taxes, and other amounts paid or payable during such Reference Period, and (ii) the True-up Amount for such Reference Period, all divided by the number of months in the applicable Reference Period.

The "**True-up Amount**" is ~~required to be calculated by the Financial Services manager in accordance with the Regulations. In principle, the True-up Amount should serve to ensure that the collection of the Clean Energy Adjustment is sufficient to pay the Finance Amount when it is due, by capturing any Finance Amounts not previously received~~**comprised of the cumulative Finance Amounts** in respect of ~~the~~**all preceding Reference Periods less the cumulative** Clean Energy Adjustment ~~during~~**amounts remitted to the Issuer in respect of all** preceding Reference Periods~~.~~

plus other anticipated shortfalls. The True-up Amount may also reflect historical and reasonably foreseeable differences between the estimated and actual Finance Amount; between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs; and

variations in billings due to variations in electricity consumption. In determining such differences, the Financial Services Manager is required to have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of Specified Consumers, an Electricity Vendor or the IESO, whether in its capacity as an Electricity Vendor or its activities as agent or otherwise under the FHPA ~~and the Regulations~~. The Financial Services Manager is obligated to calculate the True-up Amount in respect of each Reference Period so long as all Funding Obligations and other Finance Amounts have not been paid in full. The Financial Services Manager may also, at any time during a Reference Period, determine an interim True-up Amount if, among other things, it reasonably forecasts that the collection of the Clean Energy Adjustment will be insufficient to pay the estimated Finance Amount for a Reference Period.

~~[~~Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and other financing expenses of the Issuer. ~~From~~**Based on the Fair Allocation Amount provided by the Province, from** July 1, 2017 until April 30, 2021 (the "**Moratorium Period**"), no Clean Energy Adjustment amounts are permitted to be collected from Specified Consumers. During the Moratorium Period, the sole source of funds for payment on the Senior Notes, and the Issuer's other Carrying Costs, will be the amounts the IESO is obligated to pay under the Regulations during such period. See *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.~~]~~[11]

Non-bypassability:

The FHPA mandates that an amount in respect of the Clean Energy Adjustment shown on an invoice issued to a Specified Consumer is determinative of the amount of the consumer's indebtedness resulting from the Clean Energy Adjustment, and is irrevocable on invoicing such Specified Consumer and may not be set off or bypassed. See *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

Payment of Carrying Costs ~~during the Moratorium Period~~until July 31, 2021:

~~During the Moratorium Period and extending to July 31, 2021,~~[12] ~~the~~**The** IESO, which is rated A(high) by DBRS ~~Limited ("**DBRS**")~~ and Aa2 by Moody's ~~Investors Services, Inc. ("**Moody's**")~~, is required under the Regulations to pay and remit to the Issuer any amounts charged to the IESO by the Issuer in respect of ~~its~~ Carrying Costs~~.~~ **incurred in respect of the period from June 1, 2017 to July 31, 2021.** Under the Regulations, Carrying Costs include all funding costs, such as interest on the Senior Notes, and other expenses of the Issuer, other than repayment of principal on any debt obligations of

~~[11] **Note:** This narrative should more precisely track the FHPA. The relevant provisions are Section 25(3) [*the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021*] and Section 21(4) [*limitation on the Financial Services Manager incurring funding obligations payable through Clean Energy Adjustments from July 1, 2017 to April 30, 2021*]. In particular, the suggestion that CEAs cannot be collected in any circumstance during the Moratorium Period goes beyond 21(4) and presumes that there will be no Readjustment.~~

~~[12] **Note:** Please clarify this disclosure for consistency with Section 9.1(1) of the General Regulation. This provision states that the IESO shall pay financing entity carrying costs in respect of the period beginning June 1, 2017 (before the Moratorium Period) and ending on July 31, 2021.~~

the Issuer (such as principal on the Senior Notes).[13]

Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's carrying costs statement,[14] the IESO is required to deliver the amount specified therein to the Issuer. See *"The Transferor and Servicer"*. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring ■, 20■, **September 30, 2022,** which is permitted to be used to pay the Issuer's Carrying Costs. The amounts paid by the IESO to fund these Carrying Costs will be recorded by the IESO in a**the** variance account and form part of the Regulatory Asset that the IESO is expected to transfer**Transfer** to the Issuer in a subsequent period and, upon**. Upon** such transfer, will become part of**Transfer,** the Issuer's **will acquire a corresponding** Investment Interest pursuant to the Regulations.

As security for the performance of its obligation under the Regulations to pay the Issuer's Carrying Costs, the IESO has granted the Issuer a first-priority security interest in all of its accounts receivable, which includes the amounts receivable by **owing to** the IESO from Electricity Vendors**, including amounts owing** with respect to the global adjustment charge. See *"The Transferor and Servicer"*. For a further description of the global adjustment charge, see *"The Electricity Industry in Ontario — Electricity Prices"*.

Acceleration of Indebtedness:

A holder of Senior Notes must rely solely on the Clean Energy Adjustment amounts collected and any available reserve accounts for repayment of principal on the Senior Notes. Accordingly, if all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable during the Moratorium Period and before its scheduled payment date, maturity date or redemption date, the source of funds for repayment of principal may be limited.

If all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable after the Moratorium Period and before its scheduled payment date, maturity date or redemption date, then the estimated Finance Amount used by the Financial Services Manager to determine the Clean Energy Adjustment for a period will be determined without regard to the fact that such amount has become due and payable, unless and only to the extent that the amount of the Clean Energy Adjustment is capable of being increased based on the Fair Allocation Amount for such period. See *"— Fair Allocation Amount* ~~*and*~~***&*** *Financing Plan"* below. However, upon such acceleration, all accelerated Senior Notes will be repaid in full before any further payments of principal are made to holders of subordinated indebtedness, including the subordinated debt held by OPG; therefore, collections of the Clean Energy Adjustment that would

[13] **Note:** Consider revising to conform with Section 9.3(3) of the General Regulation. This Section provides that "carrying costs" also include derivative payments, etc.

[14] **Note:** Not sure how this lines up with fee recovery.

otherwise have been available to repay the principal amount of subordinated indebtedness in the absence of acceleration of the Senior Notes will instead be applied to repay accelerated Senior Notes. See *"— Subordinated Debt"* below.[15]

Statutory Duties of the OEB:

The OEB is an independent public regulatory agency established under the *Ontario Energy Board Act, 1998*. The *Ontario Energy Board Act, 1998* provides the OEB with the authority to regulate participants (e.g. OEB licensees) in Ontario's [electricity market][16], including the activities of transmitters and distributors as well as the IESO (all Electricity Vendors for the purposes of the FHPA).

Under the Regulations, the OEB is responsible for determining the rates at which Specified Consumers are to be invoiced to recover the Clean Energy Adjustment. The rates are expressed as a cent per kWh rate and are determined by the OEB by dividing (i) the aggregate Clean Energy Adjustment as determined by the Financial Services Manager in respect of the relevant period of time by (ii) the**a** forecast of electricity consumption of Specified Consumers in respect of such period, based on forecast information provided to the OEB by the IESO **to the OEB**. See *"— Statutory and Servicing Duties of the IESO"* below.

Statutory Duties of Electricity Vendors:

Electricity is distributed to almost all Specified Consumers in Ontario through a network of local distributors. See "***The*** *Electricity Industry in Ontario*" and the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Ontario electricity market and these local distributors.

The FHPA and the Regulations require**requires** Electricity Vendors to invoice their Specified Consumers for a charge in respect of the Clean Energy Adjustment, as determined by applying the rate set by the OEB, which is required to be included as a separate line item on each invoice sent to Specified Consumers. Electricity Vendors are also required to collect, as agent of [**all Financing Entities, of which** the Issuer][17] **is the first**, amounts in respect of the Clean Energy Adjustment, deposit such amounts into a segregated account established for the purpose of receiving those amounts, and hold such amounts in trust for the benefit of [the Issuer][18]**Financing Entities** until remitted to the IESO for the benefit of [the owners of Investment Interests**the Financing Entities** (initially, only the Issuer)].[19] If an Electricity Vendor does not receive payment in full of an invoice issued to a Specified Consumer, the Electricity Vendor shall allocate any payment received on a *pro rata* basis to the Clean Energy Adjustment and the other amounts payable under the particular invoice **in the manner set out in the FHPA**.[20] It is a deemed condition of their distribution license issued by the OEB that

[15] **Note:** Add detailed descriptions to correspond to the limitation on cashflows during acceleration in the applicable detailed portions of the OM and specifically address in Risk Factors.
[16] **Note:** Technically, the IESO administers (supervises) the IESO-administered markets. There is no definition for "electricity market".
[17] **Note:** This and similar references to the Issuer should instead refer to Financing Entities (Investment Interest owners), of which the Trust is the first, and then cross-refer to the concept of co-ownership in order to facilitate additional financings in the future.
[18] **Note:** Please see note 17.
[19] **Note:** Please see note 17.
[20] **Note:** Please consider revising this to conform more closely to Section 17(4) of the FHPA.

Electricity Vendors comply with the FHPA.[21]

As security for any failure of an Electricity Vendor that does not have an investment grade rating from DBRS and Moody's to remit Clean Energy Adjustment amounts collected under the FHPA, the IESO is required, pursuant to the Master Transfer and Servicing Agreement, to provide to the Issuer on or prior to the first day of the first billing period when the Clean Energy Adjustment is being invoiced to Specified Consumers, a letter of credit from a provider that satisfies the Rating Agency Condition or a performance guarantee or such other form of security that is acceptable to the Issuer and that satisfies the Rating Agency Condition. The amount of the security required ~~from the IESO~~ is based on a formula as set out in the Master Transfer and Servicing Agreement and will **be** equal **to**: **(a)** (i) 50% of ~~forecasted~~**estimated** Clean Energy Adjustment amounts that are to be collected ~~by~~**over a twelve-month period by all** such non-investment grade rated Electricity Vendors ~~and held for 45 days prior to the funds~~**, (ii) multiplied by a fraction equal to 45/365 (representing the 45-day period during which funds are expected to be held by such non-investment grade rated Electricity Vendors prior to** being remitted to the Issuer**)**; or (~~ii~~**b**) such other **lesser** amount that satisfies the Rating Agency Condition. See *"The Transferor and Servicer."*

Management Duties of OPG:

~~OPG has entered into a management agreement (the "~~**Pursuant to the** Management Agreement~~") with the Issuer pursuant to which~~**,** the Issuer has delegated to OPG, as ~~manager (the "~~Manager~~")~~, all of the powers and duties of managing the Issuer, including determining whether to incur Funding Obligations (including Offerings of Senior Notes) to acquire an Investment Interest or refinance existing Funding Obligations; negotiating and executing, on behalf of the Issuer, all agreements; maintaining accounts and banking records; preparing any offering documents to be furnished by the Issuer to prospective purchasers of Funding Obligations (including the Senior Notes); and preparing financial statements and tax filings on behalf of the Issuer. ~~See *"The Manager".*~~

In addition to the powers and duties delegated to the Manager under the Management Agreement, OPG is also required to comply with its duties as Financial Services Manager under the FHPA ~~and the Regulations~~, including preparing the Financing Plan to evaluate whether potential Funding Obligations should be incurred for the purposes of Financing Entities acquiring and financing an Investment Interest, determining the amount of the Clean Energy Adjustment inclusive of the calculation of any True-up Amount, notifying the OEB of the Clean Energy Adjustment inclusive of any True-up Amount and ensuring that Funding Obligations are incurred in a manner consistent with the Financing Plan. OPG may also administer the Investment Interest on behalf of the Issuer and any other Financing Entities. Subject to OEB approval and as provided for in the FHPA ~~and the Regulations~~, OPG is entitled to charge the Issuer a fee, comprised of a base fee and a variable fee, to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer or in relation to the establishment, management and

[21] ~~**Note:** Please confirm.~~

administration of the Issuer and its Investment Interest. The priority of the Manager's entitlement to fees is subject to the payment priorities set forth in the Master Trust Indenture. ~~See~~**The Province of Ontario is the sole shareholder of OPG and thereby has the power to determine the composition of OPG's board of directors. See *"The Electricity Industry in Ontario — Key Industry Participants — Ontario Power Generation Inc."* and** *"The Manager"*.

Statutory and Servicing Duties of the IESO:

Following the Moratorium Period, the IESO is required, as agent of ~~[~~**the Financing Entities (of which** the Issuer~~]~~[22] **is currently the only one)**, to receive Clean Energy Adjustment amounts paid to it from Electricity Vendors, deposit such amounts promptly into a segregated account established for the purpose of receiving amounts in respect of the Clean Energy Adjustment, hold such amounts in trust on behalf of ~~[~~**the Financing Entities (of which** the Issuer~~]~~ **is currently the only one)** and remit such amounts ~~to [the Issuer] [~~on a monthly basis, subject to daily remittance being required in certain limited circumstances.~~]~~[23] **Pursuant to the Master Transfer and Servicing Agreement, monthly remittances of amounts received in respect of the Clean Energy Adjustment will occur on the 18th business day of each calendar month.** In addition, the IESO will provide certain reporting and other servicing duties in favour of the Issuer, including providing ~~forecast information regarding electricity consumption of Specified Consumers and providing such~~ forecast information to the OEB and the Issuer, making commercially reasonable efforts to cause Electricity Vendors to establish segregated accounts into which Clean Energy Adjustment amounts are deposited, remitting such amounts ~~to [the Issuer]~~ and fulfilling certain additional reporting requirements. ~~[~~Generally, all servicing duties provided by the IESO to the Issuer are provided at no cost to the Issuer.~~]~~[24] However, the Issuer will reimburse the IESO for certain direct costs relating to the performance by the IESO of its duties and obligations under the Master Transfer and Servicing Agreement that are otherwise not recovered or recoverable by the IESO under the *Electricity Act, 1998* (Ontario). See *"The Transferor and Servicer."*

Change of Law Protection Agreement:

Pursuant to the Change of Law Protection Agreement ~~in favour of the Indenture Trustee~~, upon a Protection Event and delivery by the Indenture Trustee of a written payment demand, the Province of Ontario is required to make payments in respect of all "Approved Obligations" when due and payable into the Protection Account (which, provided that the Notes are Approved Obligations, includes payments of amounts that are due and payable in respect of Notes), although the amount of **the** Province of Ontario's payment obligations in a particular period ~~will~~**may** differ depending on whether an Acceleration has occurred. See *"Change of Law Protection Agreement"*. The Issuer and **the** Indenture Trustee must ensure that amounts deposited into the Protection Account are applied to pay ~~each~~ Specified ~~Creditor~~**Creditors** to whom ~~an amount is~~**amounts are** due and payable under an Approved Obligation **in accordance with the provisions of the Master Trust Indenture. See *"Capital***

[22] ~~**Note:** Please see note 17 regarding bracketed references to the "Issuer" in this paragraph..~~

[23] ~~**Note:** Please consider disclosing which IESO duties are statutory and which arise under the MTSA. For instance, in this sentence, these time requirements arise from the MTSA. Section 9(2) of the General Regulation requires that the IESO remit within a reasonable period of time.~~

[24] ~~**Note:** Please confirm.~~

Markets Platform".

Generally, an "**Approved Obligation**" under the Change of Law Protection Agreement includes all obligations of the Issuer (except for amounts required to be deposited into any capital account or finance reserve account, or any obligation for the Issuer to pay itself any remaining amounts in the Collection Account pursuant to the Master Trust Indenture), including obligations of the Issuer under the Notes, subject to the satisfaction of certain adherence conditions for those obligations that constitute "Certified Primary Obligations", as defined in the Change of Law Protection Agreement. Subject to certain limited exceptions for refinancings, a "Certified Primary Obligation" includes all Notes, as well as certain other obligations of the Issuer under derivative agreements or under contracts with terms of greater than three years that are not terminable by the Issuer on less than three years' notice under which the Manager, acting reasonably, expects aggregate payments by the Issuer during the term of the contract in an amount in excess of $5,000,000.

Protection Event:

Each of the following constitutes a "**Protection Event**" for purposes of the Change of Law Protection Agreement:

(a)

(i) the Ontario legislature repeals, and does not replace on an equivalent basis, or amends, the FHPA or any portion thereof, as in effect on the date hereof;

(ii) the Ontario legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals, and does not replace on an equivalent basis, the regulations made under the FHPA or any portion thereof, as in effect on the date hereof;

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof; or

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province of Ontario or an entity controlled by the Province of Ontario,

(vi) in each case, that (X) adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the

availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in any of clauses (i) to (v) above, or (Y) adversely affects the enforceability of, or adversely changes, the terms and conditions of the Change of Law Protection Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the FHPA ~~or the Regulations~~, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable and that has the effect of the Issuer not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in this paragraph (b).

(c) **The occurrence of a Protection Event in and of itself will not result in the acceleration of the Senior Notes.**

(d) The Province of Ontario's obligation to make payments under the Change of Law Protection Agreement upon a Protection Event and subsequent delivery of a written payment demand by the Indenture Trustee is referred to as the "**Limited Guarantee**".

(e) Upon paying amounts when due and payable in respect of Approved Obligations, including the Senior Notes, into the Protection Account, the Province of Ontario will be subrogated and entitled to all of the rights and interests of applicable Specified Creditors (including Noteholders) under and in respect of the Approved Obligations to the extent of the amounts paid~~. The Province of Ontario will have the right to be paid from the Issuer the amounts that the Province of Ontario paid in respect of the Approved Obligations, such amounts being payable in the same order of priority and with the same entitlements accruing to the Province of Ontario as applied to the amounts in respect of the Approved Obligations previously owing to Specified Creditors that the Province of Ontario has paid. The Province of Ontario will also be entitled to the benefit of the Collateral and proceeds therefrom~~.

(f) **Under the Change of Law Protection Agreement, the right to deliver a written payment demand on occurrence of a Protection Event to enforce the Limited Guarantee is the only remedy available to the Indenture Trustee (and to Specified Creditors, to the extent they are permitted to exercise any rights, interests or elections under and in accordance with the Master Trust Indenture). Specified Creditors are not permitted to exercise any**

rights, interests, or elections under the Change of Law Protection Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Master Trust Indenture (in effect as ~~at December 21, 2017.~~of the date hereof).

Approved Obligations & Adherence Conditions:

Under the Management Agreement, the Manager is required to ensure that all obligations of the Issuer are and remain Approved Obligations under the Change of Law Protection Agreement.

The Limited Guarantee shall apply to all Certified Primary Obligations that meet the following adherence conditions:

(a) the Certified Primary Obligation when incurred is an Obligation Secured under the Master Trust Indenture;

(b) OPG, as Financial Services Manager, delivers a certificate to the Indenture Trustee on or before the incurrence of such obligation certifying that it has complied with all of its obligations to the Province of Ontario and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation; and

(c) the Province of Ontario has not provided a Suspension Notice to the Indenture Trustee, OPG and the Issuer.

All Senior Notes shall constitute Obligations Secured under the Master Trust Indenture and therefore condition (a) above will be satisfied for all Offerings of Senior Notes. It will be a condition to any Offering of Senior Notes that OPG deliver the adherence certificate required pursuant to (b) above or that the Province of Ontario designates in writing that the Senior Notes are Approved Obligations. The Change of Law Protection Agreement provides that delivery of an adherence certificate shall be determinative of satisfaction of this adherence condition, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such certificate may be relied upon as conclusive evidence of same.

Suspension Notice & Post-Suspension Refinancing

The Change of Law Protection Agreement will remain in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations**, including all Senior Notes**.

However, in the following limited circumstances, the Province of Ontario may deliver a Suspension Notice under the Change of Law Protection Agreement: (i) if there has been an acceleration of Funding Obligations in accordance with the provisions of the Master Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement; (ii) if there has been an uncured breach of covenant, uncured default in performance, or uncured representation, warranty or certification that proves to be incorrect in any material

respect on the date made, in each case of OPG (or its officers, in the case of a certification) to the Province of Ontario in connection with its obligations to the Province of Ontario pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations; or (iii) if the Financial Services Manager is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove the Financial Services Manager as the Manager.

Upon delivery of a Suspension Notice, the Limited Guarantee shall not apply in respect of obligations incurred by the Issuer (excluding certain refinancings of Approved Obligations as described below) and certain material amendments of outstanding obligations of the Issuer.

Notwithstanding delivery of a Suspension Notice, the Limited Guarantee shall continue to apply to: (i) any Approved Obligations that were incurred prior to the suspension and (ii) any Funding Obligations incurred by the Issuer following a suspension that satisfy the terms and conditions of the Change of Law Protection Agreement, provided that the proceeds of such incurrence are to be used for the purpose of repaying one or more series of Approved Obligations. Accordingly, subject to compliance with the Change of Law Protection Agreement, any Senior Notes or other Funding Obligations that may be issued following a suspension to refinance Senior Notes that were Approved Obligations issued prior to a suspension will continue to have the benefit of the Limited Guarantee.

See *"Change of Law Protection Agreement"*.

Fair Allocation Amount & Financing Plan:

The Fair Allocation Amount is an amount calculated under the FHPA ~~and the Regulations~~ by the Minister of Energy in respect of each Reference Period that, among other things, allocates the estimated value of ~~certain costs allocated to Specified Consumers in respect of the Ontario government's clean energy initiatives ("~~Clean Energy Costs~~")~~[25] in proportion to the relative attribution of the value of ~~benefits determined to be derived by or accruing to Specified Consumers as a result of such clean energy initiatives ("~~Clean Energy Benefits~~")~~ among Specified Consumers. See *"Ontario's Fair Hydro Plan"*.[26]

The Financial Services Manager is required to prepare a Financing Plan under the FHPA to evaluate whether potential Funding Obligations should be incurred by the Issuer or other Financing Entities for the purposes of acquiring an Investment Interest or for the purposes of a Refinancing. In preparing the Financing Plan, the Financial Services Manager must have regard to certain principles, including that Funding Obligations should be incurred such that, along with any Funding Obligations already incurred, the estimated Finance Amount that would, subject to any Refinancing, become due and payable during a Reference Period will reasonably align with the Fair Allocation Amount determined in respect of such Reference Period as of the date the Funding Obligations were incurred~~, after~~

[25] ~~**Note:** Consider that "Clean Energy Costs" is more thoroughly defined in the Glossary. Through the OM, reconsider instances where there are two different definitions.~~

[26] ~~**Note:** The description of the fair allocation amount should more closely align to Section 20(1) of the FHPA.~~

~~reducing the Fair Allocation Amount by the Readjustment Amount, if any, in respect of the Reference Period~~.

In other words, the Financing Plan should contemplate the issuance of Funding Obligations from time to time, with terms that would result in Clean Energy Adjustments being payable by Specified Consumers that align with the purposes of the FHPA.[27] Notwithstanding the above, the FHPA provides that each Funding Obligation is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated Finance Amount with the Fair Allocation Amount.

[28] ~~The Financing Plan does not currently contemplate the issuance of any Senior Notes maturing prior to May 2024. The Financial Services Manager may, however, determine to refinance Senior Notes maturing after May 2024 through the issuance of another Series of Senior Notes. If Senior Notes cannot be refinanced on or before the applicable Principal Payment Default Date, holders of such Senior Notes will have the [ability to accelerate][29] their Senior Notes resulting in Clean Energy Adjustments that would otherwise be used to pay the principal amount on subordinated indebtedness to holders of subordinated Notes being used to pay holders of accelerated Senior Notes.~~

The Financing Plan allows for the issuance of a variety of short and long term debt. See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Financing Plan and the Fair Allocation Amount.

Subordinated Debt:

Concurrent with every issuance of senior debt by the Issuer, including any Offering of Senior Notes, it is expected that OPG will subscribe for subordinated debt and junior subordinated debt of the Issuer in an amount equal to no more than 49% of all of the Issuer's Funding Obligations, approximately 44% of which is expected to be funded through equity investments in OPG by the Province of Ontario with the remaining 5% being funded from OPG's available funds, including all or a portion of the proceeds of any offerings by OPG of medium term notes.

Under the Master Trust Indenture, the Issuer will be required at all times to ensure that: (i) the aggregate outstanding principal amount of all subordinated debt and junior subordinated debt be not less than 35% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations; and (ii) the aggregate outstanding principal amount of all junior subordinated debt be not less than 10% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations.

Use of Proceeds:

The proceeds from each Offering may be used to (i) acquire an Investment Interest ~~from the IESO~~ pursuant to **the FHPA and** the

[27] ~~**Note:** We have omitted narrative regarding the purposes of the legislation that is not a strict recital of section 3 of the FHPA. The deleted language is not precise and draws a connection to clean energy benefits that is not in the FHPA nor entirely accurate.~~

[28] ~~**Note:** Fair allocation amount is a calculation amount. It is not based on an expectation – it is an absolute value at a point in time. We recommend deleting this language as it is inappropriate.~~

[29] ~~**Note:** CEAs will automatically step up at the original maturity date without the need to accelerate assuming a refinancing cannot be completed.~~

	Master Transfer and Servicing Agreement, (ii) refinance indebtedness of the Issuer (including other Series of Senior Notes), (iii) pay Offering and related costs of the Issuer and (iv) fund specific reserve accounts as required. The Term Sheet for each Offering of Senior Notes will identify the amount of proceeds that will be used for such specified purposes.
Interest Rate:	Fixed, floating or otherwise, as determined by the Issuer and as set out in the Term Sheet applicable to such Offering.
Interest Payment Dates:	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
~~**Principal Accumulation Date(s) and Principal Accumulation Amount(s):**~~	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Principal Payment Date(s) and Principal Payment Amount(s):	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Principal Payment Default Date:	As determined from time to time by the Issuer and as set out in the Term Sheet applicable to such Offering.
Ranking:	Subject to the applicable payment waterfalls set out in the Master Trust Indenture, the Senior Notes will be direct, secured and unsubordinated obligations of the Issuer, and will at all times rank equally and proportionately with each other and all other senior indebtedness issued by the Issuer from time to time pursuant to the Indenture, without discrimination or preference. See "*Capital Markets Platform — Subordination Provisions*", *"Capital Markets Platform — Acceleration and Remedies — Payment Waterfall Upon Acceleration"*.
Security:	All indebtedness and other obligations of the Issuer, including the Senior Notes, will be secured by a first ranking charge against all property and assets of the Issuer, including each Issuer Account (and all funds and property credited thereto), all rights and benefits, and powers of the Issuer under the FHPA and all rights, benefits and power under all Program Agreements, including under the Limited Guarantee. Under the Master Trust Indenture, the Issuer is required to maintain certain reserves: the IESO Cash Reserve Deposit Amount (an amount equal to the aggregate of (i) 0.50% of the aggregate amount of all outstanding senior, subordinated and junior subordinated funding obligations determined as of April 15, 2021, and (ii) an amount estimated as the amount of Carrying Costs payable during May, June and July 2021, provided such amount in (ii) satisfies the Rating Agency Condition) will be deposited by the IESO by April 30, 2021. There is also a Program Cash Reserve Account which will begin to be funded from Clean Energy Adjustments following the Moratorium Period until it reaches the Program Cash Reserve Required Amount (on each Payment Date on and after May 15, 2021, an amount equal to 0.50% of the aggregate amount of all outstanding senior, subordinated and junior subordinated funding obligations determined

as of such date, or such lesser amount that satisfies the Rating Agency Condition). Funds in the IESO Cash Reserve Account will be applied to pay Carrying Costs after April 2021 to the extent that funds can be so applied such that the aggregate amount of funds in the IESO Cash Reserve Account and Program Cash Reserve Account is maintained at the Program Cash Reserve Required Amount.

In connection with the incurrence of any Series of Notes, the Issuer may (i) establish a Series Account for purposes of accumulating funds used to make principal payments or for purposes of reserving funds to pay finance charges, and/or (ii) enter into a credit enhancement agreement or liquidity agreement. Whether a Series of Senior Notes has the benefit of a Series Account or any credit enhancement agreement or liquidity agreement will be determined from time to time by the Issuer and set out in the Term Sheet applicable to such Offering.

See "*Capital Markets Platform — Security*".

Priority of Payments:

Prior to an Event of Default and acceleration of the Issuer Funding Obligations (other than Derivative Funding Obligations), amounts available for disbursement will generally be applied in the following order of priority:

- taxes;
- trustee fees, expenses and reimbursement amounts (up to a specified cap);
- payment of or accumulations in respect of interest for ~~senior obligations~~**Senior Funding Obligations**, *pari passu* with payments under derivative agreements (other than termination payments);
- payment of or accumulations in respect of interest for ~~subordinated obligations~~**Subordinated Funding Obligations**;
- payments of or accumulations in respect of interest for ~~junior subordinated obligations~~**Junior Subordinated Funding Obligations**;
- payment of or accumulations in respect of principal for ~~warehouse obligations~~**Warehouse Obligations** (see *"Warehouse Facilities"*);
- accumulations in respect of principal for ~~senior obligations~~**Senior Funding Obligations** (other than ~~warehouse obligations~~**Warehouse Obligations**), *pari passu* with termination payments under derivative agreements (other than as provided below);
- fees and other amounts (other than principal and interest) on ~~senior obligations~~**Senior Funding Obligations**;

- the Manager's fees, expenses and reimbursement amounts;
- payment of or accumulations in respect of principal for ~~subordinated obligations~~**Subordinated Funding Obligations**;
- fees and other amounts (other than principal and interest) on ~~subordinated obligations~~**Subordinated Funding Obligations**;
- payment of or accumulations in respect of principal for ~~junior subordinated obligations~~**Junior Subordinated Funding Obligations**;
- replenishment of Program Cash Reserve Account;
- replenishment of Series Accounts (other than accounts established for ~~subordinated obligations or junior subordinated obligations~~**Subordinated Funding Obligations or Junior Subordinated Funding Obligations**);
- replenishment of Series Accounts established for ~~subordinated obligations~~**Subordinated Funding Obligations**;
- fees and other amounts (other than principal and interest) on ~~junior subordinated obligations~~**Junior Subordinated Funding Obligations**;
- replenishment of Series Accounts established for ~~junior subordinated obligations~~**Junior Subordinated Funding Obligations**;
- termination payments under derivative agreements where the counterparty is the defaulting party or sole affected party;
- beneficiaries of the Issuer;
- indemnity amounts owing to the Manager; and
- all other obligations not specifically dealt with above.

- After an Event of Default and acceleration of the Issuer Funding Obligations (other than Derivative Funding Obligations), amounts available to the Issuer or otherwise held by the Indenture Trustee will generally be applied in the following order of priority:
  - taxes;
  - trustee fees, expenses and reimbursement amounts;
  - interest, fees and other amounts (other than principal) on ~~senior obligations~~**Senior Funding Obligations** and payments under derivative agreements (other than

termination payments), *pari passu*, then ~~subordinated obligations~~**Subordinated Funding Obligations** (other than principal) and then ~~junior subordinated obligations~~**Junior Subordinated Funding Obligations** (other than principal);

- principal for ~~warehouse obligations~~**Warehouse Obligations**;
- *pari passu*, principal on ~~senior obligations~~**Senior Funding Obligations** (other than ~~warehouse obligations~~**Warehouse Obligations**) and termination payments under derivative agreements (other than where the counterparty is the defaulting party or sole affected party);
- the Manager's fees, expenses and reimbursement amounts;
- principal for ~~subordinated obligations and then junior subordinated obligations~~**Subordinated Funding Obligations and then Junior Subordinated Funding Obligations**; and
- all other obligations not specifically dealt with above.

- Notwithstanding the above, amounts held in a Series Account will be applied in accordance with the relevant Funding Obligation Agreement and amounts held in the Protection Account will be applied in accordance with the specific written payment statement and would not otherwise modify the provisions of the applicable payment waterfalls set out in the Master Trust Indenture.
- See "*Capital Markets Platform — Payment Waterfall Prior to Acceleration*" and "*Capital Markets Platform — Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

Currency: Senior Notes may be denominated in any currency. The currency for a particular Series of Senior Notes will be set out in the Term Sheet applicable to such Offering.

Minimum Subscription: Minimum principal amount of 100,000 units of the applicable currency and integral multiple of 1,000 **units** of the applicable currency. The minimum subscription and denomination of the Senior Notes may be varied as set out in the Term Sheet applicable to such Offering.

Optional Redemption: Senior Notes may be subject to redemption prior to maturity at the times and redemption price set out in the Term Sheet applicable to such Offering.

Purchase for Cancellation: The Issuer may, at any time, purchase at any price all or any of the Senior Notes in the market or by invitation for tenders or by private contract. Any Senior Notes so purchased shall be cancelled.

Distribution Method: The Senior Notes may be offered and sold by the Issuer on a private placement basis in Canada to "accredited investors" (as such term is defined in NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) who purchase

	the Senior Notes as principal and that are not individuals unless those individuals are also "permitted clients" (as such term is defined in NI 31-103). By purchasing Senior Notes and accepting a purchase confirmation in respect thereof, a purchaser will be agreeing with and representing to the Issuer and any Agent participating in the trade that the purchaser is an accredited investor purchasing as principal along with certain other matters. See *"Representations and Agreements of Purchasers"*.
Book-Entry Form:	The Senior Notes will be delivered and recorded in book-entry form only through CDS or another depository selected by the Issuer in accordance with the Master Trust Indenture. Each Series of Senior Notes will be evidenced by a global note held by such depository, registered in its name or the name of its nominee, on behalf of all holders of such Series of Senior Notes. Subject to limited exceptions, no purchasers of Senior Notes will be entitled to a certificate or other instrument from the Issuer or CDS evidencing that purchaser's ownership thereof, and no holder of a Senior Note will be shown on the records maintained by CDS except through book-entry accounts of a participant of CDS acting on behalf of owners. See *"Depository Services"*.
Resale Restrictions:	Resale of the Senior Notes will be subject to restrictions under applicable securities legislation which vary depending on the relevant jurisdictions. **The Senior Notes may only be sold on a basis that is in accordance with, or pursuant to an exemption from, the prospectus requirements of applicable provincial securities laws and only through an appropriately registered dealer or pursuant to an exemption from the dealer registration requirements of applicable provincial securities laws.** See *"Restrictions on Resale"*.
Risk Factors:	The purchase of the Senior Notes is subject to risks. Prospective investors should carefully consider the risk factors and other information in this confidential shelf offering memorandum and the Term Sheet for each Offering before purchasing Senior Notes, including the discussion set forth under *"Risk Factors"*, and any additional disclosure set out in the Term Sheet for each Offering.
Indenture Trustee:	BNY Trust Company of Canada.
Issuer Trustee:	Computershare Trust Company of Canada.

THE ELECTRICITY INDUSTRY IN ONTARIO

General Overview

The following summary of the electricity industry in Ontario does not purport to be comprehensive or definitive. It is a general and high-level overview of the history and manner in which the industry operates, including how real-time energy supply needs are met.

The Ontario electricity industry is principally comprised of three components:

- *Generation*: the production of electricity from various forms of energy, such as wind, solar, hydropower, natural gas and nuclear;
- *Transmission*: the transfer of electricity across high-voltage power lines from generating facilities to local areas **and large directly connected consumers**; and
- *Distribution*: the delivery of electricity within local areas to homes and businesses using lower voltage power lines.

The structure of Ontario's electricity industry underwent significant changes in the late 1990s and early 2000s. Prior to April 1, 1999, Ontario Hydro, a Crown corporation, supplied most of Ontario's electricity generation and transmission needs. Consistent with initiatives taken in other electricity markets in North America at the time, the electricity industry was restructured in order to encourage greater competition. Ontario's competitive **wholesale** electricity market was opened by the IESO on May 1, 2002 and the market is used to administer the purchase and sale of wholesale electricity in Ontario.

Since the opening of the competitive market, Ontario's power supply mix has experienced significant change. As a result of provincial government policy, coal-fired generation has been eliminated and a significant amount of new capacity has been added as a result of new natural gas powered capacity, new wind and solar capacity and additional baseload nuclear generation capacity. These changes have resulted in significantly increased costs of electricity to consumers in Ontario.

While electricity supply in Ontario has increased, the province's electricity demand as reported by the IESO has fallen over the last decade, largely due to changes in economic conditions and conservation measures. Moreover, the addition of ~~small~~**smaller** scale **wind and** solar generation embedded in the distribution system has reduced the level of demand that is supplied by transmission-connected generation. Reducing electricity demand by encouraging conservation and demand management has been a key part of the Government of Ontario's plan to reduce greenhouse gas emissions from the province's electricity sector. Shorter-term fluctuations in electricity demand are impacted by variations in seasonal weather conditions.

Real-time energy supply needs are met through the wholesale electricity market administered by the IESO. Generators offer their generation into this real-time energy market, or "spot market", to be **scheduled and** dispatched by the IESO. The IESO receives hourly offers from electricity generators and importers to provide energy, along with bids ~~to withdraw energy from a few flexible~~**by domestic** loads and exporters, and then schedules the lowest-cost offers and bids needed to meet demand. ~~Virtually all~~**Most** generators in Ontario also have bilateral contracts with the IESO or receive regulated prices, or payment amounts, that provide for payments in addition to ~~the~~**wholesale** market ~~price of electricity~~**settlements** that ~~is~~**are** paid to generators.

Key Industry Participants

Ontario Power Generation Inc.

OPG is a corporation formed under the *Business Corporation Act* (Ontario)~~, whose sole shareholder is the~~**.** **The** Province of Ontario **is the sole shareholder of OPG and thereby has the power to determine the composition of OPG's board of directors**. In 1999, when Ontario Hydro was split up in anticipation of

deregulation, OPG was formed to hold ~~all of~~ the generation assets **of the former Ontario Hydro**. OPG has divested itself of certain of those assets, but remains the largest generator in Ontario.

OPG is Ontario's largest clean energy generator. As at the date hereof, OPG operated two nuclear generating stations, 66 hydroelectric generating stations, three thermal generating stations, and one wind power ~~turbine~~**facility**. OPG's ~~mission~~**mandate** is to provide low cost power in a safe, clean, reliable and sustainable manner for the benefit of its customers and its sole shareholder, the Province of Ontario. OPG's electricity generation accounts for ~~almost half~~**a significant portion** of the total energy generated and injected into Ontario's electricity transmission system~~, as reported by the IESO~~. OPG is one of the most experienced and largest generating companies in Canada with a broad set of relationships and capabilities. OPG is also experienced in successful complex financing arrangements of large capital projects, including the recently completed Lower Mattagami project.

Additional information about OPG is provided in the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum and is available at www.opg.com.

The IESO

The IESO is a non-share capital corporation created under the *Electricity Act, 1998* (Ontario). It was created as an amalgamation of two predecessor entities, one of which was also called the IESO ("**Predecessor IESO**") and the other of which was called the Ontario Power Authority ("**OPA**"). Predecessor IESO was responsible for **managing the reliability of the provincial transmission system and** operating the ~~real-time~~**wholesale** electricity markets in Ontario~~, as well as administering the market rules.~~ **.** The OPA was ~~the counterparty that~~**formed to plan the provincial power system and to procure electricity resources. The OPA** entered into bilateral power~~-or capacity~~ purchase contracts with generators **and other electricity resource providers**. These two entities were merged statutorily on January 1, 2015 into the IESO, which now carries out all of these functions. As a non-share capital corporation, the IESO does not have any shareholders or owners~~, but it~~ **and** is governed by an independent ~~Board~~**board** of ~~Directors whose chair and~~ directors ~~are~~ appointed by the Minister of Energy.

Additional information about the IESO is provided in the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum and is available at www.ieso.ca.

The Ontario Energy Board

The OEB is a non-share capital corporation created under the *Ontario Energy Board Act, 1998*. The OEB is an independent and impartial public regulatory agency. The *Ontario Energy Board Act, 1998* provides the OEB with the authority to license and regulate the participants in Ontario's electricity market, including the activities of the IESO, transmitters and distributors**,** which are also Electricity Vendors for the purposes of the FHPA.

The OEB has the following objectives in relation to the electricity industry:

(a) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(b) to promote the education of consumers;

(c) to promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry;

(d) to promote electricity conservation and demand management in a manner consistent with the policies of the Province of Ontario, including having regard to the ~~consumer~~**consumers**'~~s~~ economic circumstances;

(e) to facilitate the implementation of a smart grid in Ontario; and

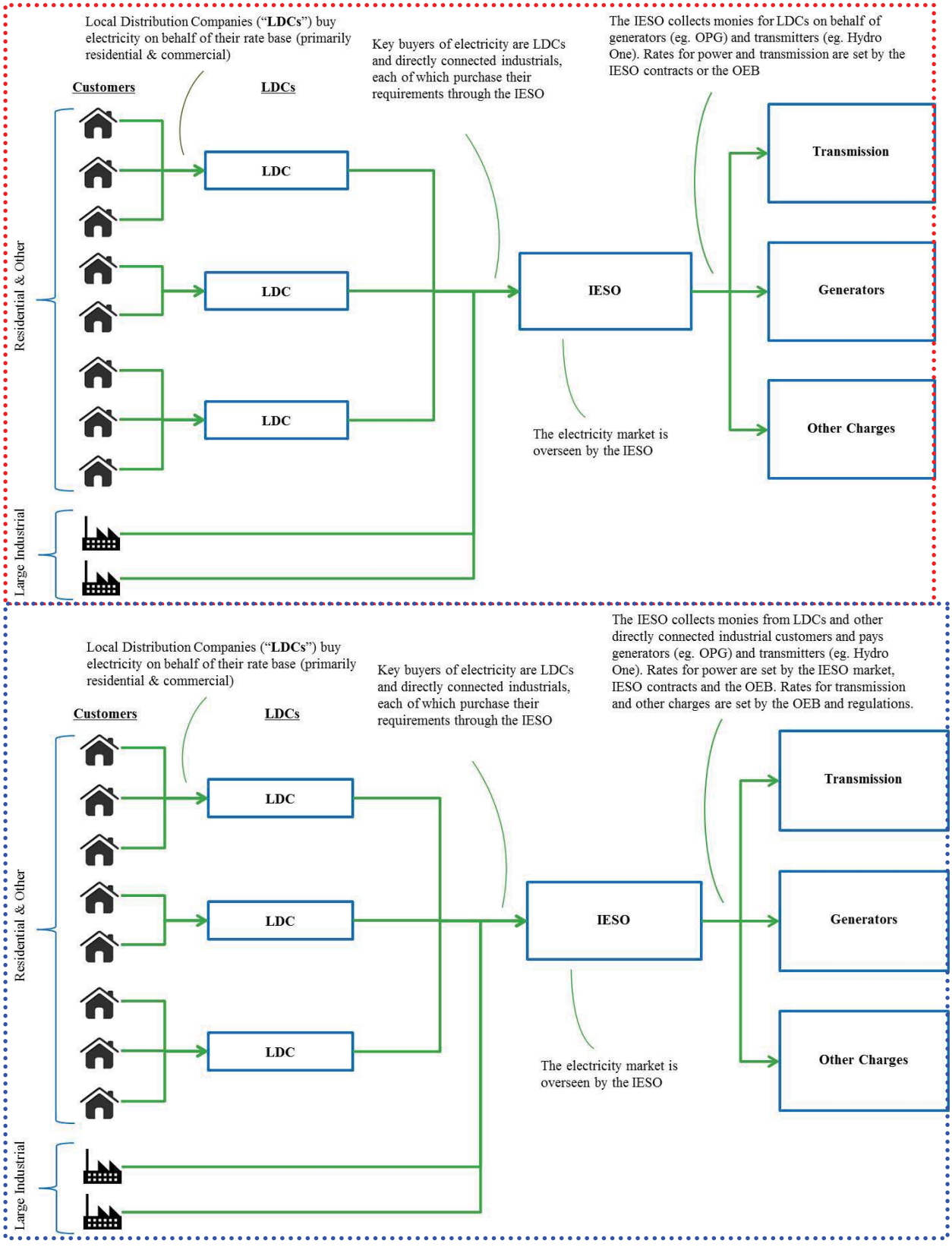
(f) to promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Ontario government, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

The OEB is responsible for, among other things, approving transmission and distribution rates in Ontario, as well as payment amounts for OPG's nuclear and hydroelectric generation. It also approves the construction, expansion, or reinforcement of transmission lines greater than two kilometres in length, as well as mergers, acquisitions, amalgamations and divestitures involving distributors, transmitters and other entities which it licenses. The activities of transmitters and distributors are subject to the conditions of their transmission and distribution licenses, as applicable, which require compliance with a number of industry codes issued by the OEB, as well as with the market rules that are administered by the IESO. These codes and other requirements prescribe minimum standards of conduct and service for licensed participants in the electricity market.

Electricity Vendors

As part of the restructuring of Ontario's electricity industry, the province's municipally-owned electricity distributors were reorganized into separate business corporations. These distributors are typically referred to in Ontario as local distribution companies, or "**LDCs**". An LDC is responsible for distributing electricity to customers in its OEB-licensed service territory, and in some cases to other distributors. A service territory may cover large portions or all of a particular municipality, or an otherwise-defined geographic area. Distribution customers include residential, commercial and industrial end-users, such as governments, schools and hospitals. At multi-unit buildings within an LDC's service territory, there may be a unit sub-metering service provider that provides metering services for each individual unit. These sub-metering service providers are also licensed by the OEB. The following diagram depicts ~~a simplified~~**the** flow of funds between the key industry participants:[30]

[30] ~~**Note:** Proposed revisions to the text in the chart: (i) "The electricity market is overseen~~ administered by the IESO~~"; (ii) "Rates for power and transmission are set by the IESO contracts or the OEB~~ Prices paid to generators are determined by IESO contracts or approved by the OEB. ~~Transmission rates are approved by the OEB.~~"



See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding LDCs.

Electricity Prices

There are ~~two~~**main** components that make up the commodity cost of electricity in Ontario, the Hourly Ontario Energy Price ("**HOEP**") and the ~~Global Adjustment~~global adjustment charge.

- The HOEP is set by the IESO based on bids and offers in the real-time energy market that is administered by the IESO.

- The global adjustment charge is ~~paid by all consumers. It is~~ established monthly by the IESO in accordance with regulations and is ~~used to collect funds used by the IESO~~**the amount necessary** to pay certain ~~"out of market"~~**other** costs **to generators and other suppliers** that are not compensated by the HOEP, including the cost of energy supply contracts with generators and payments made to ~~certain generators, including OPG, that are entitled to a regulated rate of return based on~~**OPG pursuant to** OEB-established payment amounts. ~~For all Specified Consumers[31] the global adjustment charge is based on electricity usage on a per unit basis.~~

Prior to the FHPA being passed, the amount collected **generally over an annual basis** by the IESO on account of the HOEP and global adjustment charge was approximately equal to the IESO's ~~liabilities in this regard~~**current payables to generators and other electricity resource suppliers**, subject to certain periodic true-ups**, fees** and adjustments to keep the IESO whole.

At the request of the Minister of Energy in 2004, ~~and in accordance with amendments to legislation,~~ the OEB created the "**Regulated Price Plan**" or "**RPP**", which establishes time-of-use and tiered ~~commodity~~ prices **primarily** for residential, farm and small commercial customers. Prior to the introduction of the FHPA, the RPP prices were reviewed and changed every six months **by the OEB** based on an updated forecast and any accumulated differences between the amounts collected from RPP consumers and the amount paid to generators in previous periods. RPP prices are now established in accordance with the FHPA. Most Specified Consumers are billed for electricity based on the Regulated Price Plan, although some Specified Consumers may be invoiced the HOEP and the global adjustment charge by their LDC for electricity they have consumed. The IESO has also stated that there is one Specified Consumer connected directly to the transmission system and settled by the IESO, not an LDC.

While most residential and small commercial consumers in Ontario choose to purchase their electricity under the RPP, consumers in Ontario may instead choose to buy their electricity from a licensed retailer pursuant to a retail contract that provides a ~~fixed~~ rate for electricity over a specified period. These customers are also required to pay the global adjustment charge in addition to the rate under their retail contract.

In addition to the HOEP and global adjustment charges, or RPP prices, as the case may be, electricity consumers pay a number of other uplifts and charges, such as transmission and distribution tariffs.

ONTARIO'S FAIR HYDRO PLAN

Background

On June 1, 2017, the Ontario Legislature passed the ~~*Ontario Fair Hydro Plan Act, 2017*[32] (the "**FHPA**")[, legislation that reallocates certain electricity costs over time and provides immediate rate relief to consumers][33]~~ **FHPA**. From July 1, 2017 until April 30, 2018, electricity rates payable by Specified Consumers (a category of consumers that generally is comprised of residential consumers, small businesses and farms) will **in effect** be the ~~rates~~**rate** that **would** result in a representative consumer being charged an invoice amount that is 25%[34]3 less than the rate that would otherwise have been determined by the OEB for that period ~~(the "**Fair Adjustment**")~~ absent

~~[31] **Note:** Some consumers below 500 kw are not Specified Consumers.~~
~~[32] **Note:** The FHPA was Schedule 1 to omnibus legislation entitled the *Fair Hydro Act, 2017*. Further, already defined as the FHPA above.~~
~~[33] **Note:** This narrative should be removed, or if necessary, the description of the FHPA should track the purposes of the Act as set out in Section 3 to the Act.~~
[34]3 The 25% reduction includes an 8% rebate equivalent to the provincial portion of the harmonized sales tax previously granted by the Ontario government ~~and the shifting of certain support program costs from the rate base to the tax base~~.

Ontario's Fair Hydro Plan **(such adjustment, together with the further adjustments described below in this section, the "Fair Adjustment")**.

Under the FHPA, a "**Specified Consumer**" is:

(a) a person who has an account with an Electricity Vendor for the supply of electricity in the Province of Ontario and meets any one of the following criteria:

(i) the person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed by the Regulations;

(ii) the person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed by the Regulations;

(iii) the person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22(6) of that Act;

(iv) the person's account with the Electricity Vendor relates to

(A) a dwelling;

(B) a property within the meaning of the *Condominium Act, 1998*;

(C) a residential complex within the meaning of subsection 2(1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act; or

(D) a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*; or

(v) the person satisfies such criteria as may be prescribed by the Regulations; or

(b) such other person as may be prescribed by the Regulations.

Electricity bills for Specified Consumers for the period between May 1, 2018 and April 30, 2019 are to increase by the rate of inflation (or remain unchanged in the event inflation is negative). Permitted increases after April 30, 2019 will be determined by the Ontario government through additional regulations, though the Ontario government has indicated ~~its intention~~ that rate increases will be held to the rate of inflation until 2021.

Under the FHPA, OPG is appointed as ~~the initial~~ Financial Services Manager and given the authority to, among other things, establish, or cause to be established, one or more ~~financing entities (each, a "~~Financing ~~Entity")~~**Entities** to incur ~~payment obligations (such obligations, "~~Funding Obligations~~")~~ to fund the acquisition of an Investment Interest. The Issuer is a Financing Entity under the FHPA and the Senior Notes are Funding Obligations under the FHPA.

Regulatory Asset

Under the FHPA, each month the IESO determines the shortfall that results from the Fair Adjustment as compared to what the IESO would have been entitled to receive without the Fair Adjustment and records this amount, together with the costs of financing the shortfall, **the amounts charged to the IESO by the Issuer in respect of the Carrying Costs of the Issuer [and certain other amounts]** ***[NTD: IESO to confirm what other***

amounts are included] in a variance account.[35] The IESO has the right, exercisable in accordance with the FHPA and the Regulations, to recover the balance recorded in the variance account from Specified Consumers (such right, the "**Regulatory Asset**"). ~~However, in accordance with the FHPA, the IESO is not~~**The FHPA provides that the OEB shall, from time to time and in accordance with the Regulations, determine and set rates payable by Specified Consumers to allow for the IESO to recover the balance recorded in the variance account and that the IESO shall not be** entitled to collect all or part of the balance recorded in the variance account ~~(which is the basis of the Regulatory Asset) from specified consumers~~**from Specified Consumers** before May 1, 2021. The IESO may, in accordance with the FHPA, ~~transfer~~**Transfer** a specified portion of the Regulatory Asset to a Financing Entity for a cash purchase price equal to the amount recorded in the variance account in respect of such specified portion of the Regulatory Asset. Upon receipt by the IESO of payment by the Financing Entity, the IESO retains no further right, title or interest in the corresponding Investment Interest.

Investment Interest

By acquiring an Investment Interest, the Financing Entity is financing a portion of the shortfall that results from the Fair Adjustment and, as an owner of the Investment Interest, will be entitled to recover its ~~"~~Finance Amount~~"~~ (the costs of such financing). While a Financing Entity may choose to acquire an Investment Interest ~~from the IESO~~**by accepting a Transfer of the corresponding specified portion of a Regulatory Asset**, it is under no obligation to do so.

If the IESO and a Financing Entity agree to the ~~transfer~~**Transfer** of a specified portion of the Regulatory Asset from the IESO, such ~~transfer~~**Transfer** results in the creation of a current and irrevocable property right that is immediately vested in the Financing Entity, free and clear of any adverse claim (such right, the "**Investment Asset**", and an ownership interest therein, an "**Investment Interest**"). The Investment Asset consists, collectively, of the following rights and interests of **Financing Entities that own an** Investment Interest ~~owners~~ (among other things):[36]

(a) the right and interest to impose, invoice, collect, receive and recover the Clean Energy Adjustment from Specified Consumers, including the right to determine the Clean Energy Adjustment in accordance with the FHPA;

(b) the right to receive, collect and recover the Clean Energy Adjustment that is imposed, invoiced and recoverable under the FHPA, including any amounts in respect of the Clean Energy Adjustment that are held by Electricity Vendors or the IESO;

(c) the right to enforce the duties and obligations under the FHPA of each Electricity Vendor to impose, attribute, charge and invoice for the Clean Energy Adjustment;

(d) the right to enforce the duties and obligations under the FHPA of each Electricity Vendor and the IESO to collect, receive and remit amounts received by it in respect of the Clean Energy Adjustment, including all collections and the proceeds of any enforcement action undertaken by any Electricity Vendor to recover payment of the Clean Energy Adjustment;

(e) all rights of any kind related to any of the other property rights or interests that comprise the Investment Interest~~, including any rights to receive a payment obligation incurred by the IESO as part of the transfer of the Regulatory Asset (such payment obligations incurred by the IESO being "**Funding Rebates**")~~; and

(f) all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs (a) to (e), regardless of whether it is invoiced, collected and maintained

[35] ~~**Note:** Please consider disclosure of further details as to what is recorded in the variance account. For instance, paragraph 3 of Section 15 in the General Regulation states that amounts incurred by the IESO on or after May 1, 2017 but before the FHPA came into force may be recorded in the IESO deferral.~~

[36] ~~**Note:** Please consider disclosing in this section that the Investment Asset is a collective right of the Investment Interest owners. While this is explained in a risk factor ("The Issuer may have a co-ownership interest in the Investment Asset with other Financing Entities), additional explanation/ disclosure may be warranted here.~~

together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Clean Energy Adjustment

The "**Clean Energy Adjustment**" is the amount calculated in accordance with the FHPA and payable by Specified Consumers ~~[~~to cover the cost of financing the shortfall that results from the Fair Adjustment~~]~~.[37] The Financial Services Manager will determine the amount of the Clean Energy Adjustment payable by Specified Consumers for each month of a Reference Period. The Clean Energy Adjustment is based on an estimate of the amount payable by a Financing Entity in a Reference Period in respect of the Finance Amount and the True-up Amount (each as described below).

The "**Finance Amount**" in respect of the Issuer for a period of time is an amount determined by the Financial Services Manager as follows:

(a) after eliminating any duplication in the following amounts, calculating the sum of the following amounts:

(i) amounts paid or payable during the period in respect of the payment by or on behalf of the Issuer or the provision by or on behalf of the Issuer for the payment of all or a portion of the principal amount advanced to the Issuer under a Funding Obligation;

(ii) interest, commitment fees or other similar costs payable by or on behalf of the Issuer in respect of Funding Obligations that are paid or payable during the period;

(iii) amounts payable by or on behalf of the Issuer to redeem, prepay or repurchase Funding Obligations incurred by or on behalf of the Issuer, including any premium, make-whole or other amount payable to give effect to the prepayment~~,~~ redemption or repurchase, that are paid or payable during the period;

(iv) payments required to be made in respect of any derivative agreements during the period, including ordinary course payments, payments on termination and payments made in connection with margining or collateral arrangements;

(v) amounts deposited, as required under the governing documents of Funding Obligations, into capital accounts or finance reserve accounts during the Reference Period;

(vi) Issuer expenses, including fees (including fees charged by the Financial Services Manager), charges, costs, indemnities, reimbursements and other amounts incurred or committed to by or on behalf of the Issuer as a result of an activity authorized or permitted under the FHPA, and any taxes on such amounts, in each case that are paid or payable during the period;

(vii) taxes paid or payable by or on behalf of the Issuer, incurred directly or indirectly by the Issuer , or for which the Issuer is otherwise liable as a result of any activity, undertaking, transaction or event authorized or permitted under the FHPA that **are** payable during the period; and

(viii) amounts paid or payable by or on behalf of the Issuer during the period to any guarantor or surety that made a payment of an amount due and payable under a ~~funding obligation~~**Funding Obligation**, including pursuant to a guarantee, indemnity, contract of insurance or agreement entered into under subsection 5(2) or (3) of the FHPA;

[37] ~~**Note:** Consider that the statutory definition of "Clean Energy Adjustment" states that it is "the amount determined under section 15 [of the FHPA] and payable by specified consumers". The FHPA does not expressly state the purpose of the Clean Energy Adjustment.~~

(b) after eliminating any duplication in the following amounts, calculating the sum of the following amounts:

(i) amounts withdrawn, as required under the governing documents of Funding Obligations, from capital accounts or finance reserve accounts during the period;

(ii) ~~for any period before May 1, 2021,~~ amounts received during the period in respect of Carrying Costs~~ and Funding Rebates and for any period on and after May 1, 2021, amounts received during the period in respect of Funding Rebates~~;

(iii) the aggregate of all amounts received by or on behalf of the Issuer in respect of Funding Obligations during the period;

(iv) the principal amount of Funding Obligations incurred by the Issuer that are applied to refinance existing Funding Obligation during the period;

(v) any payments received in connection with a derivative agreement, including ordinary course receipts, payments received on termination and payments received in connection with margining or collateral arrangements, in each case during the period;

(vi) amounts received by or on behalf of the Issuer as a refund of tax ~~and to which the Issuer is entitled as a result of any activity, undertaking, transaction or event authorized or permitted under the FHPA~~ during the period; and

(c) subtracting the sum calculated under (b) from the sum calculated under (a).

In determining the Clean Energy Adjustment, the Financial Services Manager must also calculate a "**True-up Amount**" in accordance with the Regulations. ~~In principle, the True-up Amount should serve to ensure that the collection of the Clean Energy Adjustments is sufficient to pay the Finance Amount when it is due, by capturing any Finance Amounts not previously received~~**The True-up Amount is comprised of the cumulative Finance Amounts** in respect of ~~the~~**all preceding Reference Periods less the cumulative** Clean Energy Adjustment ~~during the~~**amounts remitted to the Issuer in respect of all** preceding Reference Periods **plus other anticipated shortfalls**. The True-up Amount may also reflect historical and reasonably foreseeable differences between the estimated and actual Finance Amount; between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs; and variations in billings due to variations in electricity consumption. In determining such differences, the Financial Services Manager is required to have regard to amounts payable that were not collected and any amounts in respect of which an overpayment was made, which may include amounts resulting from a default of Specified Consumers, an Electricity Vendor or the IESO, whether in its capacity as an Electricity Vendor or its activities as agent or otherwise under the FHPA~~ and the Regulations~~. The Regulations obligate the Financial Services Manager to calculate the True-up Amount in respect of each Reference Period so long as all Funding Obligations and other Finance Amounts have not been paid in full. **After the final scheduled payment date of the Funding Obligation that has the latest maturity date of all outstanding Funding Obligations, the Financial Services Manager will calculate the True-up Amount quarterly.** The Financial Services Manager may also at any time during a Reference Period determine an interim True-up Amount if, among other things, it reasonably forecasts that the collection of the Clean Energy Adjustment will be insufficient to pay the estimated Finance Amount for a Reference Period.

The Financial Services Manager must notify the OEB of the Clean Energy Adjustment for each Reference Period. The OEB must accept this amount and will determine the rates at which Specified Consumers are to be invoiced to recover the Clean Energy Adjustment. The rates are expressed as a cent per kWh amount and are determined by the OEB by dividing (i) the Clean Energy Adjustment provided by the Financial Services Manager in respect of the relevant period of time by (ii) ~~the~~**a** forecast of electricity consumption of Specified ~~Creditors~~**Consumers** in respect of such period~~,~~ based on forecast information provided ~~to the OEB~~ by the IESO. Electricity Vendors are required to invoice their Specified Consumers for the Clean Energy Adjustment, as determined by applying the rate set by the OEB, which is required to be included as a separate line item on each

invoice. Electricity Vendors are required to collect, as agent of the ~~[Issuer],~~[38] **Financing Entities (of which the Issuer is currently the only one),** amounts in respect of the Clean Energy Adjustment, deposit such amounts into a segregated account established for the purpose of receiving those amounts, and hold such amounts in trust for the benefit of the ~~[Issuer]~~ **Financing Entities (of which the Issuer is currently the only one)** until remitted to the IESO for the benefit of the ~~[the owners of Investment Interests (initially, only~~**Financing Entities (of which** the Issuer **is currently the only one)**~~]~~. If an Electricity Vendor does not receive payment in full of an invoice issued to a Specified Consumer, the Electricity Vendor shall allocate any payment received on a *pro rata* basis to the Clean Energy Adjustment and the other amounts payable under the particular invoice **in the manner set out in the FHPA**.[39] It is a deemed condition of their licenses that Electricity Vendors comply with their obligations under the FHPA.[40] If there are any amounts that are collected by the Electricity Vendor, but not remitted to the IESO to remit to ~~[~~the Issuer~~]~~ during a Reference Period, such shortfall will be included in the True-up Amount for the subsequent period.

An amount in respect of the Clean Energy Adjustment shown on an invoice issued to a Specified Consumer is determinative of the amount of such Specified Consumer's indebtedness resulting from the Clean Energy Adjustment and is irrevocable upon invoicing and may not be set off or bypassed, except to the extent that the invoice reflects a clerical, typographical or calculation-related error. ~~[~~Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and other financing expenses of the Issuer. From July 1, 2017 until April 30, 2021 (the "**Moratorium Period**"), no Clean Energy Adjustments are permitted to be collected from Specified Consumers. During the Moratorium Period, the sole source of funds for payment on the Senior Notes, and the Issuer's other Carrying Costs, will be the amounts the IESO is obligated to pay under the Regulations during such period.~~]~~[41] See *"— IESO Payment of Carrying Costs during the Moratorium Period"* below. Once it starts being included on such invoices, the Clean Energy Adjustment will be collected until all outstanding Funding Obligations and other Finance Amounts have been repaid in full. Subject to the FHPA, the Clean Energy Adjustment will be collected and remitted to the Issuer to pay the Finance Amount, including the principal and interest on the Senior Notes and all other administrative and other financing expenses of the Issuer.

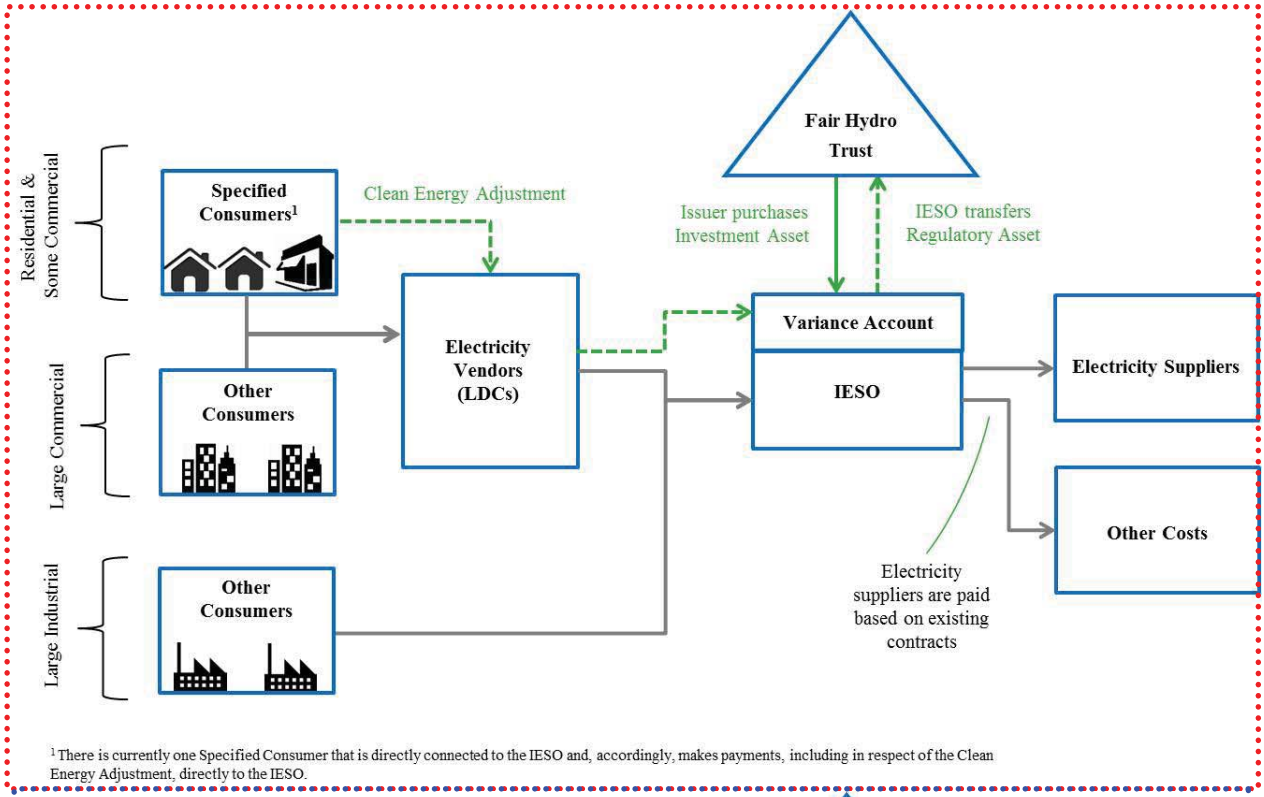
The following diagram illustrates the flow of funds under the Fair Hydro Plan.

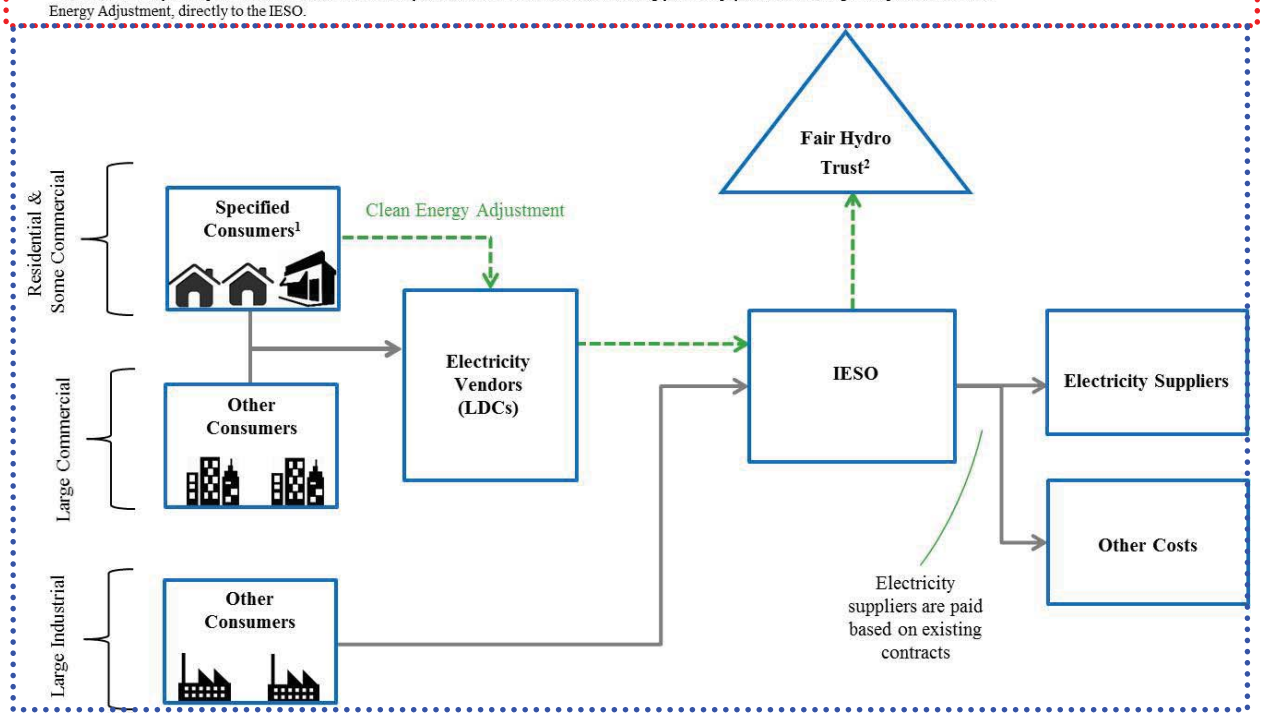
~~[38] **Note:** Please see note 17 regarding the placement of square brackets around "the Issuer" in this paragraph. The disclosure should indicate that amounts are collected for the Investment Interests owners (and that, as at the date of the OM, the Issuer is the only Investment Interest owner).~~

~~[39] **Note:** Please consider revising to conform more closely to Section 17(4) of the FHPA.~~

~~[40] **Note:** Please confirm.~~

~~[41] **Note:** This narrative should more precisely track the FHPA. The relevant provisions are Section 25(3) [*the IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021*] and Section 21(4) [*limitation on the Financial Services Manager incurring funding obligations payable through Clean Energy Adjustments from July 1, 2017 to April 30, 2021*].~~





[1] There is currently one Specified Consumer that is directly connected to the IESO and, accordingly, makes payments, including in respect of the Clean Energy Adjustment, directly to the IESO.

[2] Pursuant to the Master Transfer and Servicing Agreement, the IESO may periodically Transfer specified portions of the Regulatory Asset to the Issuer for a corresponding purchase price. Upon completion of a Transfer by the IESO of a specified portion of the Regulatory Asset following payment by the Issuer of the corresponding purchase price, the Issuer will acquire an Investment Interest.

Fair Allocation Amount and Financing Plan

The FHPA was enacted to: (i) ensure that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers; (ii) recognize that Clean Energy Benefits have accrued and will accrue over time and will continue to benefit present and future electricity consumers in Ontario; and (iii) align Clean Energy Costs with Clean Energy Benefits, in order to provide fairness for Specified Consumers over time. Under the FHPA, the Minister of Energy calculates a "**Fair Allocation Amount**", which is an amount for every Reference Period that, among other things, allocates the estimated Clean Energy Costs in proportion to the relative attribution of Clean Energy Benefits among Specified Consumers.[42] Under the FHPA, the Minister of Energy is responsible for determining the Fair Allocation Amount prior to the incurrence of the first Funding Obligation. The Fair Allocation Amount may be changed from time to time in accordance with the FHPA , provided that no change of the Fair Allocation Amount shall affect any Clean Energy Adjustment that arises as a result of a Funding Obligation that has been incurred prior to such change.

OPG, as Financial Services Manager, is required to prepare a Financing Plan to evaluate whether and when potential Funding Obligations should be incurred by a Financing Entity to acquire an Investment Interest or for the purposes of a Refinancing. The Financial Services Manager is required to prepare the Financing Plan having regard to certain prescribed principles, including that Funding Obligations should be incurred such that, along with any Funding Obligations already incurred, the estimated Finance Amount that would, subject to any Refinancing, become due and payable during a Reference Period will reasonably align with the Fair Allocation Amount determined in respect of such Reference Period as of the date the Funding Obligations were incurred~~, after reducing the Fair Allocation Amount by the Readjustment Amount, if any, in respect of the Reference Period~~. In other words, the Financing Plan should contemplate the issuance of Funding Obligations from time to time, with terms that would result in Clean Energy Adjustments being payable by Specified Consumers that align with the purposes of the FHPA. Notwithstanding the above, the FHPA provides that each Funding Obligation is deemed to be consistent with the Financing Plan and to provide for the reasonable alignment of the estimated Finance Amount with the Fair Allocation Amount.

~~The Financing Plan does not currently contemplate the issuance of any Senior Notes maturing prior to May 2024. The Financial Services Manager may, however, determine to refinance Senior Notes maturing after May 2024 through the issuance of another Series of Senior Notes. If Senior Notes cannot be refinanced on or before the applicable Principal Payment Default Date, holders of such Senior Notes will have the ability to accelerate their Senior Notes resulting in Clean Energy Adjustments that would otherwise be used to pay the principal amount of subordinated indebtedness to holders of subordinated Notes being used to pay holders of accelerated Senior Notes.~~

The Financing Plan allows for the issuance of a variety of short and long term debt. See the Investor Presentation attached as Exhibit 1 to this confidential shelf offering memorandum for more details regarding the Financing Plan and the Fair Allocation Amount.

~~IESO~~ Payment of Carrying Costs ~~During the Moratorium Period~~until July 31, 2021

Commencing May 1, 2021, a charge in respect of the Clean Energy Adjustment will be included on invoices sent to Specified Consumers, and collected and remitted to the Issuer to pay amounts owing on the Senior Notes and all other administrative and financing expenses of the Issuer. ~~During the Moratorium Period and extending to July 31, 2021,[43] the~~The IESO, which is rated A(high) by DBRS ~~Limited ("**DBRS**")~~ and Aa2 by Moody's ~~Investors Services, Inc. ("**Moody's**")~~, is required under the Regulations to pay and remit to the Issuer amounts charged to the IESO by the Issuer in respect of its Carrying Costs~~.~~ **incurred in respect of the period from June 1, 2017 to July 31, 2021.** Carrying Costs include all funding costs (such as interest on the Senior Notes) and other expenses of the Issuer, other than repayment of principal on any debt obligations of the Issuer (including repayment of principal on the Senior Notes).[44] The amounts paid by the IESO to fund these Carrying Costs will be recorded by the IESO in ~~a~~the variance account and form part of the Regulatory Asset that the IESO is expected to ~~transfer~~Transfer to the

[42] ~~**Note:** Please consider a description of the fair allocation amount that more closely aligns to Section 20(1) of the FHPA.~~
[43] ~~**Note:** Please clarify this disclosure for consistency with Section 9.1(1) of the General Regulation. This provision states that the IESO shall pay financing entity carrying costs in respect of the period beginning June 1, 2017 (before the Moratorium Period) and ending July 31, 2021.~~
[44] ~~**Note:** Consider revising to conform with the definition of "carrying costs" in Section 9.1(3) of the General Regulation.~~

Issuer in a subsequent period ~~and, upon~~**. Upon** such ~~transfer, will become part of~~**Transfer,** the Issuer~~'s~~ **will acquire a corresponding** Investment Interest pursuant to the ~~Regulations~~**FHPA**.

Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's statement, the IESO is required to deliver the amount specified in the carrying costs statement to the Issuer. See *"The Transferor and Servicer"*. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring ~~■, 20■~~,**September 30, 2022,** which is permitted to be used to pay the Issuer's Carrying Costs. Furthermore, as security for the performance of its obligations under the Regulations to pay the Issuer's Carrying Costs, the IESO has granted the Issuer a first-priority security interest in all ~~of its~~ accounts receivable~~, which includes the amounts receivable by~~ **owing to** the IESO from Electricity Vendors**, including amounts owing** with respect to the global adjustment charge. See *"The Transferor and Servicer"*.

Other Statutory Protections

The FHPA provides certain protection and assurances in respect of the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment. Generally, no action or omission by the OEB, the Minister of Energy or the Crown, and no regulation under the FHPA, will be effective to reduce, impair, postpone or terminate the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment or to impair or postpone the invoicing, collection or remittance of the Clean Energy Adjustment. If an Electricity Vendor, the IESO or the Financial Services Manager, has failed, or will fail, to comply with the FHPA ~~or the Regulations~~, the Issuer may apply to an Ontario court to make an order directing such party to comply and requiring compensation to be provided to the Issuer by such non-compliant party. Additional contractual protections are provided in the Change of Law Protection Agreement described below.

CHANGE OF LAW PROTECTION AGREEMENT

The following brief summary of certain provisions of the Change of Law Protection Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Change of Law Protection Agreement are qualified in their entirety by reference to the Change of Law Protection Agreement and the detailed provisions thereof. The Change of Law Protection Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

Pursuant to the Change of Law Protection Agreement ~~in favour of the Indenture Trustee~~, upon a Protection Event and delivery by the Indenture Trustee of a written payment demand, the Province of Ontario is required to make payments of amounts that are due and payable in respect of all Approved Obligations when due and payable into the Protection Account ~~(as hereinafter defined)~~. The Issuer and Indenture Trustee must ensure that amounts deposited into the Protection Account are applied to pay ~~each~~ Specified ~~Creditor~~**Creditors** to whom ~~an amount is~~**amounts are** due and payable under an Approved Obligation **in accordance with the provisions of the Master Trust Indenture.** See *"Capital Markets Platform"*. The Province of Ontario's obligation to make such payments under the Change of Law Protection Agreement upon a Protection Event and delivery by the Indenture Trustee of a written payment demand is referred to as the "**Limited Guarantee**".

The payment obligations of the Province of Ontario under the Limited Guarantee differ depending on whether an Acceleration has occurred. If no Acceleration has occurred in respect of any ~~Obligation Secured~~**Senior Notes** on or before a date on which the Province of Ontario is to perform the Limited Guarantee, the Change of Law Protection Agreement provides that the Province of Ontario is to pay the amounts due and payable on such date in respect of Approved Obligations. If an Acceleration has occurred in respect of any ~~Obligation Secured~~**Senior Notes** on or before a date on which the Province of Ontario is to perform the Limited Guarantee, the Province of Ontario is to pay the amounts that would be available to be paid on such date in respect of the Approved Obligation on an applicable payment date in respect of the Approved Obligation under the applicable payment provisions of the Master Trust Indenture, determined on the assumption that the amount available for allocation to Specified Creditors in accordance with such applicable payment provisions of the Master Trust Indenture in respect of each relevant

month during each Reference Period is equal to the estimated Finance Amount determined in respect of such Reference Period ~~for purposes of [section 15(1) of the FHPA (in effect as at December 21, 2017), including section 6.1 of the General Regulation under the FHPA (in effect as at December 21, 2017)]~~[45], divided by the number of months in such Reference Period.

The Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include payments of amounts that are due and payable in respect of the **Senior** Notes).

Under the Change of Law Protection Agreement, the right to deliver a written payment demand on occurrence of a Protection Event to enforce the Limited Guarantee is the only remedy available to the Indenture Trustee (and to Specified Creditors, to the extent they are permitted to exercise any rights, interests or elections under and in accordance with the Master Trust Indenture). Specified Creditors are not permitted to exercise any rights, interests, or elections under the Change of Law Protection Agreement, other than in the manner and to the extent effected and exercised under, in accordance with and subject to the limitations set forth in the Master Trust Indenture as at December 21, 2017.

In connection with the provision of the Limited Guarantee, OPG, as Financial Services Manager, has entered into a process agreement with the Province of Ontario pursuant to which OPG is required to satisfy certain reporting and other requirements regarding the Issuer's incurrence of, and material amendments to, any Issuer Funding Obligations.

Protection Event

Each of the following constitutes a "**Protection Event**" under the Change of Law Protection Agreement:

(a)

(i) the Ontario legislature repeals, and does not replace on an equivalent basis, or amends, the FHPA~~, in whole~~ or ~~in part~~**any portion thereof**, as in effect on the date hereof;

(ii) the Ontario legislature enacts or amends any other statute;

(iii) the Lieutenant Governor in Council repeals, and does not replace on an equivalent basis, the regulations made under the FHPA **or any portion thereof**, in whole or in part, as in effect on the date hereof;

(iv) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*) as in effect on the date hereof; or

(v) the implementation of a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province of Ontario or an entity controlled by the Province of Ontario,

in each case, that (X) adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in any of clauses (i) to (v)

[45] ~~Perhaps this should instead cross-reference a more detailed description and explanation of the "Acceleration" mechanics under 6.1 of the Regulation.~~

above, or (Y) adversely affects the enforceability of, or adversely changes, the terms and conditions of the Change of Law Protection Agreement or of any of the agreements under which Approved Obligations arise; or

(b) a court of competent jurisdiction determines that all or a portion of the FHPA ~~or the Regulations~~, as in effect on the date hereof, is *ultra vires* or invalid in a way that adversely affects the ability of the Issuer to receive amounts in respect of its Investment Interest so that it can pay Approved Obligations when due and payable and that has the effect of the Issuer not in fact having sufficient funds to pay such Approved Obligations that have become due and payable, in each case determined after taking into account and having regard to (i) any funds available at such time to apply to such Approved Obligations, including in any finance reserve account, capital account or collateral posting account applicable under a derivative agreement, (ii) the availability of any credit enhancement agreement to which the Issuer is a party and (iii) any reasonably expected potential effect of a True-up Amount in the Reference Period immediately following the occurrence of an event described in this paragraph (b).

The occurrence of a Protection Event in and of itself will not result in the acceleration of the Senior Notes.

On a Protection Event and payment by the Province of Ontario of amounts in respect of Approved Obligations that are due and payable into the Protection Account, such deposited amounts are applied by the Issuer and Indenture Trustee in the priority of payments governed by the Master Trust Indenture.

Upon the Province of Ontario's payment of amounts in respect of Approved Obligations that are due and payable into the Protection Account, the Province of Ontario will be subrogated and entitled to all of the rights ~~and interests~~ of applicable Specified Creditors (including Noteholders) under and in respect of the Approved Obligations to the extent of the amounts paid. Applicable Specified Creditors in respect of whom amounts were deposited into the Protection Account will not have continuing rights, interests or entitlements (including rights as a secured party) in respect of Approved Obligations to the extent so paid; the Province of Ontario will be the absolute assignee of such rights. The Province of Ontario will have the right to be paid from the Issuer the amounts that the Province of Ontario paid in respect of the Approved Obligations ("**Subrogation Amounts**"), such Subrogation Amounts being payable in the same order of priority and with the same entitlements accruing to the Province of Ontario as applied to the amounts in respect of the Approved Obligations previously owing to Specified Creditors that the Province of Ontario has paid. The Province of Ontario will also be entitled to the benefit of the Collateral ~~(as hereinafter defined)~~ and proceeds therefrom to the extent of the amounts paid under the Limited Guarantee.

As payee of Subrogation Amounts, the Province of Ontario will be a Specified Creditor under the Master Trust Indenture ~~and no person entitled under any Obligation Secured (including a Specified Creditor) that ranks equal with or subordinate to the Approved Obligation in respect of which the Province of Ontario is owed a Subrogation Amount will be entitled to make any claim or assert any right in or to the amounts paid or payable to the Province of Ontario, and no such person will have any right to the Collateral or any proceeds therefrom in respect of any Subrogation Amount~~. Further, the entitlements of the Province of Ontario to Subrogation Amounts arising in respect of Approved Obligations that are interest and principal obligations on Notes will be treated for all purposes of the Master Trust Indenture as interest and principal obligations, respectively, arising under Notes, having the same priority and any applicable voting rights as under the related Approved Obligations, and accordingly the Province of Ontario will be entitled to all of the rights, entitlements, interests and privileges of a holder of such Notes in accordance with the Master Trust Indenture, as supplemented by the supplemental indenture or other indenture document under which the related Approved Obligations were issued**, provided that for purposes of determining voting rights with respect to Notes, Notes in** which the Province of Ontario **has an interest will be deemed not to be outstanding at any time that a Specified Creditor other than the Province of Ontario has an interest in such Class of Notes**.

Approved Obligations & Adherence Conditions

Under the Management Agreement, the Manager is required to ensure that all obligations of the Issuer are and remain Approved Obligations under the Change of Law Protection Agreement.

An "**Approved Obligation**" under the Change of Law Protection Agreement means: (i) a Certified Primary Obligation if the adherence conditions applicable thereto have been satisfied at the time such obligation was incurred; (ii) all other Primary Obligations that are not Certified Primary Obligations (except any Primary Obligation to which the Limited Guarantee will not apply on or after delivery of a Suspension Notice as described below); and (iii) all Certified Primary Obligations that the Province of Ontario, in its sole discretion, designates in writing is an Approved Obligation.

A "**Primary Obligation**" under the Change of Law Protection Agreements means any Obligation Secured under the Master Trust Indenture (i) that is a Funding Obligation or (ii) that otherwise is a payment obligation of the Issuer that gives rise to a Finance Amount, in each case other than (x) any amounts required to be deposited by or on behalf of the Issuer into any capital account or finance reserve account; and (y) any obligation to pay the Issuer or on the Issuer's direction any remaining amounts in the Collection Account pursuant to the Master Trust Indenture.

A "**Certified Primary Obligation**" means a Primary Obligation: (i) incurred by or on behalf of the Issuer to fund its ownership of an Investment Interest, including any Refinancing, other than a Post-Suspension Refinancing or a Pre-Approved Refinancing (each as defined below), of such a Primary Obligation (for greater certainty, including, in the case of any Certified Primary Obligation permitting funding transactions pursuant to a Funding Obligation Agreement applicable to the Certified Primary Obligation, each individual borrowing or funding utilization thereunder), (ii) incurred by or on behalf of the Issuer upon the Issuer entering into a derivative agreement, in which case the Certified Primary Obligation therefor shall be the Master Agreement applicable to such derivative agreement and not any individual trade confirmation other than a trade confirmation that modifies or purports to override the express terms or conditions of the related Master Agreement, or (iii) incurred by or on behalf of the Issuer upon entering into a contract that has a term of more than three (3) years which is not terminable by the Issuer giving three (3) years' notice or less and expected (as determined by the Manager, acting reasonably) aggregate payments by the Issuer thereunder during the term of such contract are or would be in excess of $5,000,000 (that, for greater certainty, is not otherwise captured in clauses (i) and (ii) above).

The Limited Guarantee shall apply to all Certified Primary Obligations that meet the following adherence conditions:

(a) the Certified Primary Obligation when incurred is an Obligation Secured under the Master Trust Indenture;

(b) OPG, as Financial Services Manager, delivers a certificate to the Indenture Trustee on or before the incurrence of such obligation certifying, among other things, that OPG has delivered a certificate to the Province of Ontario confirming that OPG has complied with all of its obligations to the Province of Ontario and internal requirements and processes in connection with the adherence of the Limited Guarantee to the Certified Primary Obligation (an "**Adherence Compliance Certificate**"); and

(c) the Province of Ontario has not provided a Suspension Notice to the Indenture Trustee, OPG and the Issuer.

All Senior Notes shall constitute Obligations Secured under the Master Trust Indenture and therefore condition (a) above will be satisfied for all Offerings of Senior Notes. It will be a condition to any Offering of Senior Notes that OPG deliver the adherence certificate required pursuant to (b) above or that the Province of Ontario designates in writing that the Senior Notes are Approved Obligations. The Change of Law Protection Agreement provides that delivery of an adherence certificate shall be determinative of satisfaction of this adherence condition, notwithstanding that such certificate may include inaccuracies, be incomplete or otherwise be defective or deficient, and such certificate may be relied upon as conclusive evidence of same.

Suspension Notice & Post-Suspension Refinancings

The Change of Law Protection Agreement will remain in full force and effect until the indefeasible payment, observance and performance in full of the Approved Obligations**, including the Senior Notes**.

However, in the following limited circumstances, the Province of Ontario may deliver a written notice (a "**Suspension Notice**") to the Indenture Trustee, the Financial Services Manager and the Issuer:

(a) an acceleration of Funding Obligations in accordance with the provisions of the Master Trust Indenture or an event of default, early amortization event, termination event or similar event or circumstance (including any event that with the passage of time or the giving of notice would become such an event) of or in respect of the obligations of any party under any Program Agreement;

(b) a default in the performance, or breach, of any covenants of OPG, as Financial Services Manager, or OPG, in its corporate capacity, in each case to the Province of Ontario in connection with its obligations to the Province of Ontario pursuant to internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligation and the expiration of any applicable cure period;

(c) a representation or warranty made by OPG or a certification made by one or more officers of OPG, in each case whether as Financial Services Manager or in its corporate capacity, to the Province of Ontario in connection with its obligations to the Province of Ontario and its internal requirements and processes in connection with the provision or adherence of the Limited Guarantee to or in respect of any Certified Primary Obligations, proves to be incorrect in any material respect on the date made and the expiration of any applicable cure period; or

(d) the Financial Services Manager no longer being the Manager or actions having been taken by or on behalf of the Indenture Trustee to remove the Financial Services Manager as the Manager;

If a Suspension Notice has been provided under the Change of Law Protection Agreement (the provision of such notice being a "**Suspension Event**"), the Limited Guarantee shall not apply in respect of: (i) any Primary Obligation incurred, excluding any Post-Suspension Refinancing, or (ii) any amendment of any Primary Obligation that has a Material Effect, unless otherwise agreed to by the Province of Ontario, in each case, on or after the time such Suspension Notice is delivered.

Following the occurrence of a Suspension Event, the Limited Guarantee shall continue to apply in respect of any Post-Suspension Refinancing; provided that prior to the Financing Entity incurring any Primary Obligation constituting a Post-Suspension Refinancing, the Manager shall provide the Province of Ontario with at least 30 days' notice of its intention to seek a Post-Suspension Refinancing and during such 30-day period the Province of Ontario may, but is not obligated to, offer to fund such Post-Suspension Refinancing or arrange for another Person to fund such Post-Suspension Refinancing on the same terms as set out in the notice or on such other terms as may be considered by the Province of Ontario to be not more onerous on the Financing Entity and that are acceptable on that basis to the Financing Entity, acting reasonably.

A "**Post-Suspension Refinancing**" means a Funding Obligation that is an Obligation Secured and that is incurred on or after the occurrence of a Suspension Event in compliance with the requirements of the Change of Law Protection Agreement, as a Refinancing of one or more Series of Approved Obligations (including any Pre-Approved Refinancing incurred on or after the occurrence of a Suspension Event), in each case the proceeds of which, together with any other funds that may be available, are used solely for the purpose of paying in full such Series of Approved Obligations and any costs and expenses associated with such Refinancing.

A "**Pre-Approved Refinancing**" means a Refinancing of a Certified Primary Obligation in respect of which the Province of Ontario has, prior to the incurrence of such Certified Primary Obligation, agreed shall be an Approved Obligation, subject to compliance with such conditions and requirements as may be specified in such agreement.

A "**Material Effect**" means a material adverse effect on the obligations or the rights of the Province of Ontario under the Limited Guarantee that relates to, and in each case, differs in any material respect from the terms or conditions applicable to any transaction document **to which the Limited Guarantee applies and** which was

previously provided to the Province of Ontario, the following: (i) the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization) that, in each case, is inconsistent with the Fair Allocation Amount; (ii) the appointment, obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Issuer or the Issuer Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province of Ontario as a Specified Creditor; (v) the payment provisions and associated priorities set forth in the Master Trust Indenture; (vi) compliance by the Financial Services Manager with the then applicable Financing Plan; (vii) compliance by the Financial Services Manager or the Issuer with the FHPA ~~or the Regulations~~; or (viii) the Province of Ontario's rights of subrogation or assignment or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

Accordingly, notwithstanding delivery of a Suspension Notice, the Limited Guarantee shall continue to apply to: (i) any Approved Obligations that were incurred prior to the Suspension Event and (ii) any Funding Obligations incurred by the Issuer following a Suspension Event if the terms and conditions of the Change of Law Protection Agreement are satisfied and the proceeds of such incurrence are to be used for the purpose of repaying one or more series of Approved Obligations. Accordingly, subject to compliance with the Change of Law Protection Agreement, any Senior Notes or other Funding Obligations that may be issued following a Suspension Event to refinance Senior Notes that were ~~Approved Obligations~~ issued prior to a Suspension Event will continue to have the benefit of the Limited Guarantee.

THE ISSUER

The Issuer is an unincorporated open-ended unit trust ~~governed by~~**established under** the laws of the Province of Ontario pursuant to ~~a declaration of trust made December 20, 2017 (the "~~**the** Declaration of Trust~~"). Computershare Trust Company of Canada (the "~~**. The** Issuer Trustee~~")~~ is the sole trustee of the Issuer, which is a Financing Entity established to incur Funding Obligations for the purpose of acquiring Investment Interests pursuant to the FHPA. The principal business address and head office of the Issuer is in Ontario, in the care of the Issuer Trustee at the following address: 100 University Avenue, 11th Floor, Toronto, Ontario M5J 2Y1.

The following brief summary of certain provisions of the Declaration of Trust does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Declaration of Trust are qualified in their entirety by reference to the Declaration of Trust and the detailed provisions thereof. The Declaration of Trust may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

The Declaration of Trust establishes the Issuer to carry on activities for the exclusive benefit of its unitholders, FHP2017 Inc., a wholly-owned subsidiary of OPG, and BNY Trust Company of Canada, the Indenture Trustee under the Master Trust Indenture (collectively, the "**Unitholders**"). The beneficial interest and rights generally of the Unitholders in the Issuer are limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Issuer. The legal ownership of the trust property and the right to conduct the activities of the Issuer are vested exclusively in the Issuer Trustee and no Unitholder has any right of ownership in any of the trust property. Except in limited circumstances provided in the Declaration of Trust, no Unitholder is entitled to interfere with or give any direction to the Issuer Trustee with respect to the affairs of the Issuer or in connection with the exercise of any powers or authorities conferred upon the Issuer Trustee under the Declaration of Trust. The Issuer Trustee will generally have, free from any power or control on the part of the Unitholders, full authority over the trust property and the activities of the Issuer to the same extent as if the Issuer Trustee were the sole and absolute owner thereof. The Unitholders will also not be subject to any liability arising out of the activities of the Issuer.

The Issuer Trustee, on behalf of the Issuer, has entered into a management agreement with OPG, as Manager, whereby all of the powers and duties of managing the Issuer have been delegated to the Manager. See *"The Manager."*

The permitted activities of the Issuer are limited to:

(a) acquiring, owning, holding, administering or entering into agreements regarding the acquisition and servicing of Investment Interests, along with certain other related assets;

(b) managing, selling, assigning, pledging and collecting amounts due on or otherwise dealing with Investment Interests and certain other related assets in accordance with the terms of the Program Agreements;

(c) negotiating, authorizing, executing, delivering, assuming the obligations under and performing its duties under the Program Agreements;

(d) filing with any applicable securities commission one or more prospectuses, offering memoranda, registration statements or documents necessary or desirable to register one or more series of Funding Obligations under the securities laws of any applicable jurisdiction;

(e) authorizing, executing, delivering, issuing and registering one or more series of Funding Obligations;

(f) making payments on Funding Obligations;

(g) pledging its interest in Investment Interests and related assets to the Indenture Trustee in order to secure Funding Obligations; and

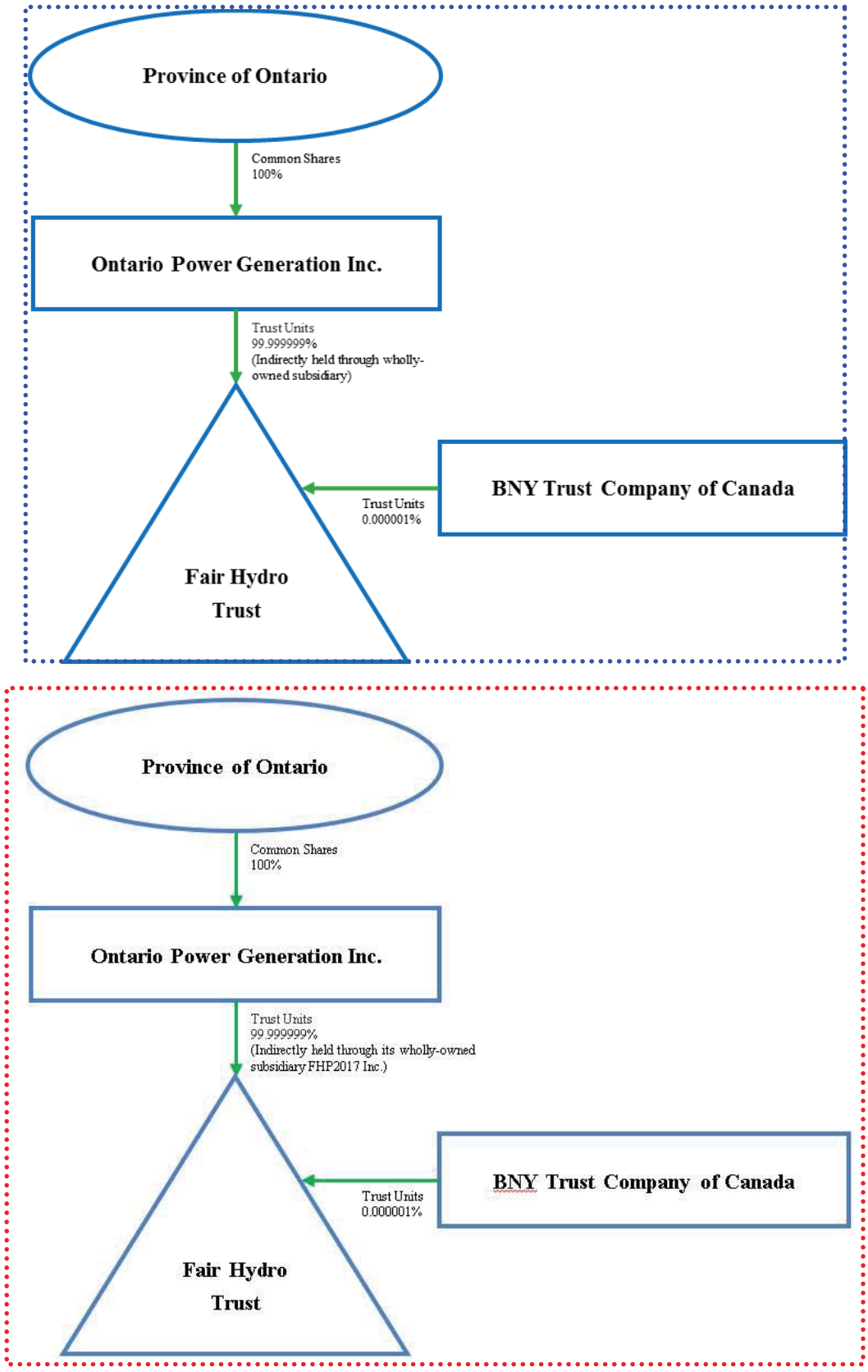
(h) engaging in any lawful act or activity that is incidental to the above-mentioned purposes.

The Issuer Trustee may amend the Declaration of Trust under specified circumstances without the consent of Unitholders provided (i) the amendment will not materially adversely affect the interest of any Unitholder, unless that Unitholder has approved of the amendment in writing, and (ii) in respect of any material amendment, the Rating Agency Condition has been satisfied. The Issuer Trustee is required to provide the Rating Agencies and the Indenture Trustee with a copy of any amendment, variation, supplement, replacement or restatement of the Declaration of Trust.

The consent of the Indenture Trustee, in addition to all other Unitholders, will be required to wind up the Issuer or voluntarily institute or consent to insolvency proceedings against the Issuer while any Funding Obligations remain outstanding. The Issuer Trustee may be removed by the Unitholders at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date such removal is to take effect. The Issuer Trustee may also be removed by the Unitholders with no prior written notice if it becomes bankrupt or insolvent or it is unable to exercise its duties under the Declaration of Trust. The Issuer Trustee may resign on 120 days' prior written notice to the Unitholders, the Indenture Trustee and the Rating Agencies. No such resignation will be effective until a replacement issuer trustee acceptable to the Unitholders and the Indenture Trustee has been appointed and the Rating Agency Condition has been satisfied.

Each of the Issuer Trustee and its directors, officers, agents, representatives and employees will be indemnified from and against all claims (including any claim arising out of the assessment of any tax on income by a taxing authority), demands, levies, penalties, suits, losses, actions, causes of action, costs, charges, fees and expenses, damages and liabilities whatsoever arising out of, among other things, any action or omission in relation to the execution of the duties of the Issuer Trustee or in relation to the trust property or the activities of the Issuer, except, in each case, for wilful misconduct, gross negligence or failure to comply with the standard of care established by the Declaration of Trust.

The following diagram illustrates the structure of the Issuer and its affiliates.



THE MANAGER

~~OPG has entered into a management agreement with the Issuer dated as of December 20, 2017 (the "~~**Pursuant to the** Management Agreement~~") pursuant to which,~~ the Issuer has delegated to OPG, as Manager, all of the powers and duties of managing the Issuer. The following brief summary of certain provisions of the Management Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Management Agreement are qualified in their entirety by reference to the Management Agreement and the detailed provisions thereof. The Management Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

The powers and duties delegated to the Manager under the Management Agreement include, among others:

(a) negotiating and executing, on behalf of the Issuer, the Program Agreements;

(b) maintaining accounts and banking records;

(c) enforcing the rights of the Issuer under the Program Agreements and the FHPA;

(d) determining, in accordance with the Financing Plan, when it is appropriate for the Issuer to incur Funding Obligations;

(e) ensuring that all Primary Obligations of the Issuer are and remain Approved Obligations;

(f) administering all activities of the Issuer in connection with the issuance, sale, payment, repurchase and redemption of the Issuer's Funding Obligations;

(g) preparing, in accordance with applicable securities laws, any offering documents to be furnished by the Issuer to prospective purchasers of Funding Obligations, including the Senior Notes, and ensuring that all statements of the Issuer made therein are at all times true and correct in all material respects;

(h) arranging for compliance by the Issuer with any continuous disclosure obligations;

(i) arranging for the retention of legal counsel, accountants and an auditor for the Issuer;

(j) preparing financial statements and paying taxes on behalf of the Issuer;

(k) preparing a monthly portfolio report setting out information regarding incoming and outgoing cash flows; and

(l) providing such other services as are incidental to the foregoing or as may be agreed upon between the Issuer and the Manager.

The Manager is also required to work with the IESO to develop, on or before January 31, 2020, a written implementation plan identifying the actions to be taken by the IESO and the Issuer to facilitate the OEB, the Issuer, the IESO and Electricity Vendors being prepared to perform their obligations under the FHPA ~~and the Regulations~~ when setting, invoicing and collecting the Clean Energy Adjustment. The Manager will deliver written progress reports to the Issuer and the Indenture Trustee on the status of the implementation plan on or before June 30, 2020, October 31, 2020 and January 31, 2021.

Following the Moratorium Period, the Manager will review a monthly servicer report required to be delivered to the Issuer by the IESO under the Master Transfer and Servicing Agreement and make commercially reasonable efforts to resolve any Electricity Vendor failures or discrepancies identified in such report that have not been remedied or adequately explained by Electricity Vendors. The Manager is obligated to institute any proceedings necessary to compel performance by Electricity Vendors of any obligations or duties under the FHPA-

~~and the Regulations~~, including with respect to the invoicing, collection and remittance of Clean Energy Adjustment amounts. Commencing May 1, 2021 and pursuant to its rights under the Regulations,[46] the Manager **(on behalf of the Issuer)** shall review, or cause to be reviewed, on an annual basis, or less frequently as may be determined by the Manager and subject to satisfaction of the Rating Agency Condition, the records maintained by Electricity Vendors with respect to the Clean Energy Adjustment and if there is evidence of material non-compliance by an Electricity Vendor, the Manager will promptly review or cause to be reviewed the records of such Electricity Vendor.

The Manager is obligated to perform its duties under the Management Agreement diligently and in conformity with the Issuer's obligations under each of the Program Agreements and with the FHPA ~~and the Regulations~~, as applicable, and honestly, in good faith and in the best interest of the Issuer. The Manager must exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

In addition to the powers and duties delegated to OPG pursuant to the Management Agreement, OPG has also agreed to comply with its duties under the FHPA in its capacity as Financial Services Manager, including:

(a) preparing the Financing Plan to evaluate whether potential Funding Obligations should be incurred by Financing Entities for the purposes of acquiring Investment Interests ~~in accordance with the FHPA or for the purposes of a Refinancing~~;

(b) determining the amounts of the Clean Energy Adjustment, inclusive of any True-up Amount;

(c) calculating the True-up Amount;

(d) notifying the OEB of the Clean Energy Adjustment, inclusive of any True-up Amount;

(e) administering the Investment Interests on behalf of Financing Entities in accordance with the Program Agreements;

(f) ensuring that Funding Obligations are incurred in a manner that is consistent with the Financing Plan; and

(g) establishing and charging fees for the services provided under the Management Agreement.

Subject to OEB approval ~~and the Regulations~~, OPG is entitled to charge the Issuer a fee, comprised of a base fee and a variable fee, to earn a return and to recover costs and expenditures incurred by OPG on behalf of the Issuer or in relation to the establishment, management and administration of the Issuer and its Investment Interest. The priority of the Manager's entitlement to fees is subject to the payment priorities set forth in the Master Trust Indenture.

The Manager is not entitled to resign from its duties or terminate the Management Agreement as long as Funding Obligations remain outstanding. The Manager may be terminated by the Issuer Trustee, with the consent of the Indenture Trustee, or by the Indenture Trustee in accordance with the Master Trust Indenture. No termination of the Manager will be effective until a replacement manager that satisfies the Rating Agency Condition has been approved and has entered into a management agreement with the Issuer whereby the replacement manager agrees to assume, in substance, the obligations of the Manager under the Management Agreement. If the Manager ceases to perform, or inadequately performs, its management duties under the Management Agreement, it might be difficult to find a replacement for the Manager or a successor manager. See "*Risk Factors – Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and* ***as*** *Manager* ~~*of the Issuer*~~*."*

The Manager shall provide to the Issuer Trustee an annual certificate confirming compliance with certain matters, including: (i) accurate maintenance of the books and records of the Issuer; (ii) all debt obligations and expenses due and payable by the Issuer have been paid to date; (iii) all required filings with tax and regulatory

[46] ~~Please confirm the source of the right to review electricity vendor records under the Regulations. If this refers to Section 10(4) of the General Regulation, the right is that of the Issuer or the FSM.~~

authorities have been completed to date; and (iv) all material statements and reports to be delivered by the Issuer under the Program Agreements have been delivered and all material statements and reports to be received by the Issuer under the Program Agreements have been received.

The Manager indemnifies the Issuer under the Management Agreement for any losses incurred by the Issuer as a result of the failure of the Manager to perform its obligations under the Management Agreement or any breach by the Manager of its representations and warranties under the Management Agreement or any other Program Agreement to which it is a party, except to the extent such losses result from the willful misconduct, bad faith or gross negligence of the Issuer. Notwithstanding the foregoing, the Manager is not obligated to indemnify the Issuer under the Management Agreement for any losses resulting from: (i) a breach or failure to perform by a third party under any Program Agreement, the FHPA ~~or the Regulations~~ (excluding any delegation by the Manager under the Management Agreement to a third party); (ii) changes in law, (iii) the validity or applicability of the Change of Law Protection Agreement; (iv) the collectability or sufficiency of the Clean Energy Adjustment or Carrying Costs to satisfy the Issuer Funding Obligations, including the Senior Notes; or (v) any liability of the Issuer incurred after termination of the Management Agreement unless attributable to the actions or omissions of the Manager prior to such termination or in respect of a representation, warranty or covenant that survives such termination.

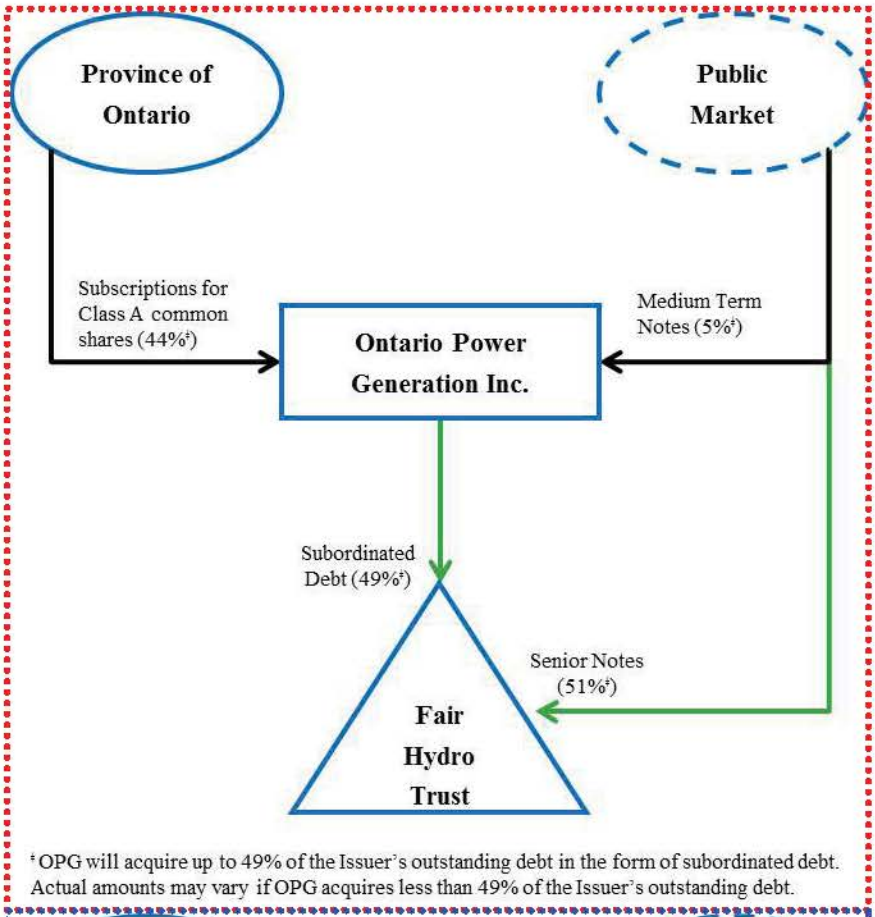
SUBORDINATED DEBT

Concurrent with every issuance of senior debt by the Issuer, including any Offering of Senior Notes, it is expected that OPG will subscribe for subordinated debt and junior subordinated debt of the Issuer in an amount of no more than 49% of all of the Issuer's Funding Obligations, approximately 44% of which is expected to be funded through equity investments in OPG by the Province of Ontario with the remaining approximate 5% being funded from OPG's available funds, including all or a portion of the proceeds of any offerings by OPG of medium term notes~~)~~.

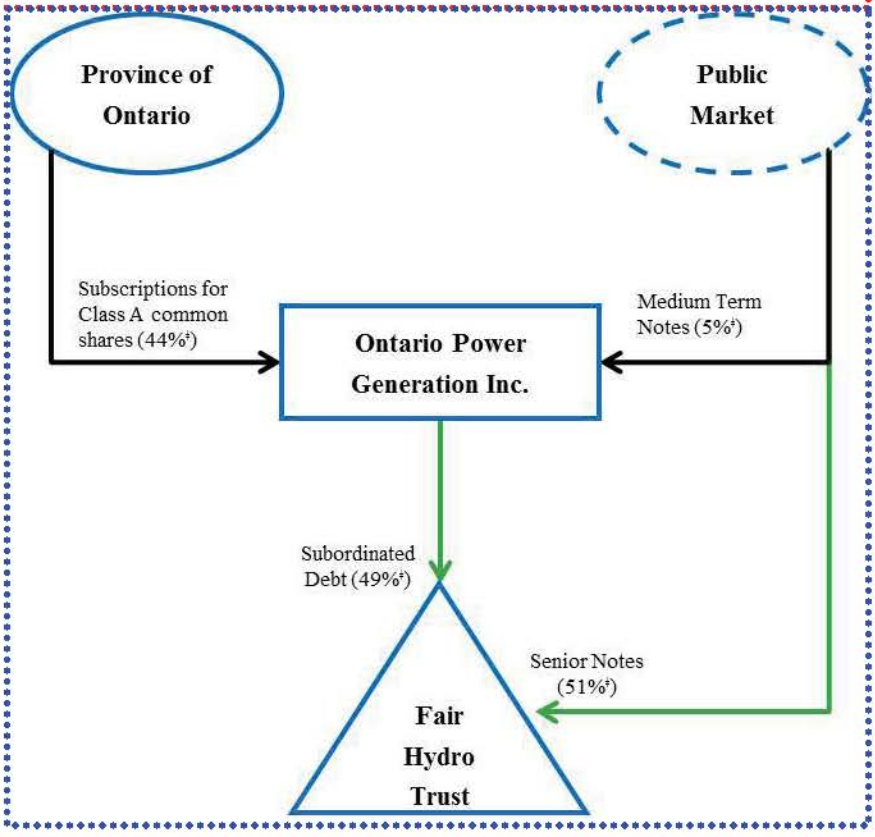
Under the Master Trust Indenture, the Issuer will be required at all times to ensure that: (i) the aggregate outstanding principal amount of all subordinated debt and junior subordinated debt be equal to not less than 35% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations; and (ii) the aggregate outstanding principal amount of all junior subordinated debt be equal to not less than 10% of the aggregate outstanding principal amount of all of the Issuer's Funding Obligations.

The Issuer is structured to be bankruptcy remote from OPG insofar as none of OPG, its subsidiaries or holders of its indebtedness will have any recourse whatsoever against the Issuer or its assets other than OPG's rights and remedies as a holder of subordinated debt of the Issuer in accordance with the provisions of that indebtedness. From an accounting perspective, however, the Issuer will be consolidated with OPG.

The following diagram illustrates the expected structure of OPG's investments in subordinated debt of the Issuer.



[1] OPG will acquire up to 49% of the Issuer's outstanding debt in the form of subordinated debt. Actual amounts may vary if OPG acquires less than 49% of the Issuer's outstanding debt.



‡ OPG is expected to acquire up to 49% of the Issuer's outstanding debt in the form of subordinated debt. Actual amounts may vary if OPG acquires less than 49% of the Issuer's outstanding debt.

SHORT TERM INDEBTEDNESS

On December 21, 2017, the Issuer entered into the following supplemental indentures under the Master Trust Indenture for the provision of an aggregate of approximately $1.56 billion in short term indebtedness (collectively, the "**Warehouse Facilities**"), of which a total of $1.179 billion is drawn as of the date hereof:

(~~i~~a) a warehouse senior series 2017-1 supplemental indenture with, among others, Royal Bank of Canada, as administrative agent for certain commercial paper conduit purchasers and financial institutions named therein, for the provision of an aggregate maximum principal amount of $800,000,000 floating rate variable funding Senior Notes, Series 2017-1 ("**Senior Notes, Series 2017-1**"), of which $601,290,000 is drawn;

(~~ii~~b) a warehouse subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $611,764,705.88 floating rate variable funding Subordinated Notes, Series 2017-1 ("**Subordinated Notes, Series 2017-1**"), of which $459,810,000 is drawn; and

(~~iii~~c) a warehouse junior subordinated series 2017-1 supplemental indenture with, among others, OPG for the provision of an aggregate maximum principal amount of $156,862,745.10 floating rate variable funding Junior Subordinated Notes, Series 2017-1 ("**Junior Subordinated Notes, Series 2017-1**"), of which $117,900,000 is drawn.

The issuance of Senior Notes, Series 2017-1, Subordinated Notes, Series 2017-1 and Junior Subordinated Notes, Series 2017-1 under the Warehouse Facilities described above were used to acquire a $1.179 billion Investment Interest ~~from the IESO~~ on December 21, 2017.

THE TRANSFEROR AND SERVICER

~~The IESO has entered into a master transfer and servicing agreement with the Issuer dated as of December 21, 2017 (the "~~**Pursuant to the** Master Transfer and Servicing Agreement~~") pursuant to which,~~ the IESO may periodically ~~transfer~~**Transfer** specified portions of the Regulatory Asset to the Issuer. Additional information regarding the IESO, including its most recently published financial statements, is available at www.ieso.ca. Such information does not form part of this confidential shelf offering memorandum and neither the Issuer nor the Agents guarantee the accuracy of such information or has independently verified the accuracy or completeness of any such information or to determine if there has been any omission by the IESO to disclose any facts, information or events which may affect the significance or accuracy of any such financial statements or other information.

The following brief summary of certain provisions of the Master Transfer and Servicing Agreement does not purport to be comprehensive or definitive. All references in this confidential shelf offering memorandum to the Master Transfer and Servicing Agreement are qualified in their entirety by reference to the Master Transfer and Servicing Agreement and the detailed provisions thereof. The Master Transfer and Servicing Agreement may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Senior Notes are outstanding.

Under the Master Transfer and Servicing Agreement, the IESO may offer, no more frequently than monthly, to ~~transfer~~**Transfer** to the Issuer ~~its right, title and interest in, to and under~~ a specified portion of the Regulatory Asset. The Issuer has the right, but not the obligation, to accept the IESO's offer. The IESO is responsible for servicing the Issuer's Investment Interest in accordance with the Regulations and the Master Transfer and Servicing Agreement. Its responsibilities including, among others:

(a) establishing a segregated account to be used for the sole purpose of ~~collecting~~**receiving** the Clean Energy Adjustment in respect of the Issuer's Investment Interest and making commercially reasonable efforts to cause Electricity Vendors to do the same;

(b) making commercially reasonable efforts to cause each Electricity Vendor to establish procedures for the invoicing of amounts in respect of the Clean Energy Adjustment;

(c) responding to inquiries by Electricity Vendors with respect to the Clean Energy Adjustment and amounts payable in respect thereof;

(d) reviewing reports submitted to the IESO by Electricity Vendors regarding the collection of Clean Energy Adjustment amounts for material manifest discrepancies;

(e) contacting Electricity Vendors on the occurrence of certain events;

(f) holding Clean Energy Adjustment amounts ~~collected~~**received** in respect of the Issuer's Investment Interest in trust for the benefit of the Issuer and remitting such amounts to the Issuer on ~~a monthly basis~~**the 18th business day of each month**, subject to daily remittance being required in certain limited circumstances;

(g) together with the Issuer, settling a form of monthly servicer report to be provided to the Issuer; and

(h) ~~forecasting the electricity consumption of Specified Consumers and~~ providing ~~such~~ forecast information to the OEB and the Issuer.

~~While the IESO provides no guarantee that collections of the Clean Energy Adjustment from Electricity Vendors will equal amounts invoiced or that the Clean Energy Adjustment amounts will be sufficient to satisfy the Issuer's Funding Obligations, the IESO must follow standards, policies and procedures in performing its servicing duties that are customary for an electricity market operator and administrator that regularly performs settlement functions.~~**The** IESO must follow standards, policies and procedures in performing its servicing duties that are customary for an electricity market operator and administrator that regularly performs settlement functions. **The Master Transfer and Servicing Agreement provides for various limitations on the duties and responsibilities of the IESO including that: (i)** the IESO provides no guarantee that collections of the Clean Energy Adjustment from Electricity Vendors will equal amounts invoiced or that **Clean Energy Adjustment amounts will be sufficient to satisfy the Issuer's Funding Obligations, (ii) the IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Investment Interest, the collectability of the Clean Energy Adjustment or that Clean Energy Adjustment amounts received will be sufficient to satisfy the Issuer's Funding Obligations, (iii) the IESO shall have no liability or responsibility to any person in respect of any forecasts or other information provided, provided only that such forecasts or other information has been prepared and provided in good faith and (iv) the IESO is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from Specified Consumers or not remitted by Electricity Vendors to the IESO.**

The IESO is required to work with the Manager to develop, on or before January 31, 2020, a written implementation plan identifying the actions to be taken by the IESO and the Issuer to facilitate the OEB, the Issuer, the IESO and Electricity Vendors being prepared to perform their obligations under the FHPA ~~and the Regulations~~ when setting, invoicing and collecting Clean Energy Adjustment amounts. The IESO and the Manager will deliver to the Issuer written progress reports on the status of the implementation plan on or before June 30, 2020, October 31, 2020 and January 31, 2021. The IESO is also required to work with the Issuer to settle a form of monthly servicer report, which will be provided to the Manager on or before the 20th business day after the end of each month in which Clean Energy Adjustment amounts are collected by Electricity Vendors from Specified Consumers, and which report is expected to contain available information regarding the Clean Energy Adjustment amounts billed, collected and remitted by Electricity Vendors, actual electricity consumption compared to forecast electricity consumption and such other information as may be agreed to by the IESO.

Generally, all servicing duties provided by the IESO to the Issuer are provided at no cost to the Issuer.[47] However, the Issuer will reimburse the IESO for its direct costs relating to the performance by the IESO of its duties and obligations under the Master Transfer and Servicing Agreement that are not otherwise recovered by the IESO

[47] ~~**Note:** Please confirm.~~

under the *Electricity Act, 1998* (Ontario), excluding any costs relating to the performance of the IESO's duties and obligations under the FHPA ~~or the Regulations~~, including its obligation to pay the Issuer's Carrying Costs.

During the Moratorium Period and extending to July 31, 2021, the IESO, which is rated A(high) by DBRS and Aa2 by Moody's is required under the Regulations to pay and remit to the Issuer amounts charged to the IESO by the Issuer in respect of its Carrying Costs. Under the Regulations, Carrying Costs include all funding costs, such as interest on the Senior Notes, and other expenses of the Issuer, other than repayment of principal on any debt obligations of the Issuer, including repayment of principal on the Senior Notes.[48] Pursuant to the Master Transfer and Servicing Agreement, on or before the fourth business day of each calendar month, the Issuer will submit a carrying costs statement to the IESO certifying the amount of Carrying Costs estimated to be incurred by the Issuer in the following month. On or before the 14th business day following receipt of the Issuer's carry costs statement, the IESO is required to deliver the amount specified therein to the Issuer. The IESO has a $2 billion unsecured credit facility provided by the Ontario Financing Authority, expiring ~~■, 20■,~~ **September 30, 2022,** which is permitted to be used to pay the Issuer's Carrying Costs.

As security for the performance of its obligation to pay the Issuer's Carrying Costs, the IESO has granted the Issuer a first-priority security interest in all ~~of its~~ accounts receivable~~, which includes the amounts receivable by the IESO~~ **owing to the IESO from Electricity Vendors, including amounts owing** with respect to the global adjustment charge. The amounts paid by the IESO to fund these Carrying Costs will be recorded by the IESO in ~~a~~**the** variance account and form part of the Regulatory Asset which is expected to be offered by the IESO for ~~transfer~~**Transfer** to the Issuer in a subsequent period ~~and, upon~~**. Upon** completion of such ~~transfer, shall become part of~~**Transfer,** the Issuer~~'s~~ **will acquire an** Investment Interest pursuant to the ~~Regulations~~**FHPA**.

As security for any failure of Non-Investment Grade Rated Electricity Vendors to remit Clean Energy Adjustment amounts collected under the FHPA, the IESO is required, pursuant to the Master Transfer and Servicing Agreement, to provide to the Issuer on or prior to the first day of the first billing period when the Clean Energy Adjustment is being invoiced to Specified Consumers, a letter of credit from a provider that satisfies the Rating Agency Condition or a performance guarantee or such other form of security that is acceptable to the Issuer and that satisfies the Rating Agency Condition. A "**Non-Investment Grade Rated Electricity Vendor**" means any Electricity Vendor that does not have a rating of: (i) "Baa3" or higher by Moody's, unless otherwise agreed to by Moody's; and (ii) "BBB(low)" or higher by DBRS, unless otherwise agreed to by DBRS.

The amount of security required from the IESO will be calculated on an annual basis and will be equal to the amount determined by the following formula:

((A / B) x C x D / 365 x E)

where A, B, C, D and E are as follows:

A = for the most recently completed twelve-month period, the aggregate amount of energy consumed by Specified Consumers of all Non-Investment Grade Rated Electricity Vendors.

B = for the same twelve-month period used for A, the aggregate amount of energy consumed by all Specified Consumers.

C = for the most current twelve-month forecast period available, the Clean Energy Adjustment amounts estimated to be payable by all Specified Consumers.

D = 45, representing the estimated number of days that total Clean Energy Adjustment amounts are expected to be held by Electricity Vendors **or such other number as mutually agreed to in writing by the Issuer and the IESO and that satisfies the Rating Agency Condition**.

[48] ~~**Note:** Consider a description of "carrying costs" that conforms to the definition set out in Section 9.1(3) of the General Regulation. Also note that the Glossary defines "Carrying Costs" as having the meaning ascribed to the term in the Regulations.~~

E = 0.50 or another value as mutually agreed to in writing by the Issuer and the IESO and that satisfies the Rating Agency Condition.

The Master Transfer and Servicing Agreement sets out specific servicer defaults. Upon the occurrence of a servicer default, the Issuer will be entitled to appoint a replacement servicer that will perform the IESO's duties as servicer under the Master Transfer and Servicing Agreement. Any replacement servicer must be permitted under the FHPA to perform the duties of servicer, the Rating Agency Condition must be satisfied and the replacement servicer must enter into a master transfer and servicing agreement with the Issuer having substantially the same terms as the Master Transfer and Servicing Agreement.

The IESO has agreed to indemnify the Issuer for any losses incurred by the Issuer as a result of the failure of the IESO to perform its obligations under the Master Transfer and Servicing Agreement or any other Program Agreement to which it is a party or the breach by the IESO of any of its representations or warranties under the Master Transfer and Servicing Agreement or any other Program Agreement to which the IESO is a party, except to the extent such losses result from the willful misconduct, bad faith or gross negligence of the Issuer. Notwithstanding the foregoing, the IESO is not obligated to indemnify the Issuer under the Master Transfer and Servicing Agreement for any losses resulting from: (i) a breach or failure to perform by a third party under any Program Agreement, the FHPA ~~or the Regulations~~ (excluding any delegation by the IESO under the Master Transfer and Servicing Agreement to a third party); (ii) changes in law, (iii) the collectability or sufficiency of the Clean Energy Adjustment to satisfy the Issuer's Funding Obligations, including the Senior Notes; or (iv) any liability of the Issuer incurred after termination of the Master Transfer and Servicing Agreement unless attributable to the actions or omissions of the IESO prior to such termination or in respect of a representation, warranty or covenant that survives such termination.

CREDIT RATINGS

Credit ratings are intended to provide investors with an independent measure of the credit quality of securities and are indicators of the likelihood of the payment capacity and willingness of an issuer to meet its financial commitment on an obligation in accordance with the terms of such obligation. The credit ratings accorded to the Senior Notes are not recommendations to purchase, hold or sell such securities inasmuch as such ratings are not a comment upon the market price of the securities or their suitability for a particular investor. There is no assurance that any rating will remain in effect for any given period of time or that any rating will not be revised or withdrawn entirely by a rating agency in the future if, in its judgment, circumstances so warrant.

The Term Sheet for each Offering will identify the rating of the applicable Senior Notes at the time of such Offering.

RATING AGENCY CONDITION

The Program Agreements provide that certain actions are subject to the "**Rating Agency Condition**". In each such case, satisfaction of the Rating Agency Condition requires: (a) that the Issuer has delivered written notice of the proposed action to the Rating Agencies at least ten business days prior to the effective date of such action; and (b) that the Rating Agencies shall have informed the Issuer prior to the effective date of such action that such action will not result in the reduction or withdrawal of the rating in effect with respect to the Notes immediately before the taking of such action. If the Rating Agency Condition is to be satisfied without specifying one or more specific Series or Tranches of Notes, the Rating Agency Condition must be satisfied with respect to all outstanding Series or Tranches of Notes.

CAPITAL MARKETS PLATFORM

The Financial Services Manager has developed a Financing Plan for the Issuer which encompasses an ongoing program which allows for the issuance of a variety of short and long term debt, as well as interest rate and currency swaps and other hedging instruments.

The Master Trust Indenture establishes common security and a set of common covenants given by the Issuer for the benefit of all of its creditors. Notes are issued under Supplemental Indentures and in certain cases, Terms Documents. Borrowings are incurred pursuant to liquidity agreements or loan agreements. Notes and Borrowings incurred by the Issuer are Issuer Funding Obligations. Each Issuer Funding Obligation will be part of a Class and Series of Issuer Funding Obligations, and may include one or more Tranches. A Class designation determines the relative seniority for receipt of cash flows. See *"— Subordination Provisions",* "*— Payment Waterfalls Prior to Acceleration*" and "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*". Tranches of Issuer Funding Obligations may differ from each other as to the interest rate, maturity and the timing, sequential order and amount of payments of principal or interest, or both.

The following summary of the principal provisions contained in the Master Trust Indenture does not purport to be comprehensive or definitive. This overview summarizes certain provisions of the Master Trust Indenture and omits descriptions of many provisions which may be considered to be of a customary nature. All references in this confidential shelf offering memorandum to the Master Trust Indenture are qualified in their entirety by reference to the Master Trust Indenture and the detailed provisions thereof. The Master Trust Indenture may be reviewed at the principal office of the Issuer Trustee in Toronto, Ontario during normal business hours while any Notes are outstanding.

Indenture Trustee

BNY Trust Company of Canada, a trust company governed by the laws of Canada, is the Indenture Trustee under the Master Trust Indenture.

Under the terms of the Master Trust Indenture, the Issuer has agreed to pay the Indenture Trustee reasonable compensation for the performance of its duties under the Master Trust Indenture. The Indenture Trustee has agreed to perform only those duties expressly set forth in the Master Trust Indenture. Many of the duties of the Indenture Trustee are described throughout this confidential shelf offering memorandum. Under the terms of the Master Trust Indenture, the Indenture Trustee's limited responsibilities include the following:

- to authenticate, deliver, cancel and otherwise administer the Notes;
- to serve as the registrar in respect of the Notes;
- to establish and maintain all Issuer Accounts and to maintain accurate records of activity in those accounts;
- to serve as the Paying Agent and distribute and transfer funds at the direction of the Manager in accordance with the terms of the Master Trust Indenture;
- to invest funds in the Issuer Accounts at the direction of the Manager (or its agent);
- to deliver to Specified Creditors notice of any Default, Event of Default, Acceleration Event, Protection Event or Servicer Default of which it has received notice, as required under the Master Trust Indenture; and
- to perform certain other administrative functions identified in the Master Trust Indenture.

In the exercise of its duties, the Indenture Trustee will use the same degree of care and skill as a reasonably prudent person would use in comparable circumstances. When all Issuer Funding Obligations have been satisfied and discharged (see "*— Satisfaction and Discharge*"), the Indenture Trustee will no longer act as Indenture Trustee and will have no fiduciary responsibilities to any remaining Specified Creditors and will act only as security agent for those remaining Specified Creditors. The Indenture Trustee is not liable for any errors of judgment as long as the errors are made in good faith and the Indenture Trustee was not negligent. Furthermore, the Indenture Trustee will not be liable for any action taken or not taken by it in good faith if directed to do so by Extraordinary Resolution. The Indenture Trustee is not required to expend or risk its own funds, or incur any financial liability in the exercise

of its duties under the Master Trust Indenture and it will not be obliged to exercise any of its rights under the Master Trust Indenture at the request of any Controlling Class Creditor unless such Controlling Class Creditor has provided it with security or an indemnity reasonably satisfactory to it.

In addition to the Indenture Trustee's compensation and the reimbursement of the Indenture Trustee's expenses in connection with the Master Trust Indenture, the Issuer will indemnify the Indenture Trustee for any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the administration of the trusts under the Master Trust Indenture. The payment of all such amounts will be subject to the payment waterfalls set out in the Master Trust Indenture and in certain instances, such amounts will be higher in priority than payments to Noteholders. See "*— Payment Waterfalls Prior to Acceleration — Collection Account*", "*— Payment Waterfalls Prior to Acceleration — Protection Account*" and "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

The Indenture Trustee may resign at any time by giving written notice to the Issuer and it may be removed for any reason by Ordinary Resolution of Controlling Class Creditors. The Indenture Trustee must resign if a material conflict of interest arises in its role as an Indenture Trustee under the Master Trust Indenture and such conflict of interest is not eliminated within 90 days after the Indenture Trustee becomes aware of such material conflict of interest. The Issuer may remove, or any Controlling Class Creditor who has been a *bona fide* Controlling Class Creditor for at least six months may, on behalf of itself and all other Debtholders, petition any court of competent jurisdiction for the removal of the Indenture Trustee if (i) the Indenture Trustee is no longer eligible to act as trustee under the Master Trust Indenture (and any Supplemental Indenture) and fails to resign after it has received a written request to do so by the Issuer or by any Controlling Class Creditor, (ii) the Indenture Trustee becomes incapable of acting, or (iii) the Indenture Trustee becomes subject to any bankruptcy or insolvency related events. In all such circumstances, the Issuer must appoint a successor Indenture Trustee. Any resignation or removal of the Indenture Trustee and appointment of a successor Indenture Trustee will not become effective until the successor Indenture Trustee accepts the appointment. If an instrument of acceptance by a successor Indenture Trustee has not been delivered to the Indenture Trustee within 30 days of giving notice of resignation or removal, the Indenture Trustee may petition a court of competent jurisdiction to appoint a successor Indenture Trustee.

Any successor Indenture Trustee will execute and deliver to the Issuer and its predecessor Indenture Trustee an instrument accepting such appointment. The successor Indenture Trustee must be a bank, a trust company or a corporation organized and doing business under the laws of Canada or of any province or territory thereof, authorized under such laws to carry on a trust business in each of the provinces and territories of Canada. The Issuer may not, nor may any person directly or indirectly controlling, controlled by, or under common control with the Issuer, serve as Indenture Trustee.

The Indenture Trustee may become the owner or pledgee of Notes and may otherwise deal with the Issuer with the same rights it would have if it were not the Indenture Trustee (subject to its obligation to resign if there is a material conflict).

Conditions Precedent to Incurrence of Obligations Secured

There is no limit on the aggregate amount of indebtedness or other obligations which may be secured under the Master Trust Indenture. However, the Issuer will not be permitted to incur any Issuer Funding Obligations or other obligations unless the Issuer meets the conditions described below under *"— Issuer Funding Obligations"* and *"— Other Obligations Secured"*.

Issuer Funding Obligations

The Issuer may not incur any new Issuer Funding Obligations, or renew or extend any existing Issuer Funding Obligations (in each case, other than Derivative Funding Obligations), unless the conditions described below are met on or prior to the date that the Issuer enters into a definitive agreement in respect of such Issuer Funding Obligations:

(a) the Issuer delivers to the Indenture Trustee and each Rating Agency notice of such incurrence;

(b) the Issuer delivers to the Indenture Trustee and each Rating Agency a certificate to the effect that:

(i) the Issuer reasonably believes that such incurrence will not cause an Adverse Effect; an "**Adverse Effect**" means that such action will at the time of its occurrence (a) result in the occurrence of an Event of Default or any event which with the giving of notice or passage of time, or both, would become an Event of Default, (b) adversely affect the amount or timing of any payment to be made to any Debtholder or Derivative Counterparty pursuant to the Master Trust Indenture or any Program Agreement, (c) materially adversely affect the amount or timing of payments to be made to the Specified Creditors (other than Debtholders and Derivative Counterparties) pursuant to this Indenture or any Program Agreement, or (d) adversely affect the security interest and the rights and remedies of the Indenture Trustee in respect thereof;

(ii) all instruments furnished to the Indenture Trustee conform to the requirements of the Master Trust Indenture and constitute sufficient authority under the Master Trust Indenture for the Indenture Trustee to (A) in the case of an issuance of Notes only, authenticate and deliver such Notes, and (B) in the case of all other Issuer Funding Obligations, execute and deliver the applicable Funding Obligation Agreement;

(iii) in the case of an issuance of Notes only, the form and terms of the Notes have been established in conformity with the provisions of the Master Trust Indenture;

(iv) the incurrence of such Issuer Funding Obligation is consistent in all material respects with the Financing Plan; see *"Ontario Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*;

(v) the conditions set out in clauses (c), (d), (g) and (k) below are met; and

(vi) such other matters as the Indenture Trustee may reasonably request;

(c) the representations and warranties of the Issuer in the Master Trust Indenture are true and correct in all material respects;

(d) the Rating Agency Condition is satisfied with respect to all outstanding Series or Tranches of Issuer Funding Obligations;

(e) the Indenture Trustee receives either:

(i) a certified copy of the instrument whereby the Province of Ontario designated in writing that such Issuer Funding Obligation is an Approved Obligation as contemplated by the Change of Law Protection Agreement; or

(ii) both (A) an Adherence Compliance Certificate addressed to the Indenture Trustee with respect to such Issuer Funding Obligation delivered in accordance with the Change of Law Protection Agreement; and (B) a certificate signed by the Manager certifying that the Province of Ontario has not provided a Suspension Notice;

(f) the Issuer delivers to the Indenture Trustee copies of the applicable Funding Obligation Agreement, including in the case of Notes, a Supplemental Indenture relating to the applicable Series or Tranche of Notes and, if applicable, a Terms Document relating to the applicable Tranche of Notes;

(g) in the case of Senior Funding Obligations only, the Issuer has Subordinated Funding Obligations and Junior Subordinated Funding Obligations in an aggregate outstanding principal amount equal to not less than 35% of the aggregate outstanding principal amount of the aggregate Senior

Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations (after giving effect to such incurrence) and in the case of Subordinated Funding Obligations only, the Issuer has Junior Subordinated Funding Obligations in an aggregate outstanding principal amount equal to not less than 10% of the aggregate outstanding principal amount of the aggregate Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations (after giving effect to such incurrence);

(h) except in the case of Notes, the Issuer delivers to the Indenture Trustee an updated list of the Specified Creditors;

(i) each Debtholder in respect of such Issuer Funding Obligation (or an authorized agent on their behalf) has made the acknowledgements and agreements described below under "— *Acknowledgements of Specified Creditors*";

(j) the Change of Law Protection Agreement is in full force and effect against the Province of Ontario or has been replaced with a new agreement that is in form and substance satisfactory to Controlling Class Creditors pursuant to an Ordinary Resolution;

(k) the conditions precedent, if any, specified in the applicable Funding Obligation Agreement are satisfied; and

(l) in the case of an issuance of Notes only:

(i) the Indenture Trustee receives a certificate for the certification and delivery of the Notes and specifying the particulars relating to such Notes;

(ii) in the case of Notes described in section 163(f)(2)(A) of the ~~United States~~ Internal Revenue Code ~~of 1986,~~, if such Notes are not in registered form (including by reason of a book entry system described in section 163(f) of the United States Internal Revenue Code of 1986), then such Notes are described in section 4701(b)(1)(B) of the United States Internal Revenue Code of 1986 and such section will apply to such Notes; and

(iii) in the case of foreign currency Notes, the Issuer appoints one or more Paying Agents in the appropriate countries, if requested by the Indenture Trustee.

Periodic drawdowns under existing Funding Obligation Agreements will not constitute a new incurrence of Issuer Funding Obligations. However, an increase in the aggregate commitment under an existing Funding Obligation Agreement or the issuance of additional Notes of an outstanding Series or Tranche of Notes will constitute a new incurrence of Issuer Funding Obligations.

The Indenture Trustee is not required to and, except as otherwise provided in a Funding Obligation Agreement, the Issuer is not required to, provide prior notice to or obtain the consent of any Debtholder or any other Specified Creditor to issue any Issuer Funding Obligations.

Other Obligations Secured

The Issuer may incur other obligations (including Derivative Funding Obligations) so long as:

(a) the Issuer delivers to the Indenture Trustee a copy of the agreement giving rise to such obligations;

(b) the Issuer delivers to the Indenture Trustee an updated list of the Specified Creditors;

(c) the counterparty to the agreement giving rise to such obligations makes the acknowledgements and agreements described below under "— *Acknowledgements of Specified Creditors*";

(d) if the obligations are Certified Primary Obligations, the Indenture Trustee receives either:

(i) a certified copy of the instrument whereby the Province of Ontario designated in writing that such obligation is an Approved Obligation as contemplated by the Change of Law Protection Agreement; or

(ii) both (A) an Adherence Compliance Certificate addressed to the Indenture Trustee with respect to such obligation delivered in accordance with the Change of Law Protection Agreement; and (B) a certificate signed by the Manager certifying that the Province of Ontario has not provided a Suspension Notice;

provided that, in respect of derivative agreements, the Issuer will provide notice to each Rating Agency of the identity of the Derivative Counterparty and the terms of any applicable master agreement and schedule.

Derivative Agreements

The Issuer may, from time to time, enter into one or more derivative agreements, which would consist of a currency swap or interest rate swap, a cap (obligating a Derivative Counterparty to make payments if a reference rate is greater than a specified rate), a floor (obligating a Derivative Counterparty to make payments if a reference rate is less than a specified rate), or a collar (obligating a Derivative Counterparty to make payments if a reference rate is greater than a specified rate and entitling the Derivative Counterparty to receive payments if the same reference rate is less than a lower specified rate), with various counterparties. In general, the Issuer will receive payments from the Derivative Counterparty in exchange for the Issuer's payments to them, to the extent required under the derivative agreements. Payments received by the Issuer will constitute Available Collections.

Acknowledgements of Specified Creditors

Each Specified Creditor must acknowledge and agree in favour of the Indenture Trustee that it is a Specified Creditor under the Master Trust Indenture and that its entitlements as a Specified Creditor are subject to the provisions applicable to Specified Creditors under the Master Trust Indenture including, without limitation, those described under "*— Indenture Trustee*", "*— Payment Waterfalls Prior to Acceleration*", "*— Debtholder Approvals and Meetings — Access to Debtholder Lists*", "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*", "*— Acceleration and Remedies — Rights of Specified Creditors*", "*— Acceleration and Remedies — Limited Recourse*" and "*— Acceleration and Remedies — No Petition*".

Subordination Provisions

Under the Master Trust Indenture, the Issuer can issue the following classes of Issuer Funding Obligations: "Senior Funding Obligations", "Subordinated Funding Obligations" or "Junior Subordinated Funding Obligations" (each, a "**Class**"). The payment of interest on Subordinated Funding Obligations shall be subordinate and rank junior to the payment of interest on Senior Funding Obligations and Derivative Funding Obligations. The payment of interest on Junior Subordinated Funding Obligations shall be subordinate and rank junior to the payment of interest on Senior Funding Obligations, Derivative Funding Obligations and Subordinated Funding Obligations. The payment of principal on Subordinated Funding Obligations shall be subordinate and rank junior to the payment of principal on Senior Funding Obligations and Derivative Funding Obligations. The payment of principal on Junior Subordinated Funding Obligations shall be subordinate and rank junior to the payment of principal on Senior Funding Obligations, Derivative Funding Obligations and Subordinated Funding Obligations. In each case, the subordinations are the to the extent and in the manner set forth in the Master Trust Indenture and described under "*— Payment Waterfalls Prior to Acceleration*" and "*— Acceleration and Remedies — Payment Waterfall Upon Acceleration*".

Subject to the applicable payment waterfall, (i) all Senior Funding Obligations will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction on account, (ii) all Subordinated Funding Obligations will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without

preference, priority or distinction and (iii) all Junior Subordinated Funding Obligations of each Series or Tranche will in all respects be equally and ratably entitled to the benefits of the Master Trust Indenture with respect to such Series or Tranche without preference, priority or distinction, in each case, except as set out in a related Funding Obligation Agreement.

Security

To secure the payment of all Obligations Secured, including principal of and interest on the Issuer Funding Obligations, the Issuer has granted to the Indenture Trustee a security interest in all of its right, title and interest (whether now owned or hereafter acquired or arising) in and to the following property: (i) the Investment Interest acquired by the Issuer; (ii) each Issuer Account (including all sub-accounts); (iii) all Eligible Investments and all investment property, money and other property held in any Issuer Accounts (including all sub-accounts); (iv) all rights, benefits and powers of the Issuer under any Program Agreement; (v) all rights, benefits and powers of the Issuer under the FHPA; (vi) all present and future claims, demands, causes of and choses in action in respect of any of the foregoing and all interest, principal, payments and distributions of any nature or type on any of the foregoing; (vii) all accounts, general intangibles, chattel paper, instruments, documents, goods, money, investment property, deposit accounts, letters of credit and letter-of-credit rights consisting of, arising from, or relating to any of the foregoing; (viii) all debts, accounts, claims, monies and choses in action due or to become due with respect to all of the foregoing and also all securities, bills, notes, evidences of deposits of money, and other documents now held or owned or which may be hereafter taken, held or owned by the Issuer, or anyone on behalf of the Issuer, and all renewals thereof, accretions thereto, substitutions therefor and all interest, income and revenue arising therefrom or by virtue thereof; (ix) all amounts received with respect to all of the foregoing; and (x) all proceeds of the foregoing (collectively, the "**Collateral**").[49]

Issuer Accounts

Pursuant to the Master Trust Indenture, the Issuer will establish various accounts ("**Issuer Accounts**") – Program Accounts, Series Accounts and Securities Accounts. Each Issuer Account will be under the sole dominion and exclusive control of the Indenture Trustee. Each Program Account and each Series Account will be established as a segregated trust account with an Eligible Institution (an "**Eligible Deposit Account**"). If the institution holding any Program Account or Series Account ceases to be an Eligible Institution, the Issuer will establish a new Program Account or Series Account that is an Eligible Deposit Account and transfer any funds or other property from such existing Program Account or Series Account to such new Program Account or Series Account. Each Securities Account will be established as a segregated securities trust account with an affiliate of an Eligible Institution, which affiliate is licensed to maintain securities accounts (an "**Eligible Securities Account**"). If the institution holding any Securities Account ceases to be an affiliate of an Eligible Institution, the Issuer will establish a new Securities Account that is an Eligible Securities Account and transfer any funds or other property from such existing Securities Account to such new Securities Account. The Indenture Trustee has no obligation to reconcile any Issuer Account against another Issuer Accounts or against the Program Agreements.

Program Accounts

Collection Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Collection Account**"). The Indenture Trustee will hold the Collection Account for the benefit of the Indenture Trustee and the Specified Creditors. All Available Collections received by the Issuer will be credited to the Collection Account. "**Available Collections**" means: (i) all amounts received by the Servicer in respect of the Clean Energy Adjustment from Specified Consumers, (ii) IESO Carrying Cost payments (other than the IESO Cash Reserve Deposit Amount); and (iii) amounts received by the Issuer pursuant to derivative agreements. See *"Ontario Fair Hydro Plan"* and *"The Transferor and Servicer"*.

Interest Accumulation Account

[49] ~~**Note:** Consider also including the floating charge in all of the property, assets and undertaking now owned or hereafter acquired by the Issuer in the definition of Collateral. (s. 2.01(b) of the Master Trust Indenture).~~

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Interest Accumulation Account**"). The Indenture Trustee will hold the Interest Accumulation Account for the benefit of the Indenture Trustee and the Specified Creditors. The Interest Accumulation Account has been established for the purposes of pre-funding, collateralizing, over-collateralizing or establishing reserves for the payment of interest in respect of all Issuer Funding Obligations.

Principal Accumulation Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Principal Accumulation Account**"). The Indenture Trustee will hold the Principal Accumulation Account for the benefit of the Indenture Trustee and the Specified Creditors. The Principal Accumulation Account has been established for the purpose of accumulating funds to be used to make repayments in respect of all Issuer Funding Obligations.

IESO Cash Reserve Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**IESO Cash Reserve Account**"). The Indenture Trustee will hold the IESO Cash Reserve Account for the benefit of the Indenture Trustee and the Specified Creditors. The Issuer will deposit the IESO Cash Reserve Deposit Amount in the IESO Cash Reserve Account on the earlier of (x) April 30, 2021, and (y) the receipt by the Issuer of the IESO Cash Reserve Deposit Amount from the IESO. **Amounts in the IESO Cash Reserve Account are not available to pay principal on the Senior Notes.**

Program Cash Reserve Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Program Cash Reserve Account**"). The Indenture Trustee will hold the Program Cash Reserve Account for the benefit of the Indenture Trustee and the Specified Creditors. The Issuer will deposit the Program Cash Reserve Required Amount in the Program Cash Reserve Account during the Reference Period commencing May 1, 2021 pursuant to the application of amounts available therefor under the Collection Account Waterfall.

Refinancing Account

Pursuant to the Master Trust Indenture, the Issuer has established an Eligible Deposit Account in the name of the Indenture Trustee (the "**Refinancing Account**"). The Indenture Trustee will hold the Refinancing Account for the benefit of the Indenture Trustee and the Specified Creditors. All proceeds arising from Notes and Borrowings related to Refinancings will be credited to the Refinancing Account.

Protection Account

Pursuant to the Master Trust Indenture, before the making of any demand for payment under the Change of Law Protection Agreement, the Issuer will establish an Eligible Deposit Account in the name of the Indenture Trustee (the "**Protection Account**"). The Indenture Trustee will hold the Protection Account for the benefit of the Indenture Trustee and the Specified Creditors. On the occurrence of a Protection Event and a written payment demand from the Indenture Trustee to the Province of Ontario, all payments received from the Province of Ontario under the Change of Law Protection Agreement will be credited to the Protection Account.

Series Accounts

Series Capital Reserve Account

In connection with the creation of a Series of Issuer Funding Obligations, the Issuer may establish an Eligible Deposit Account in the name of the Indenture Trustee (a "**Series Capital Reserve Account**"). The Indenture Trustee will hold each Series Capital Reserve Account for the benefit of the Indenture Trustee and the

applicable Debtholders or Derivative Counterparties. A Series Capital Reserve Account may be established for the sole purpose of allowing the Issuer to accumulate funds to be used to make repayments in respect of a Series of Issuer Funding Obligations. Details of any period of accumulation and the amounts to be accumulated will be specified in the applicable Funding Obligation Agreement.

Series Finance Reserve Account

In connection with the creation of a Series of Issuer Funding Obligations, the Issuer may establish an Eligible Deposit Account in the name of the Indenture Trustee (a "**Series Finance Reserve Account**"). The Series Finance Reserve Account will be under the sole dominion and exclusive control of the Indenture Trustee. The Indenture Trustee will hold each Series Finance Reserve Account for the benefit of the applicable Debtholders or Derivative Counterparties. A Series Finance Reserve Account may be established for the sole purpose of allowing the Issuer to reserve funds to pay finance charges for a Series of Issuer Funding Obligations. Details of any reserve requirements will be specified in the applicable Funding Obligation Agreement.

Securities Accounts

In connection with the establishment of any Program Account (other than the Protection Account) or Series Account, the Issuer may establish an Eligible Securities Account in the name of the Indenture Trustee (a "**Securities Account**"). The Indenture Trustee will hold each Securities Account for the benefit of the applicable Specified Creditors. A Securities Account may be established for the purpose of allowing the Issuer to invest funds held in any Program Account or Series Account in Eligible Investments. Each Securities Account may relate to only one Program Account or Series Account. Funds in each Program Account and Series Account will be invested in Eligible Investments at the direction of the Manager using the associated Securities Account. Additionally, neither the Indenture Trustee nor the Manager will be responsible for any losses incurred in the investment of any funds in any Eligible Investments and any insufficiency in an Issuer Account resulting from any loss on Eligible Investments.

Credit Enhancement Agreements and Liquidity Agreements

A Series or Tranche of Issuer Funding Obligations may have the benefit of one or more additional forms of credit enhancement—referred to herein as credit enhancement agreements—such as a letter of credit, surety bond or loan facility. In addition, a Series or Tranche of Notes may have the benefit of one or more forms of liquidity agreements—referred to herein as liquidity agreements—such as a liquidity facility. Whether a Series or Tranche of Issuer Funding Obligations has the benefit of a credit enhancement agreement or a liquidity agreement, including how any payments made pursuant to such agreement will be applied, will be set out in the applicable Funding Obligation Agreement and the related Term Sheet (where applicable).

Payment Waterfalls Prior to Acceleration

All amounts received by the Issuer and all amounts to be paid by the Issuer from a Program Account or Series Account will be made in accordance with the payment waterfalls described below. All payments or transfers described in the sections below will be made by the Paying Agent based on payment instructions provided by the Manager. See "— *Covenants of the Issuer — Payment Instructions*".

Collection Account

Subject to the paragraph below, on each Payment Date (after giving effect to the distributions described in the first paragraph under "— *IESO Cash Reserve Account*"), all amounts on deposit in the Collection Account will be distributed in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted) (the "**Collection Account Waterfall**"):

(a) first, to the payment or remittance of taxes for which a governmental authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(b) second, to pay fees, expenses and reimbursement amounts owing to the Issuer Trustee and the Indenture Trustee up to a maximum aggregate amount equal to (i) $150,000, multiplied by (ii) the number of Series of Senior Funding Obligations outstanding on such Payment Date, divided by (iii) 12;

(c) third, *pari passu* (i) to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Senior) for such Payment Date, and (ii) to pay all Derivative Funding Obligations (other than termination payments);

(d) fourth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Subordinated) for such Payment Date;

(e) fifth, to transfer to the Interest Accumulation Account, the Interest Accrual Amount (Junior Subordinated) for such Payment Date;

(f) sixth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Warehouse) for such Payment Date;

(g) seventh, *pari passu* (i) to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Senior) for such Payment Date, and (ii) to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is not the defaulting party or the sole affected party;

(h) eighth, to pay all fees and other amounts (other than principal or interest) owing in respect of Senior Funding Obligations;

(i) ninth, to pay fees, expenses and reimbursement amounts owing to the Manager;

(j) tenth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Subordinated) for such Payment Date;

(k) eleventh, to pay all fees and other amounts (other than principal or interest) owing in respect of Subordinated Funding Obligations;

(l) twelfth, to transfer to the Principal Accumulation Account, the Principal Accumulation Amount (Junior Subordinated) for such Payment Date;

(m) thirteenth, to transfer to the Program Cash Reserve Account, the amount, if any, by which the amount on deposit in the Program Cash Reserve Account is less than the Program Cash Reserve Required Amount;

(n) fourteenth, to transfer to any Series Account (other than any Series Account related solely to Subordinated Funding Obligations or Junior Subordinated Funding Obligations), the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(o) fifteenth, to transfer to any Series Account related solely to Subordinated Funding Obligations, the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(p) sixteenth, to pay all fees and other amounts (other than principal or interest) owing in respect of Junior Subordinated Funding Obligations;

(q) seventeenth, to transfer to any Series Account related solely to Junior Subordinated Funding Obligations, the amount required to replenish such Series Account as required by any related Funding Obligation Agreement;

(r) eighteenth, to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is the defaulting party or the sole affected party;

(s) nineteenth, to pay the amount required pursuant to the Declaration of Trust to the Issuer Trustee for the account of the beneficiaries of the Issuer;

(t) twentieth, to pay all indemnity amounts owing to the Manager;

(u) twenty-first, *pari passu* (i) to pay fees, expenses, reimbursement and indemnity amounts owing to the Issuer Trustee and the Indenture Trustee not previously paid pursuant to paragraph (b), (ii) to the payment or remittance of taxes not previously paid pursuant to paragraph (a), and (iii) to pay all amounts owing to Specified Creditors not specifically referred to above; in each case, including, for each referenced party, any amounts payable to their respective affiliates under the terms of any relevant indemnity; and

(v) twenty-second, any amounts remaining (i) to be held in the Collection Account for distribution in the above order of priority on the next Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full and discharged, and all other amounts have been paid in full, to pay to the Issuer.

Notwithstanding the foregoing, (i) the transfer of any amounts deposited by the IESO into the Collection Account on account of the IESO Cash Reserve Deposit Amount to the IESO Cash Reserve Account, and (ii) the transfer of any amounts deposited in the Collection Account on account of one-time transaction costs and expenses in connection with the incurrence of Issuer Funding Obligations on or within three business days of the closing date of such transaction, will, in each case, be made without reserving for or paying amounts which are senior in priority to such obligation under the Collection Account Waterfall.

Interest Accumulation Account

On each Interest Payment Date, the Paying Agent will distribute all amounts on deposit in the Interest Accumulation Account in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay all interest that is due and payable on Senior Funding Obligations on such Interest Payment Date;

(b) second, to pay all interest that is due and payable on Subordinated Funding Obligations on such Interest Payment Date, so long as after making this payment, the amount remaining on deposit in the Interest Accumulation Account at least equals the amount of accrued and unpaid interest on Senior Funding Obligations as of such Interest Payment Date; and

(c) third, to pay all interest that is due and payable on Junior Subordinated Funding Obligations on such Interest Payment Date, so long as after making this payment, the amount remaining in the Interest Accumulation Account at least equals the amount of accrued and unpaid interest on Senior Funding Obligations and Subordinated Funding Obligations as of such Interest Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Interest Accumulation Account for distribution in the above order of priority on the next Interest Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

Principal Accumulation Account

On each Interest Payment Date (after making the applications provided for in the waterfall under "—*Interest Accumulation Account*"), if any interest that is due and payable on Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations has not been paid, an amount equal to such deficiency will be withdrawn from the Principal Accumulation Account and applied to the payment of interest due and payable on such Interest Payment Date, provided that if the amount to be applied pursuant to this paragraph is insufficient to pay all such interest, the application of such amounts will be made first to Senior Funding Obligations, then to Subordinated Funding Obligations, and finally to Junior Subordinated Funding Obligations, in each case, on a *pro rata* basis.

On each Principal Payment Date (after making the applications provided for in the previous paragraph), the Paying Agent will distribute all amounts on deposit in the Principal Accumulation Account in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay all principal that is due and payable on Warehouse Obligations on such Principal Payment Date;

(b) second, to pay all principal that is due and payable on Senior Funding Obligations (other than Warehouse Obligations) on such Principal Payment Date;

(c) third, to pay all principal that is due and payable on Subordinated Funding Obligations on such Principal Payment Date, so long as after making this payment, the amount remaining in the Principal Accumulation Account at least equals the Required Principal Accumulation Amount (Senior) as of such Principal Payment Date; and

(d) fourth, to pay all principal that is due and payable on Junior Subordinated Funding Obligations on such Principal Payment Date, so long as after making this payment, the amount remaining in the Principal Accumulation Account at least equals the sum of the Required Principal Accumulation Amount (Senior) and the Required Principal Accumulation Amount (Subordinated) as of such Principal Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Principal Accumulation Account for distribution in the above order of priority on the next Interest Payment Date or Principal Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

IESO Cash Reserve Account

On each Payment Date beginning in November, 2021, an amount equal to the lesser of (i) the amounts to be paid or transferred pursuant to items (a) through (e) of the Collection Account Waterfall, and (ii) the amount, if any, by which the amount on deposit in the IESO Cash Reserve Account exceeds the IESO Cash Reserve Required Amount will be withdrawn from the IESO Cash Reserve Account and applied to the making of such payments or transfers in the order provided for in the Collection Account Waterfall.

On each Payment Date, if the amounts available for distribution from the Collection Account and from the preceding sentence are insufficient to pay or transfer items (a) through (e) of the Collection Account Waterfall, an amount equal to such deficiency will be withdrawn from the IESO Cash Reserve Account and applied to the making of such payments or transfers in the order provided for in the Collection Account Waterfall. **Amounts in the IESO Cash Reserve Account are not available to pay principal on the Senior Notes.** Once all funds in the IESO Cash Reserve Account have been paid out, the IESO Cash Reserve Account will be closed.

Program Cash Reserve Account

If, on any Payment Date, the amount on deposit in the Interest Accumulation Account is less than the sum of the Interest Accrual Amount (Senior), the Interest Accrual Amount (Subordinated) and the Interest Accrual

Amount (Junior Subordinated), an amount equal to such deficiency will be withdrawn from the Program Cash Reserve Account and deposited in the Interest Accumulation Account.

If, on any Principal Payment Date, the amount available in the Principal Accumulation Account (in accordance with the provisions applicable thereto) is insufficient to pay all principal that is due and payable on Warehouse Obligations, other Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as applicable (see "— *Principal Accumulation Account*"), on such Principal Payment Date (after making the applications provided for in the previous paragraph), amounts on deposit in the Program Cash Reserve Account will be used in the following order of priority (*pro rata* in proportion to the claims represented by each paragraph below except as otherwise noted):

(a) first, to pay the deficiency on principal that is due and payable on Warehouse Obligations on such Principal Payment Date;

(b) second, to pay the deficiency on principal that is due and payable on Senior Funding Obligations (other than Warehouse Obligations) on such Principal Payment Date;

(c) third, to pay the deficiency on principal that is due and payable on Subordinated Funding Obligations on such Principal Payment Date; and

(d) fourth, to pay the deficiency on principal that is due and payable on Junior Subordinated Funding Obligations on such Principal Payment Date.

Any amounts remaining after the applications referred to above: (i) to be held in the Program Cash Reserve Account for distribution in the above order of priority on the next Interest Payment Date or Principal Payment Date; or (ii) after all Issuer Funding Obligations have been paid in full, to be transferred to the Collection Account.

Refinancing Account

On each Principal Payment Date, the Paying Agent will transfer from the Refinancing Account to the Principal Accumulation Account the lesser of (i) the amount on deposit in the Refinancing Account, and (ii) the amount by which the sum of the Principal Accumulation Amounts for all Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations on such Principal Payment Date (without reference to any refinancing notice) exceeds the amount on deposit in the Principal Accumulation Account. After all Issuer Funding Obligations have been paid in full, any amounts remaining in the Refinancing Account will be transferred to the Collection Account.

Protection Account

On each date in respect of which the Province of Ontario makes a payment pursuant to the Change of Law Protection Agreement, the Paying Agent will, prior to making any payments under any other payment waterfall, distribute all amounts in the Protection Account solely to satisfy payments in respect of Approved Obligations as set out in the written payment statement delivered by the Manager to the Province of Ontario under the Change of Law Protection Agreement in the order of priority the applicable Obligation Secured has under the applicable payment waterfall.

On the Province of Ontario paying any amount in respect of an Approved Obligation into the Protection Account, the Province of Ontario will be subrogated and entitled to each applicable Specified Creditor's rights and interests under and in respect of the Approved Obligation to the extent of the amounts paid to the Specified Creditor out of the Protection Account, and shall be entitled to the right to be paid the applicable Subrogation Amount, the benefits of the Collateral~~,~~ and all proceeds therefrom.

Series Accounts

If, after giving effect to payments made on any Payment Date, the amount in the Collection Account is insufficient to make all required payments to Specified Creditors on such date, amounts on deposit in any Series Account may be withdrawn from such Series Account and allocated to the applicable Specified Creditors in accordance with the related Funding Obligation Agreement.

Covenants of the Issuer

Payment of Principal and Interest

The Issuer will duly and punctually pay the principal of and interest due on the Issuer Funding Obligations in the manner specified in the Master Trust Indenture and any related Funding Obligation Agreement.

Use of Proceeds

The Issuer will use the proceeds of such indebtedness solely for: (i) the acquisition by the Issuer of an Investment Interest; (ii) the redemption, repayment or repurchase of any existing Issuer Funding Obligations; (iii) the funding of Issuer Accounts; and (iv) the payment of transaction fees and expenses in connection with the incurrence of Issuer Funding Obligations.

Legal Existence

The Issuer will do or cause to be done all things necessary to preserve its existence and maintain its status as a Financing Entity.

Separateness Covenants

The Issuer will take all reasonable steps to maintain its identity as a distinct entity with assets and liabilities distinct from those of the Manager and any of its affiliates. Such steps include: (i) conducting all transactions with the Manager strictly on an arm's length basis and in good faith; (ii) allocating all overhead expenses for items shared between the Issuer and the Manager on the basis of actual use to the extent practicable; (iii) conducting its affairs strictly in accordance with the Declaration of Trust; (iv) maintaining its books and records separate from those of the Manager or any affiliate thereof; (v) preparing its financial statements separately from those of the Manager and ensuring that any consolidated financial statements of the Manager that include the Issuer have notes clearly stating that the Issuer is a separate entity; (vi) only maintaining bank accounts or other depository accounts to which the Issuer alone is the account party and from which only the Issuer or its agent has the power to make withdrawals; (vii) paying its operating expenses from its own assets (including, reimbursing the Manager for any such expenses); (viii) maintaining its property in such a manner that it is not costly or difficult to segregate, ascertain or otherwise identify its individual assets from or against those of the Manager or any affiliate thereof; and (ix) not becoming liable to any person for any obligations of the Manager or any affiliate thereof.

Performance of Obligations

The Issuer agrees that it will (i) perform and observe all of its obligations and agreements contained in the Master Trust Indenture, the Declaration of Trust, the Master Transfer and Servicing Agreement, the other Program Agreements and in the instruments and agreements relating to the Collateral; (ii) diligently pursue any and all actions to enforce its rights each instrument or agreement included in the Collateral except as expressly provided in any Program Agreement; and (iii) enforce the Servicer's material obligations under the Master Transfer and Servicing Agreement and the Manager's material obligations under the Management Agreement.

Funding Obligations

The Issuer will ensure that all indebtedness is incurred pursuant to and in accordance with the provisions of the Master Trust Indenture, as described under "— *Conditions Precedent to Incurrence of Obligations Secured —*

Issuer Funding Obligations". The Issuer will not enter into any Funding Obligation Agreement (other than a Funding Obligation Agreement relating to Warehouse Obligations) that the Manager believes, acting reasonably, would likely require the Issuer to pay principal on such Issuer Funding Obligation by means of a Refinancing (other than a Pre-Approved Refinancing).

Financial Statements; Statement as to Compliance

The Issuer will deliver, or cause to be delivered to the Indenture Trustee and the Rating Agencies: (i) within 140 days after the end of each fiscal year, audited financial statements of the Issuer; (ii) within 90 days after the end of each fiscal quarter (other than the last fiscal quarter of each fiscal year), unaudited financial statements of the Issuer; and (iii) on an annual basis on or before March 31 of each year, a written statement concerning compliance with the conditions and covenants contained in the Master Trust Indenture and confirming that no Default or Event of Default has occurred or if a material Default or Event of Default has occurred, specifying the details thereof.

Payment Instructions

The Issuer will deliver to the Indenture Trustee and the Paying Agent (if the Paying Agent is not the Indenture Trustee) on a monthly basis, a payment instruction in respect of the Collection Account, which instruction shall set out the payments to be made on the following Payment Date and setting forth, among other things, (i) the amount of the payment to Debtholders (including a breakdown of principal and interest), (ii) any other transfers and payments to be made on such Payment Date, including amounts paid to the Indenture Trustee, the Issuer Trustee and the Manager, and (iii) the amounts on deposit in the Collection Account after giving effect to the foregoing payments. Similar payment instructions will also be delivered in respect of each other Program Account and Series Account, as and when payments are to be made from those accounts.

Notice of Certain Events; Protection Event

The Issuer will give the Indenture Trustee and each Rating Agency prompt written notice of (i) each Event of Default, (ii) each breach on the part of the Issuer or the Servicer of its respective obligations under the Master Transfer and Servicing Agreement (including any Servicer Default), (iii) each breach on the part of the Manager of its obligations under the Management Agreement, (iv) any default of the Issuer or a Derivative Counterparty under a derivative agreement, and (v) any Protection Event.

No Other Business

The Issuer will not engage in any activity other than the activities set forth in the Declaration of Trust or the other Program Agreements, the material provisions of which are described in this confidential shelf offering memorandum under "The Issuer".

Amendments to Program Agreements

Unless the Rating Agency Condition is satisfied, the Issuer will not make any material amendments to any Program Agreement (other than the Master Trust Indenture and individual trade confirmations under derivative agreements), or enter into any Co-Owner Agreement. Without limiting the foregoing sentence, the Issuer will not:

(a) enter into any Co-Owner Agreement without the consent of Controlling Class Creditors by Ordinary Resolution;

(b) amend, supplement, modify, restate or replace, or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to, any of the Program Agreements (other than the Master Trust Indenture, the derivative agreements and the Declaration of Trust) if any such amendment, supplement, modification, restatement or replacement, or waiver or consent, could reasonably be considered to be materially prejudicial to the rights or interests of any Specified Creditor(s), except as expressly permitted by such Specified Creditor(s) and subject to the Province of Ontario having been given prior notice;

(c) consent, if consent is required, to the resignation of the Manager under the Management Agreement; or

(d) amend the Declaration of Trust if such amendment would have or reasonably be expected to have an Adverse Effect; provided that if such amendment would have such result, such amendment may only be made if the Issuer has obtained the consent of the Debtholders affected by such amendment by Ordinary Resolution.

Regarding amendments to the Master Trust Indenture or a Supplemental Indenture, see "— *Amendments to Master Trust Indenture*".

Consolidation; Sale of Assets

The Issuer may not consolidate with or merge into any other person, or sell, convey, exchange, transfer or otherwise dispose of any of its properties or assets included in the Collateral to any person (each, a "**transaction**"), unless:

(a) the entity formed by or surviving the consolidation or merger (if other than the Issuer) or the entity that acquires by conveyance or transfer formed by or surviving the consolidation or merger, by conveyance or transfer, as applicable: (i) is a financing entity; (ii) is organized under the laws of Canada or any province or territory thereof; (iii) is not a non-resident for purposes of the *Income Tax Act* (Canada); (iv) is not subject to regulation as an "investment company" under the Investment Company Act, (v) expressly assumes, pursuant to an assignment and/or assumption agreement or supplement, the due and punctual payment of all Obligations Secured then outstanding and the performance or observance of all of the Issuer's agreements and covenants under each of the Program Agreements to which the Issuer is a party; and (vi) in the case of a conveyance or transfer only, expressly agrees, pursuant to such assignment and/or assumption agreement or supplement, that (A) all right, title and interest conveyed or transferred is subject and subordinate to the security interest of the Indenture Trustee and (B) it will make all filings required by applicable securities laws in connection with any Notes;

(b) no Event of Default has occurred and is continuing immediately after the transaction;

(c) the Issuer has delivered to the Indenture Trustee an officer's certificate and an opinion of counsel,[50] each stating that (i) such transaction and the agreements delivered in connection with such transaction comply with the terms and conditions in the Master Trust Indenture, (ii) all conditions precedent in the Master Trust Indenture relating to the transaction have been complied with, and (iii) each agreement delivered in connection with such transaction has been duly authorized, executed and delivered, and are valid, binding and enforceable against the surviving entity or transferee, as applicable;

(d) the Rating Agency Condition has been satisfied with respect to such transaction; and

(e) any action as is necessary to maintain the first priority perfected security interest in the Collateral has been taken.

No Borrowing; Guarantees, Loans; Restricted Payments

The Issuer will not issue, incur, assume, guarantee or otherwise become liable for any indebtedness except for Funding Obligations. Additionally, the Issuer will not, except as contemplated by the Master Trust Indenture or the Declaration of Trust, make any loan or advance or credit to, or guarantee, endorse or otherwise become contingently liable in connection with the obligations of, or own, purchase or acquire any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other person.

[50] ~~**Note:** Please confirm deletion of "external counsel". Please see definition of "Opinion of Counsel" and s. 13.19(c) in Master Trust Indenture.~~

The Issuer is permitted to declare or make payable any amounts to the owner of units in the Issuer as permitted by and in accordance with the Declaration of Trust, and redeem, purchase, retire or otherwise acquire for value any units in the Issuer, provided that the Issuer may only satisfy the distribution declared or made payable, or the redemption or purchase price of such units to the extent that cash or property is available for such purpose, subject to the payment waterfalls provided for in the Master Trust Indenture. If the Issuer is restricted from satisfying the foregoing amounts in cash or property, then the Issuer will satisfy such amounts through the issuance of additional units and/or a promissory note to its unitholders in accordance with the Declaration of Trust.

Subordinated Funding Obligations and Junior Subordinated Funding Obligations

Notwithstanding anything in a Funding Obligation Agreement to the contrary, the Issuer may not redeem any Series or Tranche of Subordinated Funding Obligations or Junior Subordinated Funding Obligations unless the following conditions are satisfied: (i) no Default or Event of Default has occurred and is continuing; (ii) all Issuer Accounts are fully funded in accordance with the Master Trust Indenture and any applicable Funding Obligation Agreement; and (iii) the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations after giving effect to such redemption will not be less than 35% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations.

The Issuer will not permit (i) the aggregate outstanding principal amount of Subordinated Funding Obligations and Junior Subordinated Funding Obligations to be less than 35% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations, or (ii) the aggregate outstanding principal amount of Junior Subordinated Funding Obligations to be less than 10% of the aggregate outstanding principal amount of Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations.

Security Matters

The Issuer will not (i) permit any lien, charge, excise, claim, security interest, mortgage or other encumbrance (other than permitted liens) to be created on or extend to the Collateral, (ii) release any security or guarantee in respect of the Collateral, (iii) sell, transfer, exchange or otherwise dispose of any of the Collateral except as expressly permitted under the Master Trust Indenture, or (vi) change its name, jurisdiction of formation or type of organization, unless it has provided the Indenture Trustee and each Rating Agency with prior written notice and it has first made all filings and taken all actions necessary to continue and maintain the Indenture Trustee's first priority security interest in the Collateral.

Other Covenants

In addition to the covenants contained in any Supplemental Indenture or any other Funding Obligation Agreement and the other covenants described in this section, the Issuer agrees that:

- upon the written request of the Indenture Trustee, it will use reasonable commercial efforts, following any (i) termination or resignation of the Servicer, the Manager or the Paying Agent, or (ii) termination, non-renewal or expiry of a liquidity agreement or a credit enhancement agreement, to appoint and enter into an agreement with a successor to such Servicer, Manager or Paying Agent, or replace or renew such liquidity agreement or credit enhancement agreement, in form and substance the same as the previously existing Program Agreement;

- it will not claim any credit on or make any deduction from the principal and interest payable on the Notes or Borrowings (other than amounts withheld or deducted in accordance with the Master Trust Indenture); or

- it will not take any action that would cause it to be treated as engaged in a "trade or business within the United States" for U.S. federal income tax purposes.

Amendments to Master Trust Indenture

Amendments not Requiring Consent of Specified Creditors

The Issuer and the Indenture Trustee may amend, supplement or otherwise modify the Master Trust Indenture or any Supplemental Indenture without the consent of any Specified Creditor upon prior notice to each Rating Agency and the Province of Ontario and delivery by the Issuer to the Indenture Trustee of an officer's certificate to the effect that the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect. Such amendments to the Master Trust Indenture or any Supplemental Indenture may:

- evidence the succession or successive successions of another Financing Entity to the Issuer, and the assumption by such successor of the covenants of the Issuer in the Master Trust Indenture and the Notes;
- add to the covenants of the Issuer, or have the Issuer surrender any of its rights or powers under the Master Trust Indenture (or any Supplemental Indenture), for the benefit of the Debtholders of any or all Classes, Series or Tranches of Issuer Funding Obligations;
- cure any ambiguity, correct or supplement any provision in the Master Trust Indenture which may be inconsistent with any other provision in the Master Trust Indenture (or any Supplemental Indenture), to correct a clear clerical or administrative error, or make any other provisions for matters or questions arising under the Master Trust Indenture;
- provide for the issuance of any Series or Tranche of Notes and to set forth the terms thereof, and/or to add to the rights of the Noteholders of any Class, Series or Tranche;
- provide for the acceptance of a successor Indenture Trustee under the Master Trust Indenture;
- add any Events of Default relating to any or all Classes, Series or Tranches of Issuer Funding Obligations;
- provide for the consolidation of any financing entity and the Issuer into a single entity or the transfer of assets in any financing entity to the Issuer;
- if the IESO is replaced under the Master Transfer and Servicing Agreement, make any necessary changes to the Master Trust Indenture;
- provide for additional forms of credit enhancement for any Class, Series or Tranche of Issuer Funding Obligations;
- facilitate the issuance of foreign currency Issuer Funding Obligations;
- comply with any regulatory, accounting or tax laws, or changes to any ratings criteria;
- enable the Issuer to file a registration statement for the offering of securities registered under the Securities Act and to comply with Regulation AB thereunder; or
- qualify for sale treatment under generally accepted accounting principles.

The Master Trust Indenture or any Supplemental Indenture may also be amended by the Issuer and the Indenture Trustee without the consent of any Specified Creditor (but with prior notice to each Rating Agency and the Province of Ontario) in the following circumstances, provided that the Issuer delivers to the Indenture Trustee an officer's certificate to the effect that (i) the Issuer reasonably believes that such amendment will not and is not

reasonably expected to have an Adverse Effect, and (ii) such amendment is required to comply with law, or to conform or be consistent with the statements contained in this confidential shelf offering memorandum:

- to facilitate compliance with changes in laws or regulations applicable to the Issuer or the transactions governed by the Program Agreements; or

- to cause the provisions of the Master Trust Indenture to conform to or be consistent with or in furtherance of the statements made in this confidential shelf offering memorandum with respect to the Master Trust Indenture or any Supplemental Indenture.

Additionally, the Master Trust Indenture or any Supplemental Indenture may also be amended by the Issuer and the Indenture Trustee without the consent of any Specified Creditor (but with prior notice to each Rating Agency and the Province of Ontario) in the following circumstances, provided that (i) the Issuer delivers to the Indenture Trustee an officer's certificate to the effect that the Issuer reasonably believes that such amendment will not and is not reasonably expected to have an Adverse Effect and (ii) the Rating Agency Condition is satisfied with respect to such amendment:

- to add provisions to, or change in any manner or eliminate any of the provisions of, the Master Trust Indenture or any Supplemental Indenture;

- to modify in any manner the rights of the Specified Creditors under the Master Trust Indenture or any Supplemental Indenture; or

- to provide for those changes necessary for compliance with securities law requirements or banking laws or regulations.

The Indenture Trustee may, but is not obligated to, enter into any amendment which adversely affects its rights, duties, benefits, protections, privileges or immunities under the Master Trust Indenture (or any Supplemental Indenture).

Amendments Requiring Consent of Debtholders

The Issuer and the Indenture Trustee may amend, supplement or otherwise modify and amend the Master Trust Indenture or any Supplemental Indenture for reasons other than those stated in the prior section ("*— Amendments not Requiring Consent of Specified Creditors*"), with prior notice to each Rating Agency and the Province of Ontario, the consent of Debtholders of each Class, Series or Tranche of Issuer Funding Obligations affected by that amendment, supplement or other modification by Ordinary Resolution, and satisfaction of the Rating Agency Condition. However, if the amendment, supplement or other modification would result in any of the following events occurring, it may be made only with the consent of each Debtholder of Issuer Funding Obligations affected thereby and satisfaction of the Rating Agency Condition:

- a change in an Interest Payment Date, Principal Payment Date or Principal Payment Default Date for any Issuer Funding Obligation;

- a reduction in the principal amount of, or interest rate on, any Note, or a change in the method of computing the outstanding principal amount in a manner that is adverse to any Debtholder;

- a reduction in the amount of a discount note payable upon its acceleration;

- a reduction in the percentage in outstanding principal amount of Issuer Funding Obligations of any Class, Series or Tranche, the consent of whose holders is required for modification or amendment of the Master Trust Indenture, any Supplemental Indenture or any related agreement or for waiver of compliance with provisions of the Master Trust Indenture or for waiver of defaults and their consequences provided for in the Master Trust Indenture;

- a modification of any of the provisions governing the amendment of the Master Trust Indenture or any Supplemental Indenture, or waivers of past defaults, except to increase any percentage of Debtholders required to consent to any such amendment or waiver, or to provide that certain other provisions of the Master Trust Indenture cannot be modified or waived without the consent of each Debtholder affected by such modification;

- a change in the city or political subdivision so designated with respect to any Class, Series or Tranche of Notes where any principal of, or interest on, any Note is payable; or

- a change in the method of computing the amount of principal of, or interest on, any Note on any date.

Debtholder Approvals and Meetings

Access to Debtholder Lists

The Indenture Trustee will preserve the names and addresses of all Specified Creditors received by it in its capacity as Note registrar and those which it has received from the Issuer in accordance with the Master Trust Indenture. Three or more Debtholders of any Series or Tranche, each of whom has owned an Issuer Funding Obligation of such Series or Tranche for at least six months, may, by application to the Indenture Trustee in the prescribed form, obtain access to the current list of Debtholders held by the Indenture Trustee for purposes of communicating with other Debtholders concerning their rights under the Master Trust Indenture (or any Supplemental Indenture) or under the applicable Program Agreement.

Debtholder Meetings

The Master Trust Indenture sets out the mechanics for meetings of Debtholders. The Master Trust Indenture provides for meetings of Debtholders of any Class, Series or Tranche of Issuer Funding Obligations, of all Issuer Funding Obligations, of Controlling Class Obligations of a Series or of all Controlling Class Obligations (each of such groups of Debtholders being a "**Debtholder Group**"). The Indenture Trustee will call a meeting of a Debtholder Group upon request of the Issuer or Debtholders of at least 25% in aggregate outstanding principal amount of the applicable Issuer Funding Obligations. If the Indenture Trustee fails to convene, or cause to be convened, such a meeting after 30 days, the Issuer or those Debtholders may convene the meeting. The Indenture Trustee may call a meeting of a Debtholder Group at any time for any purpose. The quorum for any meeting is one or more persons holding (personally or as proxies) not less than 25% of the outstanding principal amount of the Issuer Funding Obligations of the Debtholder Group entitled to vote at such meeting. Each Debtholder who is present, whether in person or by proxy, will have one vote for every $1,000 of outstanding principal amount of applicable Issuer Funding Obligations of which he or she shall be the holder.

Every question submitted to a meeting, except those matters requiring an Extraordinary Resolution, shall be decided by a majority of the votes (an "**Ordinary Resolution**"). Any matter requiring an Extraordinary Resolution shall be decided by the affirmative vote of Controlling Class Creditors holding not less than 66⅔% of the outstanding principal amount of all Controlling Class Obligations (an "**Extraordinary Resolution**"). Such matters include:

- after the security has become enforceable, authorizing the Indenture Trustee to accept, in satisfaction or partial satisfaction, all or any part of the Collateral;

- after the security has become enforceable, sanctioning the selling of the Collateral or any part thereof or interest therein;

- after the security has become enforceable, authorizing the Indenture Trustee or any other person to bid or tender at any sale of the Collateral or any part thereof and take such actions in connection with such sale as it determines to be in the best interests of all Controlling Class Creditors;

- consenting to any compromise or arrangement by the Issuer with any creditor, creditors or class or classes of creditors or with the holders of any securities of the Issuer whose claims are payable from the Collateral;

- restraining any Debtholder from taking or instituting any suit, action or proceeding for the purpose of realizing on the Collateral or for the execution of any trust or power hereunder or for the appointment of a liquidator, receiver or trustee in bankruptcy or to have the Issuer liquidated or for any other remedy hereunder and to direct such Debtholder to waive any Event of Default on which any suit or proceeding is founded;

- requiring the Indenture Trustee (subject to receipt by the Indenture Trustee of reasonable funding and indemnity) to exercise or refrain from exercising any other powers conferred upon it by the Master Trust Indenture of general application to all Classes of Issuer Funding Obligations, including the exercise of any rights of the Issuer under any of the Program Agreements upon the occurrence and during the continuance of an Event of Default, or cancel any declaration of acceleration made pursuant to the Master Trust Indenture upon such terms and/or conditions as may be decided;

- authorizing the Indenture Trustee, for and on behalf of all Debtholders, to file and prove a claim or debt against the Issuer or its property for an amount equivalent to the aggregate amount which may be payable in respect of all Issuer Funding Obligations, to value the Collateral, and to vote such claim or debt at meetings of creditors and generally act for and on behalf of all Debtholders in such proceedings as such Extraordinary Resolution may provide; and

- appointing a committee to exercise, on behalf of all Controlling Class Creditors, any powers of such Controlling Class Creditors as are exercisable by Extraordinary Resolution or other resolution (as specified in the Extraordinary Resolution appointing such committee).

Any resolution or instrument signed by the requisite number of Debtholders or Controlling Class Creditors, as applicable, shall have the same force and effect as a resolution duly passed at a meeting of such Debtholders or Controlling Class Creditors.

Any action or vote taken at a meeting (including by way of written instrument) of Debtholders of a Debtholder Group duly held in accordance with the Master Trust Indenture will be binding on all Debtholders of that Debtholder Group. An Extraordinary Resolution shall bind all Debtholders and all other Specified Creditors.

In determining whether Noteholders of the requisite principal amount have taken any action under the Master Trust Indenture, (i) Senior Notes owned by the Issuer, the Manager or any affiliate of either of them, and (ii) any Class of Notes (or portion thereof) in which the Province of Ontario has an interest will, in each case, be disregarded and deemed not to be outstanding at any time that a Specified Creditor other than the Province of Ontario has an interest in such Class of Notes. In determining whether the Indenture Trustee will be protected in relying upon any such action, only Senior Notes (or, in the case of the Province of Ontario, any Notes) which a responsible officer of the Indenture Trustee knows to be owned by the Issuer, OPG or any affiliate of either of them, or with respect to which the Province of Ontario has an interest pursuant to the Change of Law Protection Agreement, will be so disregarded.

Whenever an action may be taken by Debtholders of a specified percentage of outstanding principal amount of Issuer Funding Obligations and at such time there are outstanding Issuer Funding Obligations of any relevant Series denominated in a foreign currency, then the principal amount of the Issuer Funding Obligations of such Series which will be deemed to be outstanding for purposes of taking such action will be the amount of Canadian dollars which could be obtained for such principal amount at the market exchange rate on the applicable date.

Events of Default

General

Each of the following events is an "**Event of Default**":

(a) the Issuer's failure, for a period of 5 days, to pay interest on any Controlling Class Obligations when such interest becomes due and payable;

(b) the Issuer's failure to pay the principal of any Controlling Class Obligations at the Principal Payment Default Date;

(c) any representation or warranty in the Master Trust Indenture proves to be incorrect in any material respect when made and if capable of remedy, such incorrect representation or warranty is not remedied for a period of 60 days after the Indenture Trustee or Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer requesting remedy of that default and stating that as a result of such default, the interests of such Controlling Class Creditors are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(d) the Issuer's default in the performance, or breach, of any other of its covenants or warranties in the Master Trust Indenture, for a period of 60 days after the Indenture Trustee or Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer requesting remedy of that default and stating that as a result of such default, the interests of such Controlling Class Creditors are materially and adversely affected and continue to be materially and adversely affected during the 60-day period;

(e) certain events of bankruptcy or insolvency of the Issuer, or the Issuer fails to maintain its existence or status as a Financing Entity;

(f) the Change of Law Protection Agreement ceases to be in full force and effect against the Province of Ontario, or the validity thereof, or the applicability thereof to the Province of Ontario or any Controlling Class Obligations is disaffirmed by the Province of Ontario;

(g) an Acceleration Event has occurred and Controlling Class Creditors holding at least 25% of the outstanding principal amount of all Controlling Class Obligations have provided written notice to the Issuer and the Indenture Trustee specifying the default;

(h) the Issuer's default in the performance of its covenant to deliver payment instructions for a period of three days after the Indenture Trustee has provided written notice thereof;

(i) at any time, the amounts withdrawn from the Program Cash Reserve Account prior to such time exceed the aggregate of (x) 0.50% of the largest outstanding principal amount of all Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations on or prior to such time, (y) the sum of all amounts deposited to the Program Cash Reserve Account, and (z) all interest and earnings (net of losses and investment expenses), if any, on funds credited to the Program Cash Reserve Account; or

(j) a Servicer Default occurs.

If Controlling Class Obligations constituting 25% or more of the outstanding principal amount of all Controlling Class Obligations have been accelerated in accordance with their Funding Obligation Agreements, the thresholds required in clauses (c), (d) or (g) will be deemed to have been met.

Waiver of Default

Subject to the summary provided for below under "*— Acceleration and Remedies — General*", Controlling Class Creditors may, by Ordinary Resolution, waive any past Default under the Master Trust Indenture so long as the Rating Agency Condition in respect of each Series or Tranche of Controlling Class Obligations has been satisfied.

Acceleration and Remedies

General

If an Event of Default (other than an Event of Default described in paragraph (e) or (f)) occurs and is continuing, either the Indenture Trustee or Controlling Class Creditors holding not less than 50% of the outstanding principal amount of all Controlling Class Obligations (treated as one class) may declare the outstanding principal amount of all Issuer Funding Obligations (other than Derivative Funding Obligations) to be immediately due and payable. If Controlling Class Obligations constituting 50% or more of the outstanding principal amount of all Controlling Class Obligations have been accelerated in accordance with their Funding Obligation Agreements, the 50% threshold required will be deemed to have been met. The occurrence of an Event of Default described in paragraph (e) or (f) results in an automatic acceleration of all Issuer Funding Obligations (other than Derivative Funding Obligations).

A declaration of acceleration or an automatic acceleration may be rescinded by Extraordinary Resolution if (i) the Issuer has paid all overdue interest, principal that has become due (other by reason of acceleration) on Controlling Class Obligations and other amounts set out in the Master Trust Indenture, and (ii) all Events of Default (other than non-payment of principal) have been cured or waived.

If Controlling Class Obligations are accelerated, the Indenture Trustee may amongst other things, (i) apply to a court for an order of sequestration and payment of amounts in respect of the Clean Energy Adjustment in accordance with the FHPA, (ii) take possession of the Collateral, (iii) appoint a receiver with respect to the Collateral, (iv) initiate proceedings in any court for the appointment of a receiver or for sale or foreclosure, (v) exercise rights, remedies, powers, privileges and claims under any Program Agreement, including the right to terminate and replace the Manager or the Servicer, or (vi) take any other action, suit, remedy or proceeding authorized or permitted by the Master Trust Indenture or by applicable law. The Indenture Trustee is not obligated to exercise any of its rights or powers under the Master Trust Indenture at the request or direction of any Controlling Class Creditors unless Controlling Class Creditors offer the Indenture Trustee a reasonable indemnity.

See *"Risk Factors — Risks Associated with the Unusual Nature of the Investment Asset" and "Risk Factors — Insolvency-Related Risks Relating to the Issuer"*.

Limitation on Available Amounts on Acceleration

If all or any portion of the principal amount of any indebtedness of the Issuer (including one or more Series of Senior Notes) becomes due and payable after the Moratorium Period and before its scheduled payment date, maturity date or redemption date, then the estimated Finance Amount used by the Financial Services Manager to determine the Clean Energy Adjustment for a period will be determined without regard to the fact that such amount has become due and payable, unless and only to the extent that the amount of the Clean Energy Adjustment is capable of being increased based on the Fair Allocation Amount for such period. See *"Ontario's Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*. However, upon such acceleration, all accelerated Senior Notes will be repaid in full before any further payments of principal are made to holders of subordinated indebtedness, including the subordinated debt held by OPG; therefore, collections of the Clean Energy Adjustment that would otherwise have been available to repay the principal amount of subordinated indebtedness in the absence of acceleration of the Senior Notes will instead be applied to repay accelerated Senior Notes. See *"Capital Markets Platform"*.[51]

[51] ~~**Note:** Please consider tracking the specific terms of section 6.1 of the General Regulation, and add detailed descriptions to correspond to the limitation on cashflows during acceleration in the applicable detailed portions of the OM and Risk Factors.~~

Payment Waterfall Upon Acceleration

After acceleration of the Issuer Funding Obligations (other than derivative agreements), any money or other property standing to the credit of an Issuer Account (except as set out below) or otherwise collected by the Indenture Trustee will be applied in the following priority:

(a) first, to the payment or remittance of taxes for which a governmental authority is given priority over the Specified Creditors under the laws of the applicable jurisdiction;

(b) second, to pay fees, expenses and reimbursement amounts owing to the Issuer Trustee and the Indenture Trustee;

(c) third, *pari passu* (i) to pay interest, fees and other amounts (other than principal) owing in respect of Senior Funding Obligations and (ii) to pay all Derivative Funding Obligations (other than termination payments);

(d) fourth, to pay interest, fees and other amounts (other than principal) owing in respect of Subordinated Funding Obligations;

(e) fifth, to pay interest, fees and other amounts (other than principal) owing in respect of Junior Subordinated Funding Obligations;

(f) sixth, to pay principal owing in respect of Warehouse Obligations;

(g) seventh, *pari passu* (A) to pay principal owing in respect of Senior Funding Obligations (other than Warehouse Obligations) and (B) to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is not the defaulting party or the sole affected party;

(h) eighth, to pay fees, expenses and reimbursement amounts owing to the Manager;

(i) ninth, to pay principal owing in respect of Subordinated Funding Obligations;

(j) tenth, to pay principal owing in respect of Junior Subordinated Funding Obligations;

(k) eleventh, to pay termination payments owing to Derivative Counterparties where the Derivative Counterparty is the defaulting party or the sole affected party;

(l) twelfth, to pay all indemnity amounts owing to the Manager;

(m) thirteenth, *pari passu* (i) to the payment or remittance of taxes not previously paid pursuant to paragraph (a), and (ii) to pay all amounts owing to Specified Creditors not specifically referred to above; in each case, including, for each referenced party, any amounts payable to their respective affiliates under the terms of any relevant indemnity; and

(n) fourteenth, to pay any remaining amounts to the Issuer.

However, amounts on deposit in a Series Account will first be used to satisfy all obligations owing to the Debtholders or Derivative Counterparties for whom such Series Account was established. Thereafter, such amounts will be applied in accordance with the priorities set out above. In addition, amounts on deposit in the Protection Account will only be used to satisfy the obligations for which those amounts were deposited.

Rights of Specified Creditors

No Specified Creditor will have the right to institute any proceeding, judicial or otherwise, with respect to the Master Trust Indenture, or for the appointment of a receiver or trustee or similar official, or for any other remedy under the Master Trust Indenture. A Controlling Class Creditor may exercise such rights if:

(a) the Issuer or a Controlling Class Creditor has previously given to the Indenture Trustee written notice of a continuing Event of Default;

(b) Controlling Class Creditors, by Ordinary Resolution, have made written request of the Indenture Trustee to institute the proceeding in its own name as Indenture Trustee;

(c) Controlling Class Creditors have offered the Indenture Trustee a satisfactory indemnity; and

(d) the Indenture Trustee has, for 60 days, failed to institute the proceeding.

Subject to certain powers which may only be exercised by Extraordinary Resolution, Controlling Class Creditors, by Ordinary Resolution, will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee with respect to all Issuer Funding Obligations. However, the Indenture Trustee may decline to follow such direction if it determines (based on advice from counsel) that such direction (i) conflicts with applicable law or the Master Trust Indenture, (ii) has a substantial likelihood of involving the Indenture Trustee in personal liability or (iii) is unjustly prejudicial to Controlling Class Creditors not taking part such direction. See "*— Debtholder Approvals and Meetings — Debtholder Meetings*" for a description of certain powers which may only be exercised by Extraordinary Resolution. Specified Creditors (other than Debtholders) do not have any right to direct the time, method and place of conducting any proceeding for any remedy available to the Indenture Trustee, or exercising any trust or power conferred on the Indenture Trustee. Specified Creditors (other than Debtholders) will only have the right to receive proceeds following an Event of Default.

Limited Recourse

The obligation of the Issuer to pay principal of and interest on the Issuer Funding Obligations or any other amount payable to any Specified Creditor is subject to the allocation and payment provisions in the Master Trust Indenture and the applicable Funding Obligation Agreement and limited to amounts available from the Collateral. Neither the Indenture Trustee, the Manager nor the Issuer Trustee in its individual capacity, nor any holder of any unit in the Issuer, nor any of their respective owners, beneficiaries, agents, officers, directors, employees, successors or assigns will, in the absence of an express agreement to the contrary, be personally liable for the payment of the principal of or interest on the Notes or any other Issuer Funding Obligation, or for the Issuer's covenants and agreements contained in the Master Trust Indenture.

No Petition

Each Specified Creditor, by accepting its rights as a beneficiary under the Master Trust Indenture, agrees that until one year and one day following repayment in full of all Issuer Funding Obligations, it will not commence (or join in commencing) a bankruptcy, insolvency or similar proceeding under the laws of any jurisdiction against the Issuer.

Force Majeure

The Indenture Trustee and the Issuer Trustee will not be responsible or liable for any failure or delay in the performance of their obligations under the Master Trust Indenture arising out of or caused by, directly or indirectly, forces beyond their control, including loss or malfunctions of utilities, communications or computer services.

Satisfaction and Discharge

The Master Trust Indenture will cease to be of further effect with respect to any Class, Series or Tranche of Issuer Funding Obligations when:

(a) (x) in the case of Notes, all Notes of that Class, Series or Tranche which had been outstanding, with certain exceptions set forth in the Master Trust Indenture, have been delivered to the Indenture Trustee for cancellation or been cancelled, or (y) in the case of all other Issuer Funding Obligations, all Issuer Funding Obligations of that Class, Series or Tranche have been paid in full, as certified by the Issuer;

(b) the Issuer has paid all other sums payable by it under the Master Trust Indenture with respect to that Class, Series or Tranche of Issuer Funding Obligations; and

(c) the Issuer has delivered to the Indenture Trustee an officer's certificate and an opinion of external counsel each stating that the conditions precedent in the Master Trust Indenture relating to the satisfaction and discharge with respect to that Class, Series or Tranche of Issuer Funding Obligations have been complied with.

The Master Trust Indenture will cease to be of further effect when all Issuer Funding Obligations have been satisfied and discharged in accordance with the previous paragraph and all other Obligations Secured have been paid in full, as certified by the Issuer.

DESCRIPTION OF SENIOR NOTES

The following description of the Senior Notes is a summary of certain of their material attributes and characteristics, and does not purport to be complete. The terms and conditions set forth in this *"Description of ~~the~~ Senior Notes"* section will apply to each Senior Note unless otherwise specified in the Term Sheet applicable to such Offering. For further particulars, reference should be made to the Master Trust Indenture and the Supplemental Indenture and Terms Document, if any, relating to the particular Series or Tranche of Senior Notes.

General

The Senior Notes will be issued under the Master Trust Indenture and will be Funding Obligations issued in connection with the financing program described under the heading "*Capital Markets Platform*". The specific terms and conditions of each Series of Senior Notes will be set forth in the Supplemental Indenture authorizing that Series and the specific terms and conditions of any Tranche of Senior Notes will be set forth in the Supplemental Indenture or the Terms Document authorizing that Tranche.

Under the Master Trust Indenture, the Issuer may issue an unlimited principal amount of Senior Notes. See "*Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations*". The Senior Notes will be direct obligations of the Issuer and secured in the manner provided for under the Master Trust Indenture. See "*Capital Markets Platform — Security*".

The Supplemental Indenture or Terms Document will describe the following terms of the Senior Notes:

- the Series designation;
- stated principal amount of the Senior Notes;
- whether such Senior Notes are of a particular Tranche of Senior Notes;

- the currency or currencies in which such Senior Notes will be denominated and in which payments of principal of, and interest on, such Senior Notes will or may be payable;

- the price at which such Series or Tranche of Senior Notes will be issued;

- the times at which such Series or Tranche of Senior Notes may, pursuant to any optional redemption provisions, be redeemed, and the other terms and provisions of any such redemption;

- the rate per annum at which such Series or Tranche of Senior Notes will bear interest, if any, or the formula or index on which such rate will be determined;

- each Interest Payment Date, each Principal Payment Date and the Principal Payment Default Date for such Series or Tranche of Senior Notes;

- the Principal Accumulation Date(s)**, if any,** and Principal Accumulation Amount(s) for such Series of Senior Notes;

- the initial principal amount of such Senior Notes, and the means for calculating the outstanding principal amount of such Series or Tranche of Senior Notes;

- whether or not application will be made to list such Series or Tranche of Notes on any securities exchange;

- any events of default with respect to such Series or Tranche of Senior Notes;

- if such Series or Tranche of Senior Notes will be issued in whole or in part in the form of a global note, the terms and conditions, if any, upon which such global note may be exchanged for other individual Senior Notes, and the depository for such global note;

- if such Class, Series or Tranche of Senior Notes will be issued in whole or in part in registered form, bearer form or both, and if such Senior Notes will be issued with or without coupons;

- if such Class, Series or Tranche will have the benefit of a credit enhancement agreement or liquidity agreement, and the terms and provisions of the applicable agreement;

- the record date for any Interest Payment Date or Principal Payment Date of such Series or Tranche of Senior Notes, if different from the last of the month before the related Interest Payment Date or Principal Payment Date; and

- whether and under what conditions, additional amounts will be payable to Noteholders of such Series or Tranche of Notes.

Limitations

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt, liability or obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. The Senior Notes will not ~~be~~ insured or guaranteed by the Province of Ontario, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*.

Payments of Principal and Interest

Interest will accrue on the principal balance of each Series or Tranche of Senior Note at the interest rate specified in the related Term Sheet and will be payable on the Interest Payment Date(s) specified in the related Term

Sheet. Principal of each Series or Tranche of Senior Notes will be payable in the amounts and on the Principal Payment Date(s) specified in the related Term Sheet. The Term Sheet applicable to a Series or Tranche of Senior Notes will also set out the Principal Payment Default Date for such Senior Notes, which is the date on which failure to pay the principal amount of such Senior Notes will result in an Event of Default.

On each Payment Date, the Issuer will, to the extent funds are available therefor from the Collection Account (see "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account*"), transfer to the Interest Accumulation Account the aggregate amount of interest that has accrued on each Series of Senior Notes (together with all other amounts to be accrued for other Issuer Funding Obligations). On each Interest Payment Date for a Series or Tranche of Senior Notes, the Paying Agent will pay to the holders of such Senior Notes interest then due on such Senior Notes using amounts available therefor from the Interest Accumulation Account, the Principal Accumulation Account, the IESO Cash Reserve Account, the Program Cash Reserve Account and the Protection Account. See "*Change of Law Protection Agreement*" and "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration*".

On each Payment Date, the Issuer will, to the extent funds are available therefor from the Collection Account (see "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account*"), transfer to the Principal Accumulation Account the aggregate of the amounts the Issuer is required to accumulate for each Series of Senior Notes (together with all other amounts to be accumulated for other Issuer Funding Obligations). The Term Sheet applicable to a Series or Tranche of Senior Notes will set out the Principal Accumulation Amount(s) and the ~~Principal Accumulation Date(s)~~**Payment Dates on which such amount are to be accumulated** for such Senior Notes. On each Principal Payment Date for a Series or Tranche of Senior Notes, the Paying Agent will pay to the holders of such Senior Notes the principal then due on such Senior Notes using amounts available therefor from the Principal Accumulation Account, the Program Cash Reserve Account and the Protection Account. See "*Change of Law Protection Agreement*" and "*Capital Markets Platform — Payment Waterfalls Prior to Acceleration*". Holders of Senior Notes may receive principal payments earlier than ~~a~~**an expected** Principal Payment Date if an optional redemption occurs and may receive principal payments later than ~~a~~**an expected** Principal Payment Date if there are insufficient Available Collections. See "*Risk Factors*" for a discussion of factors that may affect the timing of principal payments on a Series or Tranche of Senior Notes. It is not an Event of Default if the stated principal amount of a Series or Tranche of Senior Notes is not paid in full on ~~a~~**an expected** Principal Payment Date. If the stated principal amount of a Senior Note is not paid in full by its Principal Payment Default Date, an Event of Default will occur. See "*Capital Markets Platform — Events of Default*".

Unless otherwise specified in a Term Sheet, the Issuer has designated the Indenture Trustee as its Paying Agent for all Senior Notes having a place of payment in Toronto, Ontario.

Optional Redemption of Senior Notes

If a Supplemental Indenture for any Series or Tranche of Senior Notes states that such Senior Notes will be redeemable, in whole at any time or in part from time to time, such Senior Notes will be redeemable at the option of the Issuer at the redemption price specified in the Supplemental Indenture. If less than all the Senior Notes of any Series or Tranche are to be redeemed at one time, the Senior Notes of such Series or Tranche to be redeemed will be selected by the Indenture Trustee on a pro rata basis according to the principal amount of such Senior Notes registered in the name of each holder thereof, or in such other manner as the Indenture Trustee may consider equitable.

Notice of any redemption will be delivered to each holder of the Senior Notes to be redeemed, electronically or by mail (postage prepaid) at the address of such holder appearing in the Note register (or published in an authorized newspaper in the case of Senior Notes held in bearer form) or otherwise in accordance with the procedures of the depository, at least 15 days but not more than 30 days before the redemption date, except that redemption notices may be delivered more than 30 days prior to the redemption date if the notice is issued in connection with a satisfaction and discharge of the Master Trust Indenture with respect to such Series or Tranche of Senior Notes. The notice of redemption will state (i) the portion of the principal amount thereof to be redeemed (provided that no Senior Notes in an aggregate principal amount of 1,000 units of the applicable currency or less will be redeemed in part), (ii) the redemption date and (iii) the redemption price. Unless the Issuer defaults in payment of the redemption price, on and after the redemption date, interest will cease to accrue on the Senior Notes or portions

of the Senior Notes called for redemption. A replacement note in principal amount equal to the unredeemed portion thereof will be issued in the name of the holder thereof upon cancellation of the original note; provided, however, that, in the case of a global note, an appropriate notation may instead be made on such note to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof.

The Term Sheet for each Offering will identify the redemption provisions of the applicable Notes at the time of such Offering.

Purchase for Cancellation

The Issuer may purchase or otherwise acquire, at any time or from time to time, all or any of the outstanding Senior Notes of any Series or Tranche in the market or by invitation for tenders or by private contract at such prices as it may determine in its sole discretion. All such Senior Notes purchased by the Issuer will be cancelled. If, upon a tender, more Senior Notes of a Series or Tranche are tendered at the same lowest price than the Issuer is prepared to accept, the Senior Notes of such Series or Tranche to be purchased will be selected by the Indenture Trustee on a pro rata basis according to the principal amount of such Senior Notes registered in the name of each holder thereof, or in such other manner as the Indenture Trustee may consider equitable.

DEPOSITORY SERVICES

Except as otherwise provided below, the Senior Notes will be issued in "book-entry only" form and must be purchased, transferred, redeemed or exchanged through participants ("**Participants**") in the depository service of a depository chosen by the Issuer (the "~~Depository~~depository") or its nominee, which include securities brokers and dealers, banks and trust companies. On the closing date of an Offering, the Issuer will cause a global certificate representing the Senior Notes to be delivered to, and registered in the name of, the ~~Depository~~depository or its nominee. Except as described below, no purchaser of Senior Notes will be entitled to a certificate or other instrument from the Issuer or the ~~Depository~~depository evidencing that purchaser's ownership thereof, and no purchaser will be shown on the records maintained by the ~~Depository~~depository except through a book-entry account of a Participant acting on behalf of such purchaser. Each purchaser of Senior Notes will typically receive a customer confirmation of purchase from the registered dealer from which the Senior Notes are purchased in accordance with the practices and procedures of that registered dealer. The practices of registered dealers may vary, but generally, customer confirmations are issued promptly after execution of a customer order. The ~~Depository~~depository will be responsible for establishing and maintaining book-entry accounts for its Participants having interests in the Senior Notes.

Neither the Issuer, the Indenture Trustee nor the Agents will assume any liability for: (i) any aspect of the records relating to the beneficial ownership of the Senior Notes held by the ~~Depository~~depository or the payments relating thereto; (ii) maintaining, supervising or reviewing any records relating to the Senior Notes; or (iii) any advice or representation made by or with respect to the ~~Depository~~depository or those contained in this confidential shelf offering memorandum and relating to the rules governing the ~~Depository~~depository or any action to be taken by the ~~Depository~~depository or at the direction of its Participants. The rules governing the ~~Depository~~depository provide that it acts as the agent and ~~Depository~~depository for the Participants. As a result, Participants must look solely to the depository and persons, other than Participants, having an interest in the Senior Notes must look solely to Participants for payments made by or on behalf of the Issuer to the ~~Depository~~depository in respect of the Senior Notes.

If: (i) required by applicable law; (ii) the ~~Depository~~depository notifies the Issuer in writing that the ~~Depository~~depository is no longer willing or able to discharge properly the responsibilities of a depository with respect to the Senior Notes and the Issuer is unable to locate a qualified successor; (iii) the Issuer determines the Senior Notes in book-entry only form should be exchanged for definitive certificates and the Issuer delivers a written notice to such effect to the Indenture Trustee; (iv) an Event of Default has occurred and Noteholders holding more than 50% of the Controlling Class Obligations of any Series of Senior Notes determine such book-entry system is no longer in the best interests of the holders of that Series; or (v) the book-entry system is terminated, then certificates representing the Senior Notes will be issued to the beneficial owners of Senior Notes.

Interest on the Senior Notes will be paid directly to CDS while the book-entry only system is in effect. If definitive certificates are issued, interest will be paid by wire transfer of immediately available funds to the accounts specified by the holders thereof or, if no such account is specified, by mailing a cheque to each such holder's registered address. Payment of principal, and the interest due, at maturity, will be paid directly to CDS while the book-entry only system is in effect. If definitive certificates are issued, payment of principal, and interest due, at maturity, will be paid upon surrender thereof at any office of the Trustee or as otherwise specified in the Indenture.

Manner of Effecting Transfer or Redemption

A transfer or redemption of Senior Notes held in "book-entry form" only will be effected through records maintained by the ~~Depository~~**depository** or its nominee with respect to interests of Participants, and on the records of Participants with respect to interests of persons other than Participants. Purchasers of such Senior Notes who are not Participants, but who desire to purchase, sell or otherwise transfer ownership of or other interests in the Senior Notes, may do so only through Participants.

DTC, Euroclear and Clearstream, Luxembourg

Where CDS acts as depository for a series of Senior Notes, to the extent the Issuer makes such series of Senior Notes eligible with The Depositary Trust Company ("**DTC**"), Euroclear Bank S.A./N.V., as operator of the Euroclear System ("**Euroclear**") and Clearstream Banking, société anonyme ("**Clearstream, Luxembourg**"), and the Issuer specifies as such in the Term Sheet with respect to the particular series of Senior Notes, holders may hold such series of Senior Notes through the accounts maintained by DTC, Euroclear or Clearstream, Luxembourg, as applicable, as participants in CDS only if they are participants of those systems, or indirectly through organizations which are participants of those systems.

In such case, DTC, Euroclear and Clearstream, Luxembourg will hold omnibus book-entry positions on behalf of their participants through customers' securities accounts in their respective depositaries which in turn will hold such positions in customers' securities accounts in the names of the nominees of the depositaries on the books of CDS. All securities in DTC, Euroclear and Clearstream, Luxembourg are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts.

Transfers of such Senior Notes by persons holding through Euroclear or Clearstream, Luxembourg participants, as applicable, will be effected through CDS, in accordance with CDS rules, on behalf of the relevant European international clearing system by its depositaries; however, such transactions will require delivery of transfer instructions to the relevant European international clearing system by the participant in such system in accordance with its rules and procedures and within its established deadlines (European time). The relevant European international clearing system will, if the transfer meets its requirements, deliver instructions to its depositaries to take action to effect the transfer of the Senior Notes on its behalf by delivering Senior Notes through CDS and receiving payment in accordance with its normal procedures for next-day funds settlement. Payments with respect to the Senior Notes held through Euroclear or Clearstream, Luxembourg will be credited to the cash accounts of Euroclear participants or Clearstream, Luxembourg participants in accordance with the relevant system's rules and procedures, to the extent received by its depositaries.

All information in this confidential shelf offering memorandum concerning CDS, DTC, Euroclear and Clearstream, Luxembourg, reflects the Issuer's understanding of the policies of such organizations which may change at any time without notice.

PLAN OF DISTRIBUTION

The Senior Notes may be sold by the Issuer directly pursuant to applicable statutory exemptions or through agents designated by the Issuer from time to time. Each Term Sheet will identify the Agents engaged in connection with the applicable Offering of Senior Notes and will also set forth the terms of the Offering of Senior Notes, including the net proceeds to the Issuer and, to the extent applicable, any fees payable to the Agents. The Agents will conditionally offer the Senior Notes for sale on a "best efforts" basis, if, as and when issued and delivered by the Issuer in accordance with the conditions contained in an agency agreement (the "**Agency Agreement**") between the

Issuer, OPG and the Agents to be entered into on or about the date of each Term Sheet. The Agents will be paid a fee by the Issuer for their services rendered to the Issuer in connection with the offering, issue and sale of the Senior Notes. The obligations of the Agents under the Agency Agreement may be terminated upon the occurrence of certain stated events. The Agents may over-allot or effect transactions which stabilize or maintain the market price of the Senior Notes at a level different than that which might otherwise prevail in the open market. Such transactions, if commenced, may be discontinued at any time.

The Senior Notes may not be offered or sold, directly or indirectly, in Canada or to or for the account of any Canadian resident except, in the case of sales made in any province of Canada, pursuant to an exemption from the prospectus requirements in Section 2.3 of NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(2) of the *Securities Act* (Ontario), also known as the "accredited investor" exemption. In addition, Senior Notes will not be offered or sold, directly or indirectly, to individuals unless those individuals are also "permitted clients" within the meaning of NI 31-103.

Resale of the Senior Notes will be subject to restrictions under applicable securities legislation which vary depending on the relevant jurisdictions. **The Senior Notes may only be sold on a basis that is exempt from the prospectus requirements of applicable securities legislation through an appropriately registered dealer or pursuant to an exemption from the registration requirements of applicable securities legislation**. See *"Restrictions on Resale"*.

This confidential shelf offering memorandum does not constitute an offer to sell or a solicitation of an offer to buy any of the Senior Notes in the United States. The Senior Notes have not been and will not be registered under the U.S. Securities Act or any state securities laws and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons (as such term is defined in Regulation S under the U.S. Securities Act) unless the Senior Notes are registered under the U.S. Securities Act and applicable state securities laws or an exemption therefrom is available. In addition, until 40 days after the commencement of an Offering, any offer or sale of the Senior Notes within the United States by any dealer (whether or not participating in an Offering) may violate the registration requirements of the U.S. Securities Act if such offer or sale is made otherwise than in accordance with an exemption from the registration requirements of the U.S. Securities Act. Each Agent has agreed that, except as permitted by an Agency Agreement, it will not offer or sell the Senior Notes as part of the distribution of the Senior Notes at any time within the United States or to, or for the account or benefit of, U.S. persons.

RISK FACTORS

An investment in Senior Notes involves certain risks. Prospective investors in the Senior Notes should carefully consider all the information included in this confidential shelf offering memorandum, including the risks described below, before deciding to invest in the Senior Notes. This section does not describe all risks applicable to the Issuer and is intended only as a summary of certain material risks. In addition, prospective investors should consult their own financial and other legal and tax advisors, and should carefully consider, among other matters, the following discussion of risks before deciding whether to purchase Senior Notes.

Judicial, Legislative or Regulatory Risks

Future legal action might challenge or invalidate the FHPA ~~or the Regulations~~ and materially adversely affect a holder's investment in the Senior Notes.

The Investment Asset is a creation of the FHPA, which became effective on June 1, 2017. The Issuer will be the first Financing Entity under the FHPA to issue Funding Obligations as contemplated under the FHPA. The FHPA~~, the Regulations~~ or any provisions thereof might be directly contested in courts or otherwise become the subject of litigation. The FHPA is novel legislation in Canada and therefore there are no precedents to rely on to support the validity of the FHPA ~~or the Regulations~~.

As of the date of this confidential shelf offering memorandum, no such litigation has arisen; however, there can be no assurance that a lawsuit challenging the validity of some portion or all of the FHPA ~~or the Regulations~~ will not be filed in the future or that, if filed, such lawsuit will not be successful. If such a lawsuit ~~was~~**were** successful, and an

invalidation of any relevant underlying legislative or regulatory provision were to result that did not constitute a Protection Event under the Change of Law Protection Agreement, a holder of Senior Notes may lose some or all of their investment in the Senior Notes or experience significant delays in recovering their investment in the Senior Notes. Even if the successful lawsuit constitutes a Protection Event, under the terms of the Change of Law Protection Agreement, the Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include any amount in respect of an amount due and payable to a Specified Creditor under the Limited Guarantee).

Future legislative action to change the FHPA~~, the Regulations~~, the Change of Law Protection Agreement or the electricity market might materially adversely affect a holder's investment in the Senior Notes.

The FHPA provides that no act or omission of the Crown shall be effective to reduce, impair, postpone or terminate the obligations of Specified Consumers to pay amounts in respect of the Clean Energy Adjustment or to impair or postpone the invoicing, collection or remittance of the Clean Energy Adjustment. Ontario does not have a referendum or initiative process by which the FHPA may be amended or repealed. Therefore, the only way for such provisions of the FHPA to be amended or repealed would be through a subsequent legislative action by the Province of Ontario. A determination by the Province of Ontario that, for political or other reasons, the FHPA ~~or the Regulations~~ should no longer be law in Ontario or that the FHPA ~~or Regulations~~ should be amended to limit or delay the recovery of Clean Energy Adjustments, could result in a decision to make such an amendment, repeal or revocation. Any such action that adversely affects the ability of the Issuer to receive amounts in respect of the Investment Interest so that it can pay Approved Obligations when due and payable (determined after taking into account certain factors described above in the definition of "Protection Event") would be subject to the Change of Law Protection Agreement. Under the Change of Law Protection Agreement, the Province of Ontario is not obligated to pay or indemnify the Indenture Trustee or any Specified Creditor for consequential, special or punitive damages, or for economic loss or loss of profits (provided that economic loss does not include any amount in respect of an amount due and payable to a Specified Creditor under the Limited Guarantee). See *"Change of Law Protection Agreement"*. However, future legislative action by the Province of Ontario could also be taken that would have the effect of voiding or otherwise rendering invalid the Change of Law Protection Agreement.

Canada does not have any constitutional protection of property rights. While an adverse impact of statutory measures on private property has, in some circumstances, been judicially held to entitle property owners to compensation, such entitlements themselves can also be extinguished by legislation. Accordingly, if the provisions of the FHPA ~~or the Regulations~~ referenced in the previous paragraph were amended or ~~revoked~~**repealed** through subsequent legislative action of the Province of Ontario and future legislative action was also taken by the Province of Ontario that had the effect of voiding or otherwise rendering invalid the Change of Law Protection Agreement, a holder of Senior Notes may lose some or all of their investment in the Senior Notes or experience significant delays in recovering their investment in the Senior Notes.

Future judicial action could reduce the value of a holder's investment in the Senior Notes.

The Investment Asset is the creation of the FHPA. There is uncertainty associated with investing in Senior Notes payable from an interest in an asset that depends on legislation for its existence because there is no juridical or regulatory experience implementing and interpreting the legislation or similar legislation in Canada. Because the Investment Asset is a creation of the FHPA, any judicial determination interpreting the FHPA or the Investment Asset might have an adverse effect on a holder of Senior Notes' investment in the Senior Notes.

Potential difficulties in enforcing civil liabilities against the Province of Ontario may arise.

Under the *Proceedings Against the Crown Act* (Ontario), the remedies of injunction and specific performance are not available against the ~~Province of Ontario~~**Crown, nor may an order for execution or attachment be made against the Crown**, although the remedy of damages is available.[~~52~~] Nothing in the Change of Law Protection Agreement or the Program Agreements affects the rights, protections and immunities of the Crown under the *Proceedings Against*

[~~52~~] ~~**Note:** Consider mentioning that section 21 of the *Proceedings Against the Crown Act* (Ontario) prohibits execution, attachment and process against the Province.~~

the Crown Act (Ontario). As a result, if the Province of Ontario fails to comply with the Change of Law Protection Agreement, the Indenture Trustee's ability to obtain an effective remedy against the Province of Ontario is limited and holders of Senior Notes may lose some or all of their investments in the Senior Notes or experience significant delays in recovering their investments.[53]

Risks Associated with the Unusual Nature of the Investment Asset

Clean Energy Adjustments will not be payable until May 1, 2021 and until such time the IESO will be the sole source of funds for payment on the Senior Notes. ***Amounts paid by the IESO are not available to pay principal on the Senior Notes.***

During the Moratorium Period, no Clean Energy Adjustments are permitted to be collected from Specified Consumers. During the Moratorium Period, a holder of Senior Notes must rely for payment **by the Issuer** of interest on the Senior Notes, and the Issuer must rely for payment of all of its ~~other~~ Carrying Costs, ~~solely~~ upon the IESO who is obligated under the Regulations to pay these Carrying Costs. **The amounts paid by the IESO cannot be applied on account of principal on the Senior Notes.** The IESO has granted the Issuer a first-priority security interest in all its accounts receivable from Electricity Vendors, which includes the amounts receivable by the IESO from Electricity Vendors with respect to the global adjustment charge, as security for the performance of its regulatory obligation to pay the Issuer's Carrying Costs. The IESO also has a $2 billion unsecured credit facility agreement with the Ontario Financing Authority, expiring ~~■, 20■~~ **September 30, 2022,** which ~~is permitted to~~**can** be used to pay the Issuer's Carrying Costs. ~~*[NTD: IESO credit facility description to be confirmed.]*~~[54] There can be no assurance that the IESO will continue to have sufficient funds available to pay ~~interest on the Senior Notes or to pay~~ the Issuer's ~~other~~ Carrying Costs during the Moratorium Period. If the Issuer enforces the security granted to the Issuer by the IESO during this period, there can be no assurance that the IESO's accounts receivable from Electricity Vendors will be sufficient to pay ~~interest on the Senior Notes or~~ the Issuer's ~~other~~ Carrying Costs and a holder of Senior Notes may suffer material payment delay on the Senior Notes during the Moratorium Period.

The Issuer's ability to enforce security granted by the IESO may be significantly impaired or delayed.

Under various Canadian bankruptcy, insolvency and restructuring statutes or Canadian federal or provincial receivership laws, including the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Canada Business Corporations Act*, the *Winding-up and Restructuring Act*, and various provincial corporate statutes (collectively, "**Canadian Insolvency and Restructuring Laws**"), the Issuer's ability to enforce security granted by the IESO may be significantly impaired or delayed. In view of the broad discretionary powers of courts under Canadian Insolvency and Restructuring Laws, it is not possible to predict how long payments of Carrying Costs by the IESO or enforcement of any letter of credit or performance guarantee provided by the IESO could be delayed following commencement of a proceeding under Canadian Insolvency and Restructuring Laws by the IESO or whether or when the Issuer would be able to repossess or dispose of the assets over which it holds a security interest. Canadian Insolvency and Restructuring Laws also contemplate the granting of super priority security interests or charges (which could be in priority to the security of existing secured creditors) on the assets of the debtor company to secure the repayment of any amounts to be borrowed to facilitate the insolvency proceeding, any amounts owing for the fees and costs of professionals involved in the insolvency proceeding, obligations of directors of the company with respect to their statutory liabilities and sometimes other amounts.

Canadian Insolvency and Restructuring Laws also contain provisions enabling an obligor to prepare and file a proposal or a plan of arrangement or reorganization for consideration by all or some of its creditors, to be voted on by the various classes of creditors affected thereby. Such a restructuring proposal or plan of arrangement or reorganization, if accepted by the requisite majority of each class of affected creditors and if approved by the relevant Canadian court, would be binding on all creditors of the applicable obligor within the affected classes, including the Issuer, whether or not the Issuer votes in favour of the restructuring proposal or plan of arrangement or reorganization. Such a proposal or plan of arrangement or reorganization may have the effect of compromising

~~[53] **Note:** Consider mentioning, as a mitigant, that section 22 of the *Proceedings Against the Crown Act* (Ontario), which states that "the Minister of Finance shall pay out of the Consolidated Revenue Fund the amount payable by the Crown, (a) under an order of a court that is final and not subject to appeal; (b) under a settlement of a proceeding in a court…".~~

~~[54] **Note:** Is there any other information to be added apart from the expiry date?~~

certain rights available to the Issuer with respect to the payment of Carrying Costs or enforcement of any security provided by the IESO ~~under the Master Transfer and Servicing Agreement~~.

A holder of Senior Notes may experience material payment delays because the source of funds for payment after the Moratorium Period is limited.

A holder of Senior Notes may suffer material payment delays on the Senior Notes if the collateral securing the Senior Notes is insufficient to pay the accrued interest on and the principal amount of those Senior Notes in full. During the Moratorium Period, a holder of Senior Notes must rely for payment **by the Issuer** of interest on the Senior Notes, and the Issuer must rely for payment ~~of all~~ of its ~~other~~ Carrying Costs, ~~solely~~ upon the IESO who is obligated under the Regulations to pay these Carrying Costs. **Amounts paid by the IESO are not available to pay principal on the Senior Notes.** After the Moratorium Period, the only source of funds for payments of interest on and principal of the Senior Notes will be the collateral. The collateral for the Senior Notes will include:

- the Investment Interest, including the right to impose, bill, collect and receive Clean Energy Adjustment amounts, inclusive of the True-up Amount;
- the cash and investments on deposit in the accounts held by the Indenture Trustee; and
- the Issuer's rights under various contracts described in this confidential shelf offering memorandum and under the FHPA ~~and the Regulations~~.

The Senior Notes will not be insured or guaranteed by the Province of Ontario, the IESO, OPG or any of their respective affiliates, the Indenture Trustee or any other person or entity, except pursuant to the Limited Guarantee provided by the Province of Ontario upon the occurrence of a Protection Event ~~and delivery by the Indenture Trustee to the Province of Ontario of a written payment demand~~. See *"Change of Law Protection Agreement"*. The Senior Notes will be ~~limited recourse~~**nonrecourse** obligations, secured only by the collateral. ~~See "*Capital Markets Platform — Acceleration and Remedies — Limited Recourse*". ~~Delays in payment on the Senior Notes might result in a reduction in the market value of the Senior Notes and, therefore, the value of a holder's investment in the Senior Notes.

The Senior Notes do not constitute a debt, liability or other obligation of, or interest in, OPG or any of its other affiliates (other than the Issuer). The Senior Notes are not a debt~~, liability~~ or ~~other~~**general** obligation of the Province of Ontario or any of its political subdivisions, agencies or instrumentalities. **However, insofar as the Province of Ontario or any such political subdivision, agency or instrumentality is a Specified Consumer, such governmental entity will be obligated, in its capacity as a Specified Consumer, to pay Clean Energy Adjustment amounts that will be collected and remitted to the Issuer in respect of its Investment Interest securing the Senior Notes.**

A holder of Senior Notes must rely for payment of principal of and interest on the Senior Notes solely upon the FHPA ~~and the Regulations~~, rights to enforcement of the FHPA~~, the Regulations~~ and of various agreements described in this confidential shelf offering memorandum, collections of Clean Energy Adjustment amounts and cash and investments on deposit in the related accounts held pursuant to the Master Trust Indenture.

The Clean Energy Adjustment may not be billed after April 30, 2047, unless further regulations to extend that date are passed.

The Clean Energy Adjustment may not be billed to Specified Consumers after April 30, 2047, unless further regulations to extend that date are passed. If Clean Energy Adjustment amounts billed through this period are not sufficient to repay the Senior Notes in full and further regulations to extend this date are not passed, apart from amounts in the capital accounts, if any, no other funds will be available to pay the unpaid balance due on the Senior Notes.

Foreclosure of the Indenture Trustee's lien on the Investment Interest securing the Senior Notes might not be practical and acceleration of the Senior Notes before maturity might have little practical effect.

Under the Master Trust Indenture, the Indenture Trustee on behalf of the holders of Senior Notes and other creditors has the right to foreclose or otherwise enforce the lien granted to the Indenture Trustee by the Issuer on the collateral securing the Senior Notes. However, in the event of foreclosure, there is likely to be a limited market, if any, for the collateral. Therefore, foreclosure might not be a realistic or practical remedy. Moreover, although principal of the Senior Notes will be due and payable upon acceleration of the Senior Notes before maturity, under the Regulations, the amount of the Clean Energy Adjustment may not be increased to take into account such acceleration (subject to limited exceptions depending on the Fair Allocation Amount at the time). As a result, this limitation on increases to the Clean Energy Adjustment at the time of any acceleration of the Senior Notes prior to maturity will result in principal of the Senior Notes being paid on acceleration as funds become available. However, upon such acceleration, the priority of principal payments to creditors of the Issuer will result in all accelerated Senior Notes being repaid in full before any further payments of principal are made to holders of subordinated indebtedness of the Issuer. ~~In the event of an acceleration, holders of Senior Notes may be paid sooner or later than originally expected.~~

The Issuer may issue multiple Series of Senior Notes secured by the Investment Interest and some decisions affecting holders of Senior Notes may require the approval of all Series.

The Issuer may issue multiple Series of Senior Notes all of which will be secured by the collateral securing the Senior Notes. The Issuer may not issue additional Series of Senior Notes if the issuance would not satisfy the Rating Agency Condition and certain other conditions precedent in the Master Trust Indenture. See *"Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations"*. If additional Series of Senior Notes are issued, Clean Energy Adjustment amounts collected by or for the benefit of the Issuer will be prorated among the Series of Senior Notes based on the respective amounts of interest and principal due and payable or required to be accumulated in respect of each Series of Senior Notes. Any issuance of additional Series of Senior Notes by the Issuer could cause reductions or delays in payment on the Senior Notes. In addition, some matters relating to the Senior Notes issued by the Issuer may require the vote of the holders of all Series of Senior Notes. The interests of holders of a particular Series of Senior Notes in these votes might conflict with the interests of the holders of another Series of Senior Notes. Thus, these votes could result in an outcome that is materially unfavorable to holders of a particular Series of Senior Notes.

The Master Trust Indenture contains Events of Default (other than those pertaining to the insolvency of the Issuer or invalidity of the Change of Law Protection Agreement) that can only be declared by Debtholders who hold at least 25% of the outstanding Controlling Class Obligations. If any such Event of Default has occurred and is continuing, Debtholders who hold at least 50% of the outstanding Controlling Class Obligations may accelerate all Issuer Funding Obligations (other than Derivative Funding Obligations). However, it is possible for individual Series of Senior Notes to have their own acceleration events such that those individual Series of Senior Notes may be accelerated while other Series of Issuer Funding Obligations would not be accelerated. In such a case, (i) the allocation of Available Collections to the holders of accelerated Series of Issuer Funding Obligations in a Class would be higher relative to the non-accelerated Series of Issuer Funding Obligations of that Class than it would otherwise be, and (ii) after payment in full of accelerated Senior Notes and other Senior Funding Obligations and once all amounts due and payable on non-accelerated Senior Notes and other Senior Funding Obligations have been satisfied on any principal payment date, amounts remaining for payment of principal would be allocated to the repayment of principal on both accelerated and non-accelerated subordinated debt, as applicable. In certain cases, a declaration of acceleration or an automatic acceleration may also be rescinded by Extraordinary Resolution if (i) the Issuer has paid all overdue interest, principal that has become due (other than by reason of acceleration) on Controlling Class Obligations and other amounts set out in the Master Trust Indenture, and (ii) all Events of Default (other than non-payment of principal) have been cured or waived. See *"Capital Markets Platform — Acceleration and Remedies — General"*.

If a Series of Senior Notes or all Senior Notes are accelerated, a holder of Senior Notes might receive payment of principal sooner or later than expected.

Under certain circumstances it is possible that all outstanding Senior Notes will be accelerated as a Class or that certain Series of Senior Notes will be accelerated while other Series of Senior Notes will not be accelerated. See

"Capital Markets Platform – Acceleration and Remedies". The possibility of certain Series of Senior Notes accelerating while other Series of Senior Notes do not accelerate would arise if (i) an Event of Default occurs but Noteholders holding at least 50% of all outstanding Senior Notes do not approve the acceleration of all outstanding Senior Notes, and (ii) holders of Senior Notes of a particular Series approve the acceleration of the Senior Notes of that Series by the requisite majority of holders of that Series as set out in the applicable supplemental indenture for that Series.

If all Senior Notes are accelerated the application of available funds will be as described under *"Capital Markets Platform – Acceleration and Remedies"* for all Senior Notes. It is possible that holders of 50% or more of the outstanding principal balance of all Senior Notes will approve the acceleration of all Senior Notes even if holders of a particular Series of Senior Notes do not vote in favour of the acceleration of the Senior Notes of that Series.

If only certain Series of Senior Notes are accelerated, then the outstanding principal balance of those Series of Senior Notes will become immediately due and payable but the payment due dates of those Series of Senior Notes that have not been accelerated will not change. In this case, the application of available funds will continue as described under *"Capital Markets Platform -- Payment Waterfalls Prior to Acceleration"*.

Where all Series of Senior Notes or only certain Series of Senior Notes are accelerated, available funds that would otherwise be used to pay the principal amount of subordinated indebtedness will be applied to repay principal of the accelerated Senior Notes. This could result in a holder of Senior Notes that have been accelerated receiving payment of principal sooner than expected. If a Series of Senior Notes has not been accelerated, the payment of principal on such Senior Notes should not occur earlier than expected as the payment due dates for such Senior Notes will not have been accelerated.

Where all Series of Senior Notes or only certain Series of Senior Notes are accelerated, available funds that would otherwise be used to pay the principal amount of the Senior Notes in accordance with the original repayment schedules of such Senior Notes may be applied to repay principal of the accelerated Senior Notes *pari passu* with the principal due on all outstanding Senior Notes (subject to the payment priority given to Warehouse Funding Obligations). If accelerated Senior Notes were not expected to be repaid before a particular Series of Senior Notes at the time the accelerated Senior Notes were issued, the acceleration of such Senior Notes could result in the holder of a particular Series of Senior Notes receiving payment of principal later than expected.

The Issuer may have a co-ownership interest in the Investment Asset with other Financing Entities.

The FHPA authorizes the establishment of one or more Financing Entities that may incur Funding Obligations for the purpose of acquiring an Investment Interest**Interests**. The Master Trust Indenture does not contain any restrictions on the establishment of other Financing Entities or any restrictions on the transfer**Transfer** by the IESO of a specified portion**portions** of the Regulatory Asset to other Financing Entities. If additional Funding Obligations are incurred by other Financing Entities to acquire an Investment Interest, **the Investment Asset will be co-owned by all Financing Entities (including the Issuer) and consequently** Clean Energy Adjustment amounts collected by or for the benefit of the Issuer**Financing Entities** will be prorated among all Investment Interest owners based on the respective amounts of Clean Energy Adjustment amounts invoiced and not yet paid. Any issuance of Funding Obligations by other Financing Entities could cause reductions or delays in payment on the Senior Notes.[55]

If the Clean Energy Adjustment amounts and other funds held in the Issuer Accounts results in investment losses or the investments become illiquid, a holder of Senior Notes might receive payment of principal of and interest on the Senior Notes later than expected.

Funds held in the Issuer Accounts will be invested in Eligible Investments. Eligible Investments include, among other categories, money market funds having a rating in the highest investment category from each applicable Rating Agency. Although investments in these money market funds have traditionally been viewed as highly liquid with a low probability of principal loss, illiquidity and principal losses have been experienced by investors in certain of these funds as a result of disruptions in the financial markets in recent years. If investment losses or illiquidity are

[55] **Note:** Consider explaining under this risk factor that the Investment Asset is a bundle of rights and interests held collectively by all investment interest owners.

experienced, a holder of Senior Notes might experience a delay in payments of principal and interest and a decrease in the value of their investment in the Senior Notes.

Servicing, Operating and Consumer Risks

Payments on the Senior Notes depend on the performance of Electricity Vendors and the IESO.

The Issuer's receipt of Clean Energy Adjustment amounts, which will be used to make payments on the Senior Notes, will depend in part on the skill and diligence of Electricity Vendors and the IESO and their respective successors in performing their respective duties under the FHPA~~, the Regulations~~ and, with respect to the IESO, the Master Transfer and Servicing Agreement.

The FHPA~~, the Regulations~~ and the ~~Program Agreements~~**Master Transfer and Servicing Agreement** impose new duties and obligations of the IESO and Electricity Vendors. There can be no assurances that the new duties and obligations of the IESO and the Electricity Vendors will be assumed and implemented without difficulty and in accordance with the provisions of the FHPA~~, the Regulations~~ and the ~~Program Agreements~~**Master Transfer and Servicing Agreement**. If the IESO ceases to perform, or inadequately performs, its collection, remittance, forecasting and other functions under the terms of the FHPA~~, the Regulations~~ and the Master Transfer and Servicing Agreement, it might be difficult to enforce these obligations against the IESO. While the Indenture Trustee has the right to replace the IESO, as servicer, on an Event of Default upon receipt of an Ordinary Resolution, it might be difficult to find a replacement for the IESO or a successor servicer. Also, any successor servicer might have less experience and ability than the IESO and might experience difficulties in collecting Clean Energy Adjustment amounts or ~~forecasting consumption~~**providing forecast information**, resulting in delays or disruptions to the setting and collection of the Clean Energy Adjustment. Any successor servicer would likely charge fees for the provision of such services and such fees could be material.

If an Electricity Vendor~~ or the IESO~~ fails to collect or remit sufficient Clean Energy Adjustment amounts for any reason, then the IESO's payments to the Issuer in respect of the Clean Energy Adjustments might be delayed or reduced. In that event, payments on the Senior Notes might be delayed or reduced. In addition, any person into which the IESO may be merged, converted or amalgamated or that may succeed to the properties and assets of the IESO substantially as a whole will assume the role of servicer under the Master Transfer and Servicing Agreement, subject only to the satisfaction of the conditions set forth therein. These conditions do not include either the consent of holders of Senior Notes or satisfaction of the Rating Agency Condition.

Payments on the Senior Notes depend on the performance of OPG as Financial Services Manager and as Manager~~ of the Issuer~~.

The FHPA~~, the Regulations~~ **imposes new duties and obligations of OPG, as Financial Services Manager,** and the Program Agreements impose new duties and obligations of OPG, as ~~Financial Services~~ Manager~~ and as Manager of the Issuer~~. There can be no assurances that the new duties and obligations of OPG will be assumed and implemented without difficulty and in accordance with the provisions of the FHPA~~, the Regulations~~ and the Program Agreements. If OPG, as Financial Services Manager, ceases to perform, or inadequately performs, its statutory duties under the FHPA~~ and the Regulations~~, including determining the Clean Energy Adjustment (inclusive of the True-~~Up~~**up** Amount), the Indenture Trustee will have no right to replace OPG as Financial Services Manager. If OPG ceases to perform, or inadequately performs, its management duties under the Management Agreement, the Indenture Trustee has the right to replace the Manager on an Event of Default upon receipt of an Ordinary Resolution but it might be difficult to find a replacement for OPG or a successor manager. Also, any successor manager might have less experience and ability than OPG, resulting in delays or disruptions to the setting and collection of the Clean Energy Adjustment. Any successor manager would likely charge fees for the provision of such services and such fees could be materially higher than the fees charged by OPG.

Inaccurate consumption forecasting or unanticipated delinquencies or write-offs might reduce or delay scheduled payments on the Senior Notes.

Clean Energy Adjustment amounts will be calculated ~~in part~~ based upon a forecast of Specified Consumer usage to be newly developed **based on forecast information provided** by the IESO~~[, adjusted for expected billing lags and charge-offs] [including the effect of delinquencies and write-offs] *[Confirm whether the IESO forecast takes into account items noted in square brackets.]*~~. Under the Regulations, the IESO is required to provide ~~to the OEB~~**a** forecast ~~information regarding~~**of** electricity consumption of Specified Consumers. The amount ~~and the rate~~ of the Clean Energy Adjustment **collected in any period** will depend in part on actual electricity usage **by Specified Consumers** and the amount of collections and write-offs for Specified Consumers.[56] If the IESO or a successor inaccurately forecasts electricity consumption or if OPG uses inaccurate consumer delinquency or write-off data when setting or adjusting the Clean Energy Adjustment, there could be a shortfall or material delay in collections, which might result in missed or delayed payments of principal and interest on the Senior Notes.

Inaccurate forecasting of electricity consumption by the IESO might result from, among other things unanticipated weather, resulting in less electricity consumption than forecast; general economic conditions being worse than expected, causing Specified Consumers to reduce their electricity consumption; the occurrence of a natural disaster, wind storm or an act of terrorism, cyber-attack or other catastrophic event unexpectedly disrupting electrical service and reducing electricity consumption; unanticipated changes in the market structure of the electric industry; Specified Consumers unexpectedly ceasing business or departing from the Province of Ontario; dramatic and unexpected changes in energy prices resulting in decreased electricity consumption; Specified Consumers consuming less electricity than anticipated because of increased energy prices, unanticipated increases in conservation efforts or unanticipated increases in electricity consumption efficiency; differences or changes in forecasting methodology; or Specified Consumers switching to alternative sources of energy, including self-generation or co-generation of electric power in some cases without using Ontario's transmission or distribution system. Self-generators that receive no transmission or distribution service from the Province of Ontario are not liable for the Clean Energy Adjustment. ~~Neither the~~**The** FHPA ~~nor the Regulations~~**does not** require exit fees to be charged to any Specified Consumers that might leave the grid to self-generate.

Inaccurate forecasting of delinquencies or write-offs by OPG could result from, among other things unexpected deterioration of the economy, the occurrence of a natural disaster, an act of war or terrorism or other catastrophic events causing greater write-offs than expected or forcing Electricity Vendors to grant additional payment relief to Specified Consumers; the failure of Electricity Vendors to submit accurate and timely information ~~to the IESO~~ regarding their collections and write-offs; an unexpected change in law that makes it more difficult for Electricity Vendors to terminate service to nonpaying Specified Consumers, or that requires Electricity Vendors to apply more lenient credit standards for Specified Consumers.

Changes to billing and collection practices may reduce the amount of funds available for payments on the Senior Notes.

The methodology for determining the amount of the Clean Energy Adjustment invoiced to each Specified Consumer is specified in ~~the~~ FHPA ~~and the Regulations~~. None of OPG, the IESO or any Electricity Vendor, as it performs its billing and collection functions on the Issuer's behalf, may change this methodology. However, subject to applicable law, tariff and regulatory requirements, billing and collection arrangements with each Specified Consumer may be changed in a manner that delays or reduces the payments to the Issuer in respect of the Clean Energy Adjustment. ~~For example, an Electricity Vendor's conditions of service may permit it to offer equal monthly billing plans to its consumers thereby delaying payments from one month to the next during the year or to enter into arrangements for the payment of arrears. In that event, collection of the Clean Energy Adjustment may be delayed or reduced until an adjustment is made.~~

~~[56] **Note:** Please confirm.~~

Limits on rights to terminate service to Specified Consumers might make it more difficult to collect the Clean Energy Adjustment.

To the extent that Specified Consumers do not pay for their electricity service, Electricity Vendors will not be able to collect the Clean Energy Adjustment from these Specified Consumers. Electricity Vendors have the ability to terminate service for non-payment subject to the terms of their conditions of service, which conditions must be consistent with the OEB's rules regarding disconnection. Under OEB rules, Electricity Vendors are prohibited from disconnecting or threatening to disconnect homes for non-payment during the winter from November 15 to April 30 every year. Historical rates of non-payment are included in the calculations of the Clean Energy Adjustment, but increases in the rates of non-payment would reduce the Clean Energy Adjustment until it is adjusted through the True-up Amount in a subsequent Reference Period.

It might be difficult for the Issuer to collect the Clean Energy Adjustment from Specified Consumers

Under the FHPA, the Issuer may bring an action against a Specified Consumer for non-payment of the Clean Energy Adjustment, but only an Electricity Vendor may terminate service for failure to pay the Clean Energy Adjustment.[57] The FHPA provides that partial payment of electricity invoices shall be allocated pro rata among the Clean Energy Adjustment and other charges on the invoice. Since the Issuer does not have the threat of termination of service available to enforce payment of the Clean Energy Adjustment, it would need to rely on the Electricity Vendor to threaten to terminate service for nonpayment of other portions of the electricity invoice. This inability might reduce the value of a holder's investment in the Senior Notes.

Delinquent or partial payments of electricity bills may make payments on the Senior Notes occur later than expected.

The amount and the rate of collection of the Clean Energy Adjustment, including the True-up Amount, will impact whether there is a delay in the scheduled payments on the Senior Notes. If the Clean Energy Adjustment amounts are collected at a slower rate than expected, OPG might have to make adjustments to the Clean Energy Adjustment for a subsequent Reference Period through the True-**up** Amount. If those adjustments are not timely and accurate, there may be a delay in payments of principal and interest and a decrease in the value of the Senior Notes**.**

Indemnification obligations of OPG and the IESO are limited and might not be sufficient to protect the investments in the Senior Notes.

OPG will be obligated under the Management Agreement to indemnify the Issuer and the Indenture Trustee~~, for itself and on behalf of the holders of Senior Notes and other creditors,~~ only in specified circumstances. Likewise, the IESO will be obligated under the Master Transfer and Servicing Agreement and the Acknowledgement and Indemnity Agreement to indemnify the Issuer and the Indenture Trustee~~, for itself and on behalf of the holders of Senior Notes and other creditors,~~ only in specified circumstances.

Furthermore, neither OPG nor the IESO may have sufficient funds available to satisfy its indemnification obligations, and the amount of any indemnification paid by OPG or the IESO, as applicable, might not be sufficient for holders of Senior Notes to recover all of their investment in the Senior Notes. In addition, if OPG or the IESO becomes obligated to ~~indemnify holders of Senior Notes~~**provide indemnification**, the ratings on the Senior Notes might be downgraded as a result of the circumstances causing the breach~~ and the fact that holders of Senior Notes will be unsecured creditors of OPG or the IESO, as applicable, with respect to any of these indemnification amounts. Neither OPG nor the IESO will indemnify any person for any loss, damages, liability, obligation, claim, action, suit or payment resulting solely from a downgrade in the ratings on the Senior Notes, or for any consequential damages, including any loss of market value of the Senior Notes resulting from a default or a downgrade of the ratings of the Senior Notes.~~

~~[57] **Note:** Please confirm source/ conform to wording in FHPA.~~

~~*Delinquent or partial payments of electricity bills may make payments on the Senior Notes occur later than expected.*~~~~The amount and the rate of collection of the Clean Energy Adjustment, including the True-up Amount, will impact whether there is a delay in the scheduled payments on the Senior Notes. If the Clean Energy Adjustment amounts are collected at a slower rate than expected, OPG might have to make adjustments to the Clean Energy Adjustment for a subsequent Reference Period through the True ~~Up~~ Amount. If those adjustments are not timely and accurate, there may be a delay in payments of principal and interest and a decrease in the value of the Senior Notes~~.

Power outages could impair payment of the Senior Notes.

Ontario experiences seasonal conditions typical of southeastern Canada. Summers are usually hot with high temperatures in excess of 20°C. Winters include snow and icing conditions that can be damaging to overhead power lines. Transmission and/or distribution and generation facilities could be damaged depending on weather conditions and usage of electricity could be interrupted temporarily or for long periods of time, reducing the Clean Energy Adjustment amounts collected in one or more Reference Periods.

Technological changes that make alternative energy sources more attractive in the future or significant population fluctuations may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment.

Technological developments and/or tax or other economic incentives might result in the introduction of economically attractive, more fuel-efficient, more environmentally-friendly and/or more cost-effective alternatives to purchasing electricity through Electricity Vendors for increasing numbers of Specified Consumers. Manufacturers of self-generation facilities may develop smaller-scale, more fuel-efficient on-site generating and/or storage units that can be cost-effective options for a greater number of Specified Consumers. Moreover, an increase in self-service power may result if extreme weather conditions result in regular shortages of grid-supplied energy or if other factors cause grid-supplied energy to be less reliable. Specified Consumers who self-generate their electricity may use it to offset, or eliminate, their consumption from the grid thereby reducing, or eliminating, the Clean Energy Adjustment amounts payable by such Specified Consumers. Technological developments might allow greater numbers of Specified Consumers to reduce or even altogether avoid the payment of Clean Energy Adjustment amounts under such provisions through on-site generation, including where coupled with on-site storage capacity. This might reduce the kilowatt-hours of electric energy delivered to Specified Consumers by means of an Electricity Vendor's system, thereby causing Clean Energy Adjustment charges to the remaining Specified Consumers to increase. Such increases may reduce the collectability of the Clean Energy Adjustment.

Unexpected significant population decreases in the Province of Ontario or Specified Consumers unexpectedly ceasing business or departing from the Province of Ontario may adversely affect the amount of the Clean Energy Adjustment to be invoiced, collected and recovered from Specified Consumers. The decrease in the population of the Province of Ontario may result in fewer Specified Consumers from whom to collect the Clean Energy Adjustment. The increased impact on the remaining Specified Consumers could lead to increased potential consumer defaults and delays, billing lags and write-offs or variations in billing due to variations in electricity consumption.

Insolvency-Related Risks

If the Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed.

Trusts such as the Issuer ordinarily cannot seek protection under the principal Canadian Insolvency and Restructuring Laws (other than a receivership). However, in view of the broad discretionary powers of courts under Canadian Insolvency and Restructuring Laws, the courts' inherent jurisdiction and otherwise, it is not possible to state with certainty that the Issuer could not become subject to Canadian Insolvency and Restructuring Laws. If the Issuer were to become subject to Canadian Insolvency and Restructuring Laws, the Indenture Trustee's ability to enforce security granted by the Issuer may be significantly impaired or delayed. It is not possible to predict how long payments under the Senior Notes could be delayed following commencement of a proceeding under Canadian Insolvency and Restructuring Laws by the Issuer or whether or when the Indenture Trustee would be able to enforce upon or dispose of the assets over which it holds a security interest. Canadian Insolvency and Restructuring Laws also contemplate the granting of super priority security interests or charges (which could be in priority to the security of existing secured creditors) on the assets of the debtor company to secure the repayment of any amounts to be

borrowed to facilitate the insolvency proceeding, any amounts owing for the fees and costs of professionals involved in the insolvency proceeding, obligations of directors of the company with respect to their statutory liabilities and sometimes other amounts.

Canadian Insolvency and Restructuring Laws also contain provisions enabling an obligor to prepare and file a proposal or a plan of arrangement or reorganization for consideration by all or some of its creditors, to be voted on by the various classes of creditors affected thereby. Such a restructuring proposal or plan of arrangement or reorganization, if accepted by the requisite majority of each class of affected creditors and if approved by the relevant Canadian court, would be binding on all creditors of the applicable obligor within the affected classes, including the Indenture Trustee and the Noteholders, whether or not the Indenture Trustee or any holders of Senior Notes votes in favour of the restructuring proposal or plan of arrangement or reorganization. Such a proposal or plan of arrangement or reorganization may have the effect of compromising certain rights available to the Indenture Trustee and the holders of Senior Notes under the Master Trust Indenture or in respect of the collateral.

*If the IESO were to become subject to Canadian Insolvency and Restructuring Laws, the ~~transfers between~~**Transfers of specified portions of the Regulatory Asset by** the IESO~~ and the Issuer pursuant to the Master Transfer and Servicing Agreement~~ may not be respected as true sales of the ~~Investment Interest~~**Regulatory Asset**.*

Ordinarily, the interests of the Issuer as ~~transferee~~**acquirer** of ~~the~~**an** Investment Interest may be subordinate to statutory deemed trusts and other non-consensual liens, trusts and claims created or imposed by statute or rule of law on the property of the IESO arising prior to the time ~~an Investment Interest is transferred~~**the corresponding Regulatory Asset was Transferred** to the Issuer~~, which~~**. This** could reduce the amounts that may be available to the Issuer **in respect of the Investment Interest** and, consequently, the holders of Senior Notes. Section 27(3) of the FHPA provides that at the time of the ~~transfer~~**Transfer of the Regulatory Asset** to a Financing Entity ~~under the FHPA~~, such ~~transfer~~**Transfer** shall be deemed to have been perfected, vested, valid and binding against the IESO and all other persons who have claims of any kind against the IESO. Section 27(4) of the FHPA provides that section 27(3) applies regardless of whether the persons who have claims have received notice of the ~~transfer~~**Transfer** and the property rights and interests acquired by the ~~transferee~~**Transferee** shall have priority over any liens in favour of those persons. However, in the event that the IESO becomes insolvent, its insolvency would be subject to federal bankruptcy and insolvency legislation and the effect of these provisions of the FHPA in such circumstances is untested. The ~~IESO will treat the transactions described herein as a transfer~~**Transfers** of the Regulatory Asset to the Issuer~~. Such transfers~~ will be made in accordance with ~~Section~~**section** 26 of the FHPA. Section 27(1) of the FHPA provides that a ~~transfer~~**Transfer** of a specified portion of the Regulatory Asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding Investment Interest to the ~~transferee. As a transfer~~**Transferee. Therefore**, the Investment Interest would not form part of the assets of the IESO and would not be available to the creditors of the IESO. However, with respect to certain insolvency events relating to the IESO, it is possible that an insolvency administrator or a creditor of the IESO may attempt to argue that the transactions between the IESO and the Issuer are not true sales of the ~~Investment Interest~~**Regulatory Asset**. This position, if accepted by a court applying federal bankruptcy and insolvency laws, could prevent timely or ultimate payment of amounts due to the Issuer and, consequently, due from the Issuer to holders of Senior Notes.

These risks are in addition to the insolvency risks of the IESO noted above under *"Risks Associated with the Unusual Nature of the Investment Asset"*.

*If the IESO or any Electricity Vendor were to become subject to Canadian Insolvency and Restructuring Laws, collections that have been commingled may be unrecoverable and the Issuer's ability to enforce its rights against the IESO **or such Electricity Vendor** may be significantly impaired or delayed.*

~~While the IESO is the servicer under~~**Under** the Master Transfer and Servicing Agreement, collections ~~held~~**received** by the IESO are to be held by the IESO in a segregated account. Until Clean Energy Adjustments are remitted to the IESO by Electricity Vendors, amounts collected by the Electricity Vendors are to be held by Electricity Vendors in segregated accounts. If the IESO or any Electricity Vendor fails to hold collections in a segregated account, then to the extent that funds are commingled and used for the benefit of the IESO or such Electricity Vendor prior to making required deposits, in the event of the liquidation, insolvency, receivership or administration or other proceeding

under Canadian Insolvency and Restructuring Laws of the IESO or the Electricity Vendor, the ability of the Issuer to enforce its rights to the collections in a timely manner may be adversely affected and collections that have been commingled may be unrecoverable. In the event of the insolvency of the IESO, the right of the Issuer under the Master Transfer and Servicing Agreement to appoint a replacement servicer may be stayed or prevented.

These risks are in addition to the insolvency risks of the IESO noted above under *"Risks Associated with the Unusual Nature of the Investment Asset"*.

If OPG were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to enforce its rights against the Manager may be significantly impaired or delayed and the Issuer's assets and liabilities may be substantively consolidated with those of OPG.

Section 53.1 of the *Electricity Act, 1998* (Ontario), as amended by the ~~FHPA~~***Fair Hydro Act, 2017* (Ontario)**, provides that, regardless of whether a Financing Entity is or is not a subsidiary of OPG: (a) the assets and liabilities of the Financing Entity shall not form part of the assets and liabilities of OPG or any of its subsidiaries (excluding the Financing Entity if it is a subsidiary); and (b) the assets and liabilities of OPG or any of its subsidiaries (excluding the Financing Entity if it is a subsidiary) shall not form part of the assets and liabilities of the Financing Entity. However, in the event that OPG becomes insolvent, its insolvency would be subject to federal bankruptcy and insolvency legislation and the effect of these provisions of the *Electricity Act, 1998* (Ontario), as amended by the *Fair Hydro Act, ~~2017,~~*[58]***2017* (Ontario),** in such circumstances is untested. In particular, in the event of the liquidation, insolvency, receivership or administration or other proceeding under Canadian Insolvency and Restructuring Laws of OPG, the ability of the Issuer to enforce certain of its rights in and to the Investment Interest in a timely manner may be adversely affected. Such affected rights may include the right to appoint a replacement Manager. It is possible that the creditors of OPG may attempt to substantively consolidate the assets and liabilities of OPG and the Issuer. The Issuer and OPG have taken steps to minimize this risk. However, no assurance can be given that, in the case of the insolvency of OPG, a court would not order that the Issuer's assets and liabilities be substantively consolidated with those of OPG. Such substantive consolidation would result in all creditors of OPG and the Issuer being paid out of a common pool of assets, with no distinction as to which assets are property of OPG and which assets are property of the Issuer, and could cause payment of the claims of the beneficial owners of the Senior Notes to be subject to substantial delay and to adjustment in timing and amount.

If the Issuer Trustee were to become subject to Canadian Insolvency and Restructuring Laws, the assets and liabilities of the Issuer may be substantively consolidated with the Issuer Trustee.

In the case of the insolvency of the Issuer Trustee, it is possible that the creditors of the Issuer Trustee may attempt to argue that the assets of the Issuer are held by the Issuer Trustee in its personal capacity (and not as trustee of the Issuer) and are to be available to the creditors of the Issuer Trustee. Assuming that the Issuer Trustee deals with the assets of the Issuer in accordance with the provisions of the Declaration of Trust, the assets of the Issuer would not constitute property of the Issuer Trustee available for distribution to the creditors of the Issuer Trustee. An insolvency administrator appointed with respect to the Issuer Trustee may be able to recover from the property of the Issuer a portion of its costs that are incurred until a replacement for the Issuer Trustee, as trustee of the Issuer, is appointed or pending any proceeding in respect of the property of the Issuer. Such costs may exceed the compensation provided for in the Declaration of Trust.

If a Specified Consumer were to become subject to Canadian Insolvency and Restructuring Laws, the Issuer's ability to collect Clean Energy Adjustment amounts from such Specified Consumer may be adversely affected.

The application to a Specified Consumer of Canadian Insolvency and Restructuring Laws and related provincial laws could also affect the ability to collect the Clean Energy Adjustments due for the period prior to the insolvency. Federal bankruptcy laws ~~would~~ generally discharge bankrupt Specified Consumers who are individuals of their obligation to pay Clean Energy Adjustment amounts due for the period prior to the individual being discharged from bankruptcy.

~~[58] The *Fair Hydro Act, 2017* (Ontario), which provided in Schedule 1 the *Ontario Fair Hydro Plan Act, 2017*, amends two other statutes: the *Electricity Act, 1998* (see section 43) and the *Ontario Energy Board Act, 1998* (see section 44).~~

If amounts in the Issuer Accounts for any Series are invested with entities that become subject to insolvency proceedings, the Issuer's ability to make payments to holders of Senior Notes may be adversely affected.

Amounts that are on deposit from time to time in the Issuer Accounts for any Series may be invested in Eligible Investments. If insolvency proceedings were to be commenced by or against any entity with which an Eligible Investment is made or which is an issuer, obligor or guarantor of any Eligible Investment, the ability of the Indenture Trustee to enforce its rights in respect of any such Eligible Investment and the ability of the Issuer to make payments to holders of Senior Notes in a timely manner may be adversely affected. In order to reduce this risk, the Eligible Investments must satisfy certain ratings criteria. See *"Rating Agency Condition"*.

Other Risks

The credit ratings are not an indication of the expected rate of payment of principal on the Senior Notes.

The Senior Notes will be rated by one or more established rating agencies. A rating is not a recommendation to buy, sell or hold the Senior Notes. The ratings merely analyze the probability that the Issuer will repay the total principal amount of each series of Senior Notes at its final principal payment date (which is later than the Principal Payment Date(s)) and will make timely interest payments. The ratings are not an indication that the rating agencies believe that principal payments are likely to be paid on time according to any expected sinking fund schedule. Thus, the Issuer might repay the principal of a holder of Senior Notes later than expected, which might materially reduce the value of a holder's investment in the Senior Notes.

If the ratings on the Senior Notes are withdrawn or revised downward, the value of a holder's investment in the Senior Notes may be adversely affected.

There is no assurance that any credit rating will remain in effect for any given period of time. The ratings on the Senior Notes may be withdrawn or revised downward at any time without notice, which may have an adverse effect on the market price of the Senior Notes. A rating is not a recommendation to buy, sell or hold the Senior Notes. The ratings merely analyze the probability that the Issuer will repay the total principal amount of each series of Senior Notes at its final principal payment date (which is later than the Principal Payment Date(s)) and will make timely interest payments. The ratings are not an indication that the rating agencies believe that principal payments are likely to be paid on time according to any expected sinking fund schedule. Ratings on the Senior Notes may be lowered, qualified or withdrawn at any time without notice.

The credit ratings of the IESO, OPG and the Province of Ontario might affect the market value of the Senior Notes.

The Senior Notes will not be insured or guaranteed by the Province of Ontario, IESO, OPG or any of their respective affiliates or any other person or entity, except that the Province of Ontario has agreed to provide a limited guarantee in respect of the Senior Notes following the occurrence of certain events. See *"Change of Law Protection Agreement"*. Although neither the IESO nor OPG are obligors in respect of the Senior Notes, a downgrading of the current credit ratings of the IESO, OPG or the Province of Ontario might have an adverse effect on the market value of the Senior Notes, particularly, with respect to the IESO, during the Moratorium Period when no Clean Energy Adjustments are permitted to be collected from Specified Consumers. Credit ratings might change at any time. A rating agency has the authority to revise or withdraw its rating based solely upon its own judgment.

The absence of an established market for the Senior Notes might limit the ability to resell or refinance the Senior Notes.

There is no public market for the Senior Notes, and the Issuer does not intend to apply for a listing of the Senior Notes on any stock exchange. There can be no assurance as to the liquidity of the trading market for the Senior Notes or that a trading market for the Senior Notes will develop.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of such Senior Notes with liquidity for their investment or that it will continue for the term of such Senior Notes. Accordingly, purchasers of the Senior

Notes may be required to bear the financial risk of investing in the Senior Notes until the maturity date of the Senior Notes.

If an active market does develop for the Senior Notes, the market price on the Senior Notes will depend on many factors including, but not limited to, (i) the Issuer's credit rating and the credit rating of the Senior Notes; (ii) the prevailing interest rates being paid on similar securities; (iii) the Issuer's financial condition and future prospects; and (iv) the overall condition of the economy and the financial markets. The condition of the financial markets and prevailing interest rates have fluctuated in the past and are likely to fluctuate in the future. Fluctuations could have an adverse effect on the market price of the Senior Notes.

The Financial Services Manager has the ability to determine whether to refinance Senior Notes maturing after May 2024 through the issuance of another Series of Senior Notes. However, there can be no assurance that Senior Notes can be refinanced on or before their applicable Principal Payment Default Date.

Restrictions on resale might limit the ability to resell the Senior Notes.

The Senior Notes may not be offered or sold, directly or indirectly, in Canada or to or for the account of any Canadian resident except, in the case of sales made in any province of Canada, pursuant to an exemption from the prospectus requirements under applicable securities laws. The Issuer currently does not intend to file a prospectus or similar document with any securities regulatory authority in Canada qualifying the resale of the Senior Notes to the public in any province of Canada in connection with any Offering of Senior Notes. As a result, the Senior Notes purchased pursuant to this confidential shelf offering memorandum will be subject to restrictions on resale, and may only be resold if a further statutory exemption may be relied upon by the investor or if an appropriate discretionary order or consent is obtained pursuant to applicable securities laws. See "Restrictions on Resale".

REPRESENTATIONS AND AGREEMENTS OF PURCHASERS

The distribution of the Senior Notes in Canada is being made on a private placement basis. By purchasing Senior Notes and accepting a purchase confirmation in respect thereof, a purchaser in Canada will be deemed to have represented to the Issuer and the Agents that, as at the date of such purchaser's purchase of Senior Notes:

(a) none of the Issuer, the Agents or any person representing the Issuer or the Agents has made any representations to it (written or oral) with respect to the Issuer, any Offering or sale of the Senior Notes, other than the information contained in this confidential shelf offering memorandum which has been delivered to it;

(b) it is resident in a province of Canada (each an "**Offering Jurisdiction**") and is entitled under applicable securities laws of such Offering Jurisdiction to purchase the Senior Notes without the benefit of a prospectus qualified under those securities laws and any act, solicitation, conduct or negotiation directly or indirectly in furtherance of such purchase and sale has occurred only in one of the provinces of Canada;

(c) the purchaser has been provided the opportunity to receive a copy of the Master Trust Indenture and each of the Supplemental Indentures;

(d) the purchaser has reviewed and acknowledges the terms referred to below under the section entitled "Restrictions on Resale";

(e) it is basing its investment decision solely on this confidential shelf offering memorandum and not on any other information or statement concerning the Issuer or any Offering and it has not become aware of any advertisement in printed media of general and regular paid circulation (or other printed public media), radio, television or telecommunications or other form of advertisement (including electronic display) with respect to the distribution of the Senior Notes;

(f) it has been independently advised as to restrictions with respect to trading in the Senior Notes imposed by applicable securities laws in the jurisdiction in which it resides, confirms that no representation (written or oral) has been made to it by or on behalf of the Issuer or an Agent with respect thereto, acknowledges that it is aware of the characteristics of the Senior Notes, the risks relating to an investment in the Senior Notes and of the fact that it may not be able to resell the Senior Notes except in accordance with limited exemptions under applicable securities legislation and regulatory policy and compliance with the other requirements of applicable law; and it agrees that any certificates representing the Senior Notes will bear a legend indicating that the resale of such Senior Notes is restricted; the purchaser further acknowledges that it has been advised to consult its own legal counsel in its jurisdiction of residence for full particulars of the resale restrictions applicable to it and has reviewed and acknowledges the terms referred to under the heading "Restrictions on Resale"; and the purchaser further acknowledges that if it resells the Senior Notes in compliance with applicable law it will give notice to the subsequent transferee during the restricted period noted under the heading "Restrictions on Resale" of such restrictions;

(g) it acknowledges the risks relating to an investment in the Senior Notes and it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its prospective investment in the Senior Notes, it and any accounts for which it is acting have the ability to bear the economic risks of the prospective investment and can afford the complete loss of such investment and it acknowledges that it and any accounts for which it is acting may be required to bear the financial risks of this investment for an indefinite period of time;

(h) it acknowledges that: (i) no securities commission or similar regulatory authority has reviewed or passed on the merits of the Senior Notes; and (ii) there is no government or other insurance covering the Senior Notes;

(i) it acknowledges that no person has made any oral or written representation to it that any person will re-sell or re-purchase the Senior Notes, or refund any part or all of the purchase price of the Senior Notes, or that the Senior Notes will be listed on any exchange or quoted on any quotation and trade reporting system, or that any application has been or will be made to list the Senior Notes on any exchange or quote the notes on any quotation and trade reporting system, and no person has given any undertaking to such purchaser relating to the future value or price of the Senior Notes;

(j) none of the funds being used to purchase the Senior Notes are, to the best of the purchaser's knowledge, (i) proceeds obtained by or derived, directly or indirectly, as a result of illegal activities, or (ii) being tendered on behalf of a person or entity who has not been identified to the purchaser;

(k) the funds being used to purchase the Senior Notes and advanced by or on behalf of the purchaser to the Agents do not represent proceeds of crime for the purposes of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada);

(l) the purchaser is responsible to obtain independent investment, legal and tax advice with respect to its purchase of the Senior Notes and accordingly has had the opportunity to acquire an understanding of the transaction described in this confidential shelf offering memorandum and the meanings of all the terms contained herein relevant to such purchase for the purpose of giving acknowledgements, representations and agreements under this confidential shelf offering memorandum;

(m) it (i) is an "accredited investor" (as such term is defined in NI 45-106 and, in the case of a purchaser resident in Ontario, section 73.3(1) of the *Securities Act* (Ontario)) that is not an individual, unless such individual is also a "permitted client" (as such term is defined in NI 31-103); (ii) is either (A) purchasing the Senior Notes as principal, (B) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation of a jurisdiction of Canada (other than a trust company or trust corporation registered solely under the laws of the Province of Prince Edward Island) or a

foreign jurisdiction, acting on behalf of a fully managed account managed by the trust company or trust corporation, as the case may be, or (C) a person acting on behalf of a fully managed account managed by that person, if that person is registered or authorized to carry on business as an adviser or the equivalent under the securities legislation of a jurisdiction of Canada or foreign jurisdiction; and (iii) was not created or used solely to purchase or hold securities as an accredited investor as described in paragraph (m) of the definition of "accredited investor" in NI 45-106;

(n) the purchaser has provided applicable certifications and/or other information or documentation to the Agents and the Issuer to evidence its status and criteria for compliance with the relevant category of "accredited investor," understands that the Agents and the Issuer may be required to verify that the purchaser satisfies such criteria, and that the purchaser may be required to provide additional information or documentation to the Agents and the Issuer to evidence such compliance;

(o) the purchaser, if resident in the Province of Québec, has agreed that all documents relating to such purchase be in English only, as more particularly described under the heading "Language of Documents". *L'acquéreur, s'il réside dans la Province de Québec, accepte que tous les documents liés à son acquisition soient en langue anglaise uniquement, tel qu'il est plus amplement décrit sous la rubrique «Langue des documents»*;

(p) it will execute, deliver and file such reports, undertakings and other documents relating to his, her or its purchase of the Senior Notes as may be required by applicable securities laws, regulations and rules, or assist the Issuer and the Agents, as applicable, in obtaining and filing such reports, undertakings and other documents;

(q) it is not a U.S. person (as such term is defined in Regulation S under the U.S. Securities Act), none of the Senior Notes are being or will be acquired, directly or indirectly, for the account or benefit of a U.S. person, the purchaser was not offered any of the Senior Notes in the United States, the purchaser did not execute or deliver any agreement in connection herewith in the United States, and the purchaser is aware that the Senior Notes have not been and will not be registered under the U.S. Securities Act or the securities laws of any State of the United States and that the Senior Notes may not be offered or sold in the United States without registration under the U.S. Securities Act or except in compliance with the requirements of an exemption from registration;

(r) if the purchaser is acquiring any Senior Notes as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such account and that it has full power to make the acknowledgements, representations and agreements contained herein on behalf of each such account;

(s) the offer and sale of the Senior Notes is conditional upon the offer and sale being exempt from the prospectus filing requirements of applicable securities law;

(t) the purchaser acknowledges that the Issuer may be required to disclose to applicable securities regulatory authorities the identity of the purchaser and any person with a beneficial interest in the Senior Notes;

(u) except for any rating reports that may have been issued by the applicable Rating Agencies, no agency, governmental authority, regulatory body, stock exchange or other entity has made any finding or determination as to the merit for investment of, nor have any such agencies or governmental authorities, regulatory bodies, stock exchanges or other entities made any recommendation or endorsement with respect to the Senior Notes;

(v) if the purchaser is:

(i) a corporation, it is duly incorporated and is validly subsisting under the laws of its jurisdiction of incorporation and has all requisite legal and corporate power and authority

to purchase the Senior Notes and to make such representations and agreements as contemplated herein and has obtained all necessary approvals in respect thereof;

(ii) a partnership, syndicate or other form of unincorporated organization, it has the necessary legal capacity and authority to purchase the Senior Notes and to make such representations and agreements as contemplated herein and has obtained all necessary approvals in respect thereof; or

(iii) an individual, he or she is of the full age of majority, is a "permitted client" as such term is defined in NI 31-103 and is legally competent to purchase the Senior Notes and to make such representations and agreements as contemplated herein;

(w) the purchaser is not an "insider" of the Issuer (within the meaning of Canadian securities laws) and is not registered or required to be registered as a dealer, adviser or otherwise under the securities laws of any province of Canada (unless in either case it has specifically provided written advice to the contrary to the Issuer and to the Agents);

(x) it will, if requested by the Issuer or the Agent from whom the purchase confirmation is received, provide evidence of the basis of its above representations; and

(y) the Issuer, the Agents and others will rely upon the truth and accuracy of the foregoing acknowledgements, representations and agreements and it agrees that if any of the acknowledgements, representations or agreements deemed to have been made by its purchase of the Senior Notes are no longer accurate, it shall promptly notify the Issuer and the Agents for the applicable Offering of Senior Notes.

In addition, each purchaser of Senior Notes, by purchasing Senior Notes and accepting a purchase confirmation in respect thereof, represents to the Issuer and the Agents for the applicable Offering of Senior Notes that the purchaser:

(a) has been notified by the Issuer:

(i) that the Issuer is required to provide information pertaining to the purchaser of Senior Notes required to be disclosed in Schedule 1 of Form 45-106F1 under NI 45-l06 (including its name, address, telephone number and the number and value of securities purchased), which Form 45-106F1 the Issuer is required to file under NI 45-106;

(ii) that such personal information will be delivered to the applicable Canadian securities regulatory authorities (the "**Commissions**") in accordance with NI 45-106;

(iii) that such personal information is being collected indirectly by the applicable Commission under the authority granted to it in securities legislation;

(iv) that such personal information is being collected for the purposes of the administration and enforcement of securities legislation; and

(v) that the public official in the provinces of Canada who can answer questions about the indirect collection of such personal information is set out in Schedule A of this confidential shelf offering memorandum, and

(b) has authorized the indirect collection of the personal information by the applicable Commission.

By purchasing Senior Notes, the purchaser also acknowledges that its name and other specified information, including the number of Senior Notes it has purchased, may be disclosed to other Canadian securities regulatory authorities and become available to the public in accordance with the requirements of applicable laws and consents

to the disclosure of that information. Furthermore, by purchasing the Senior Notes, the purchaser acknowledges that certain information as to its status as an "accredited investor" that the purchaser may have provided to any Agent involved in the trade may be required to be delivered by such Agent to the Issuer under the terms of an Agency Agreement between the Issuer, OPG and the Agents referred to under "Plan of Distribution". By purchasing the Senior Notes, the purchaser consents to the disclosure of such information.

LANGUAGE OF DOCUMENTS

Upon receipt of this confidential shelf offering memorandum, each purchaser hereby confirms that it has expressly requested that all documents evidencing or relating in any way to the sale of the Senior Notes described herein (including for greater certainty any purchase confirmation or any notice) be drawn up in the English language only. *En recevant le présent document, chaque acquéreur confirme par les présentes qu'il a expressément demandé que tous les documents qui attestent la vente des débentures décrites dans les présentes ou qui s'y rapportent de quelque manière que ce soit (y compris, plus particulièrement, une confirmation d'achat ou un avis) soient rédigés en langue anglais seulement.*

RESTRICTIONS ON RESALE

The distribution of the Senior Notes in the provinces of Canada is being made on a private placement basis and is therefore exempt from the requirement that the Issuer prepare and file a prospectus with the relevant Canadian securities regulatory authorities. Accordingly, any resale of the Senior Notes must be made: (a) through an appropriately registered dealer or pursuant to an exemption from the dealer registration requirements of applicable provincial securities laws; and (b) in accordance with, or pursuant to an exemption from, the prospectus requirements of applicable provincial securities laws. These resale restrictions may in some circumstances apply to resales made outside of Canada. Purchasers are advised to seek legal advice prior to any resale of the Senior Notes.

Purchasers are advised that the Issuer does not intend to file a prospectus or similar document with any securities regulatory authority in Canada qualifying the resale of the Senior Notes to the public in any province of Canada in connection with any Offering.

Furthermore, each purchaser of Senior Notes, by its purchase thereof, will be deemed to have represented, acknowledged or confirmed, as the case may be, to the Issuer and any dealer who is involved in the sale of the Senior Notes to such purchaser that such purchaser understands that the Senior Notes are subject to transfer and resale restrictions in Canada and that the certificates representing the Senior Notes (or the relevant ownership statement under a direct registration system or other book-entry system) or other applicable document or notice (including this document) will bear or will notify the purchaser of the following legend:

> "EXCEPT IN THE PROVINCE OF MANITOBA, IN ACCORDANCE WITH NATIONAL INSTRUMENT 45-102 — RESALE OF SECURITIES, UNLESS OTHERWISE PERMITTED UNDER CANADIAN SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS FOUR MONTHS AND A DAY AFTER THE LATER OF (I) THE DATE ON WHICH THE SECURITY IS ISSUED; AND (II) THE DATE THE ISSUER BECOMES A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY OF CANADA.
>
> IN THE PROVINCE OF MANITOBA, UNLESS OTHERWISE PERMITTED UNDER APPLICABLE CANADIAN SECURITIES LAWS OR WITH THE PRIOR WRITTEN CONSENT OF THE APPLICABLE REGULATORS, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS TWELVE MONTHS AND A DAY AFTER THE DATE THE PURCHASER ACQUIRED THE SECURITY."

The Issuer is not and does not intend to become a reporting issuer.

There is currently no secondary market for the Senior Notes. There can be no assurance that a secondary market will develop or, if a secondary market does develop, that it will provide holders of such Series of Senior Notes with liquidity for their investment or that it will continue for the life of such Senior Notes. Accordingly, purchasers of the Senior Notes may be required to bear the financial risk of investing in the Senior Notes until the maturity date.

REPORTING REQUIREMENTS

The Issuer is not a reporting issuer or the equivalent thereof under the securities legislation in any jurisdiction. Accordingly, the Issuer is not subject to the continuous reporting and disclosure requirements prescribed by such securities legislation. Therefore, there is no requirement that the Issuer comply with such requirements, including, without limitation, the requirements to provide prompt notification of material changes by way of press releases, to formally file disclosure documents with applicable securities regulatory authorities or to prepare and file annual audited financial statements or quarterly unaudited financial statements. However, the Issuer will provide audited annual financial statements and unaudited quarterly financial statements in accordance with the terms of the Master Trust Indenture. See *"~~Description of Senior Notes — Reporting Requirements of Senior Notes~~**Capital Markets Platform — Covenants of the Issuer — Financial Statements; Statement as to Compliance**"*.

STATUTORY RIGHTS OF ACTION

Securities legislation in certain of the provinces of Canada provides purchasers, in addition to any other rights they may have at law, with a remedy for rescission or damages where an offering memorandum or any amendment to it, and in some cases, advertising and sales literature used in connection therewith, contains a misrepresentation. These remedies, or notice with respect thereto, must be exercised or delivered, as the case may be, by the purchaser within the time limit prescribed, and are subject to the defences contained, in the applicable securities legislation. Purchasers should refer to the applicable provisions of the securities legislation of their province for the particulars of these rights or consult with a legal advisor. The following is a summary of the rights of rescission or rights to damages available to purchasers of the Senior Notes.

Rights for Purchasers in Ontario

Section 5.2 of Ontario Securities Commission Rule 45-501 — *Ontario Prospectus and Registration Exemptions* provides that when an offering memorandum, such as this confidential shelf offering memorandum, is delivered to an investor to whom securities are distributed in reliance upon the "accredited investor" prospectus exemption in section 73.3 of the *Securities Act* (Ontario) or a predecessor exemption to section 73.3 of the *Securities Act* (Ontario) the right of action referred to in section 130.1 of the *Securities Act* (Ontario) ("**Section 130.1**") is applicable, unless the prospective purchaser is:

(a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act;

(b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

(c) a Schedule III bank, meaning an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

(d) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada); or

(e) a subsidiary of any person referred to in paragraphs (a), (b), (c) or (d), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by the directors of the subsidiary.

Section 130.1(1) provides such investors who purchase securities offered by an offering memorandum with a statutory right of action against the Issuer of securities for rescission or damages in the event that the offering memorandum and any amendment to it contains a "misrepresentation". The term "misrepresentation" is defined to mean an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make any statement not misleading in the light of the circumstances in which it was made. These remedies, or notice with respect to these remedies, must be exercised or delivered, as the case may be, by the purchaser within the time limits prescribed by applicable securities laws.

Where this confidential shelf offering memorandum is delivered to a prospective purchaser of Senior Notes in connection with a trade made in reliance on section 73.3 of the *Securities Act* (Ontario), and this document contains a misrepresentation, the purchaser will have, without regard to whether the purchaser relied on the misrepresentation, a statutory right of action against the Issuer for damages or, while still the owner of Senior Notes, for rescission, in which case, if the purchaser elects to exercise the right of rescission, the purchaser will have no right of action for damages, provided that the right of action for rescission will be exercisable by the purchaser only if the purchaser commences the action not more than 180 days after the date of the transaction that gave rise to the cause of action; or, in the case of any action other than an action for rescission, the earlier of: (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or (ii) three years after the date of the transaction that gave rise to the cause of action.

The Issuer will not be liable for a misrepresentation if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation.

In an action for damages, the Issuer will not be liable for all or any portion of the damages that the Issuer proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

In no case will the amount recoverable for the misrepresentation exceed the price at which the Senior Notes were offered.

The liability of all persons and companies referred to above is joint and several. The Issuer, however, shall not be liable where it is not receiving any proceeds from the distribution of the securities being distributed and the misrepresentation was not based on information provided by the Issuer, unless the misrepresentation, (a) was based on information that was previously publicly disclosed by the Issuer, (b) was a misrepresentation at the time of its previous public disclosure and (c) was not subsequently publicly corrected or superseded by the Issuer prior to the completion of the distribution of the securities being distributed.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express provisions of the *Securities Act* (Ontario) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Saskatchewan

Section 138 of *The Securities Act, 1988* (Saskatchewan), as amended (the "**Saskatchewan Act**") provides that where an offering memorandum (such as this confidential shelf offering memorandum) or any amendment to it is sent or delivered to a purchaser and it contains a misrepresentation (as defined in the Saskatchewan Act), a purchaser who purchases a security covered by the offering memorandum or any amendment to it has, without regard to whether the purchaser relied on the misrepresentation, a right of action for rescission against the Issuer or a selling security holder on whose behalf the distribution is made or has a right of action for damages against:

(a) the Issuer or a selling security holder on whose behalf the distribution is made;

(b) every promoter and trustee of the Issuer or the selling security holder, as the case may be, at the time the offering memorandum or any amendment to it was sent or delivered;

(c) every person or company whose consent has been filed respecting the offering, but only with respect to reports, opinions or statements that have been made by them;

(d) every person who or company that, in addition to the persons or companies mentioned in (a) to (c) above, signed the offering memorandum or the amendment to the offering memorandum; and

(e) every person who or company that sells securities on behalf of the Issuer or selling security holder under the offering memorandum or amendment to the offering memorandum.

Such rights of rescission and damages are subject to certain limitations including the following:

(a) if the purchaser elects to exercise its right of rescission against the Issuer or selling security holder, it will have no right of action for damages against that party;

(b) in an action for damages, a defendant will not be liable for all or any portion of the damages that he, she or it proves do not represent the depreciation in value of the securities resulting from the misrepresentation relied on;

(c) no person or company, other than the Issuer or a selling security holder, will be liable for any part of the offering memorandum or any amendment to it not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, unless the person or company failed to conduct a reasonable investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation or believed that there had been a misrepresentation;

(d) in no case will the amount recoverable exceed the price at which the securities were offered; and

(e) no person or company is liable in an action for rescission or damages if that person or company proves that the purchaser purchased the securities with knowledge of the misrepresentation.

In addition, no person or company, other than the Issuer or selling security holder, will be liable if the person or company proves that:

(a) the offering memorandum or any amendment to it was sent or delivered without the person's or company's knowledge or consent and that, on becoming aware of it being sent or delivered, that person or company immediately gave reasonable general notice that it was so sent or delivered; or

(b) with respect to any part of the offering memorandum or any amendment to it purporting to be made on the authority of an expert, or purporting to be a copy of, or an extract from, a report, an opinion or a statement of an expert, that person or company had no reasonable grounds to believe and did not believe that: (i) there had been a misrepresentation, or (ii) the part of the offering memorandum or any amendment to it did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or an extract from, the report, opinion or statement of the expert.

Not all defences upon which the Issuer or others may rely are described herein. Please refer to the full text of the Saskatchewan Act for a complete listing.

The liability of all persons and companies referred to above is joint and several.

Similar rights of action for damages and rescission are provided in section 138.1 of the Saskatchewan Act in respect of a misrepresentation in advertising and sales literature disseminated in connection with an offering of securities.

Section 138.2 of the Saskatchewan Act also provides that, subject to certain limitations and defences, where an individual makes a verbal statement to a purchaser that contains a misrepresentation relating to the security purchased and the verbal statement is made either before or contemporaneously with the purchase of the security, the purchaser has, without regard to whether the purchaser relied on the misrepresentation, a right of action for damages against the individual who made the verbal statement.

Section 141(1) of the Saskatchewan Act provides a purchaser with the right to void the purchase agreement and to recover all money and other consideration paid by the purchaser for the securities if the securities are sold in contravention of the Saskatchewan Act, the regulations to the Saskatchewan Act or a decision of the Saskatchewan Financial Services Commission.

Section 141(2) of the Saskatchewan Act also provides a right of action for rescission or damages to a purchaser of securities to whom an offering memorandum or any amendment to it was not sent or delivered prior to or at the same time as the purchaser enters into an agreement to purchase the securities, as required by Section 80.1 of the Saskatchewan Act.

The rights of action for damages or rescission under the Saskatchewan Act are in addition to and do not derogate from any other right which a purchaser may have at law.

Section 147 of the Saskatchewan Act provides that no action will be commenced to enforce any of the foregoing rights more than:

(a) in the case of an action for rescission or cancellation, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of any other action, other than an action for rescission or cancellation, the earlier of:

  (i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action; or

  (ii) six years after the date of the transaction that gave rise to the cause of action.

The Saskatchewan Act also provides that a purchaser who has received an amended offering memorandum delivered in accordance with subsection 80.1(3) of the Saskatchewan Act has a right to withdraw from the agreement to purchase the securities by delivering a notice to the person who or company that is selling the securities, indicating the purchaser's intention not to be bound by the purchase agreement, provided such notice is delivered by the purchaser within two business days of receiving the amended offering memorandum.

This summary is subject to the express provisions of the Saskatchewan Act and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Nova Scotia

The right of action for rescission or damages described herein is conferred by section 138 of the *Securities Act* (Nova Scotia). Section 138 provides, in the relevant part, that in the event that this confidential shelf offering memorandum, together with any amendments hereto, or any advertising or sales literature (as defined in the *Securities Act* (Nova Scotia)) contains an untrue statement of material fact or omits to state a material fact that is required to be stated or that is necessary in order to make any statements contained herein or therein not misleading in light of the circumstances in which it was made (a "misrepresentation"), a purchaser of Senior Notes is deemed to have relied upon such misrepresentation if it was a misrepresentation at the time of purchase and has, subject to certain limitations and defences, a statutory right of action for damages against the Issuer, its trustees, any person who signed this confidential shelf offering memorandum, any selling security holder and the directors of any such selling security holder at the date of this confidential shelf offering memorandum or, alternatively, while still the owner of the Senior Notes, may elect instead to exercise a statutory right of rescission against the Issuer, in which

case the purchaser will have no right of action for damages against any person listed above, including the Issuer, provided that, among other limitations:

(a) no action will be commenced to enforce the right of action for rescission or damages by a purchaser resident in Nova Scotia under Section 138 later than 120 days after the date payment was made for the Senior Notes (or after the date on which initial payment was made for the Senior Notes where payments subsequent to the initial payment are made pursuant to a contractual commitment assumed prior to, or concurrently with, the initial payment);

(b) no person will be liable if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation;

(c) no person or company, other than the Issuer, is liable under Section 138 if the person or company proves that:

(i) this confidential shelf offering memorandum, or any amendment hereto, was sent or delivered to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its delivery, the person or company gave reasonable general notice that it was delivered without the person's or company's knowledge or consent;

(ii) after delivery of this confidential shelf offering memorandum, or the amendment hereto, and before the purchase of the Senior Notes by the purchaser, on becoming aware of any misrepresentation in this confidential shelf offering memorandum, or the amendment hereto, or any record incorporated or deemed incorporated by reference therein, the person or company withdrew the person's or company's consent to this confidential shelf offering memorandum, or amendment hereto, or such record, and gave reasonable general notice of the withdrawal and the reason for it; or

(iii) with respect to any part of this confidential shelf offering memorandum, or amendment hereto, or any record incorporated or deemed to be incorporated by reference therein, purporting to be made on the authority of an expert, or to be a copy of, or an extract from a report, an opinion or a statement of an expert, the person or company had no reasonable grounds to believe and did not believe that there had been a misrepresentation, or that the relevant part of this confidential shelf offering memorandum, or amendment hereto, or such record, did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or extract from, the report, opinion or statement of the expert;

(d) no person or company, other than the Issuer, is liable under Section 138 with respect to any part of this confidential shelf offering memorandum, or amendment hereto, or any record incorporated or deemed incorporated by reference therein, not purporting to be made on the authority of an expert, or to be a copy of or an extract from, a report, opinion or statement of an expert, unless the person or company failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation, or believed that there had been a misrepresentation;

(e) in the case of an action for damages, no person will be liable for all or any portion of the damages that it proves do not represent the depreciation in value of the Senior Notes resulting from the misrepresentation; and

(f) in no case will the amount recoverable under Section 138 in any action exceed the price at which the Senior Notes were offered to the purchaser.

The liability of all persons or companies referred to above is joint and several with respect to the same cause of action. A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person or company who is jointly and severally liable to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.

The foregoing statutory right of action for rescission or damages conferred by Section 138 of the Securities Act (Nova Scotia) is in addition to and without derogation from any other right or remedy available at law or otherwise to the purchaser. This summary is subject to the express provisions of the *Securities Act* (Nova Scotia) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions may have at law.

Rights for Purchasers in New Brunswick

Section 2.1 of New Brunswick Securities Commission Rule 45-802 provides that the statutory rights of action in rescission or damages referred to in Section 150 of the *Securities Act* (New Brunswick) ("**Section 150**") apply to information relating to an offering memorandum, such as this confidential shelf offering memorandum, that is provided to a purchaser of securities in connection with a distribution made in reliance on the "accredited investor" prospectus exemption in Section 2.3 of NI 45-106. Section 150 provides investors who purchase securities offered for sale in reliance on an exemption from the prospectus requirements of the *Securities Act* (New Brunswick) with a statutory right of action for damages against (i) the Issuer; (ii) the selling security holder on whose behalf the distribution was made; (iii) every person who was a director of the Issuer as at the date of the offering memorandum; and (iv) every person who signed the offering memorandum in the event that an offering memorandum provided to such investor contains a "misrepresentation". Alternatively, if the investor purchased the securities from a person referred to in (i) or (ii) above, an investor may elect a right of rescission, in which case the investor shall have no right of action for damages. "Misrepresentation" means an untrue statement of a material fact or an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

Where this confidential shelf offering memorandum is delivered to a prospective purchaser of Senior Notes in connection with a trade made in reliance on Section 2.3 of NI 45-106, and this document (including any documentation incorporated or deemed to be incorporated by reference) contains a misrepresentation, a purchaser who purchases the securities will be deemed to have relied on the misrepresentation and will have, subject to certain limitations and defences, a statutory right of action against the Issuer for damages or, while still the owner of Senior Notes, for rescission. If the purchaser elects to exercise the right of rescission, the purchaser will have no right of action for damages. The right of action for rescission will be exercisable by the purchaser only if the purchaser commences the action against the defendant, not more than 180 days after the date of the transaction that gave rise to the cause of action; or, in the case of any action other than an action for rescission, the earlier of: (i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action, or (ii) six years after the date of the transaction that gave rise to the cause of action.

No person other than the Issuer or the selling security holder is liable under Section 150 if the person proves that:

(a) the offering memorandum was delivered to the purchaser without the person's knowledge or consent and that, on becoming aware of its delivery, the person gave written notice to the Issuer that it was delivered without the person's knowledge or consent;

(b) upon becoming aware of a misrepresentation in the offering memorandum the person withdrew the person's consent to the offering memorandum and gave written notice to the Issuer of the withdrawal and the reason for the withdrawal; or

(c) with respect to any part of the offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, the person had no reasonable grounds to believe and did not believe there had been a misrepresentation or that the relevant part of the offering memorandum did not fairly represent the report, opinion or statement of the expert or was not a fair copy of, or extract from, the report, opinion or statement of the expert.

In addition, no person other than the Issuer or the selling security holder is liable under Section 150 with respect to any part of an offering memorandum not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion or statement of an expert unless (i) the person failed

to conduct such reasonable investigations as to provide reasonable grounds for a belief that there had been no misrepresentation or (ii) the person believed that there had been misrepresentation.

The defendant will not be liable for a misrepresentation if it proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation.

In an action for damages, the defendant will not be liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

In no case will the amount recoverable for the misrepresentation exceed the price at which the Senior Notes were offered.

The liability of all persons referred to above is joint and several.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express provisions of the Securities Act (New Brunswick) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Prince Edward Island

The right of action for rescission or damages described herein is conferred by Section 112 of the *Securities Act* (Prince Edward Island). Section 112 provides, that in the event that this confidential shelf offering memorandum contains a "misrepresentation", a purchaser who purchased the Senior Notes during the period of distribution, without regard to whether the purchaser relied upon such misrepresentation, has a statutory right of action for damages against the Issuer, the selling security holder on whose behalf the distribution was made, every trustee of the Issuer as at the date of the confidential shelf offering memorandum, and every person who signed the confidential shelf offering memorandum. Alternatively, the purchaser while still the owner of the Senior Notes may elect to exercise a statutory right of action for rescission against the Issuer. "Misrepresentation" means an untrue statement of material fact, or an omission to state a material fact that is required to be stated by the *Securities Act* (Prince Edward Island), or an omission to state a material fact that needs to be stated so that a statement is not false or misleading in light of the circumstances in which it is made. Statutory rights of action for rescission or damages by a purchaser are subject to the following limitations:

(a) no action will be commenced to enforce the right of action for rescission by a purchaser, resident in Prince Edward Island, later than 180 days after the date of the transaction that gave rise to the cause of action;

(b) in the case of any action other than an action for rescission, the earlier of;

  (i) 180 days after the purchaser first had knowledge of the facts given rise to the cause of action; or

  (ii) three years after the date of the transaction giving rise to the cause of action;

(c) no person will be liable if the person proves that the purchaser purchased the security with knowledge of the misrepresentation;

(d) no person other than the Issuer will be liable if the person proves that

  (i) the confidential shelf offering memorandum was sent to the purchaser without the person's knowledge or consent and that, on becoming aware of it being sent, the person

had promptly given reasonable notice to the Issuer that it had been sent without the knowledge and consent of the person;

(ii) the person, on becoming aware of the misrepresentation in the confidential shelf offering memorandum, had withdrawn the person's consent to the confidential shelf offering memorandum and had given reasonable notice to the Issuer of the withdrawal and the reason for it; or

(iii) with respect to any part of the confidential shelf offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, statement or opinion of an expert, the person had no reasonable grounds to believe, and did not believe that;

(A) there had been a misrepresentation; or

(B) the relevant part of the confidential shelf offering memorandum:

a. did not fairly represent the report, statement or opinion of the expert, or

b. was not a fair copy of, or an extract from, the report, statement, or opinion of the expert.

Not all defences upon which the Issuer or others may rely are described herein. Please refer to the full text of the *Securities Act* (Prince Edward Island) for a complete listing.

If the purchaser elects to exercise a right of action for rescission, the purchaser will have no right of action for damages.

In no case will the amount recoverable in any action exceed the price at which the Senior Notes were offered to the purchaser.

In an action for damages, the defendant will not be liable for any damages that the defendant proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law.

This summary is subject to the express conditions of the *Securities Act* (Prince Edward Island) and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for Purchasers in Manitoba

Pursuant to section 141.1(1) of *The Securities Act* (Manitoba) (the "**Manitoba Act**"), where this confidential shelf offering memorandum, or any amendment to this confidential shelf offering memorandum, is sent or delivered to a purchaser in the Province of Manitoba and such document contains a misrepresentation, a purchaser who purchases Senior Notes offered by this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum is deemed to have relied on that misrepresentation, if it was a misrepresentation at the time of purchase and, subject to the defenses described in the Manitoba Act, has:

(a) a right of action for damages against:

(i) the Issuer;

(ii) each of its trustees at the date of this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum; and

(iii) every person or company who signed this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum; and

(b) a right of rescission against the Issuer;

provided that:

(c) no person or company is liable if the person or company proves that the purchaser purchased the Senior Notes with knowledge of the misrepresentation;

(d) in an action for damages, the defendant is not liable for all or any portion of the damages that he, she or it proves do not represent the depreciation in value of the Senior Notes resulting from the misrepresentation relied on; and

(e) in no case will the amount recovered exceed the price at which the Senior Notes were offered to the public.

Where a purchaser elects to exercise a right of rescission against the Issuer, the purchaser will have no right of action for damages against the Issuer or against a person or company referred to in (a)(ii) or (iii) above.

No person or company other than the Issuer is liable:

(a) if the person or company proves that this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum was sent without the person's or company's knowledge or consent and that, after becoming aware of its being sent, the person or company promptly gave reasonable notice to the Issuer that it was so sent;

(b) if the person or company proves that after becoming aware of any misrepresentation in this confidential shelf offering memorandum or any amendment to this confidential shelf offering memorandum, the person or company withdrew the person's or company's consent to it and gave reasonable notice to the Issuer of the person's or company's withdrawal and the reason for it;

(c) if the person or company proves that with respect to any part of this confidential shelf offering memorandum or of any amendment to this confidential shelf offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion or statement of an expert, the person or company had no reasonable grounds to believe and did not believe that:

(i) there had been a misrepresentation; or

(ii) the relevant part of this confidential shelf offering memorandum or of the amendment to this confidential shelf offering memorandum:

(A) did not fairly represent the report, opinion or statement of the expert; or

(B) was not a fair copy of or extract from the report, opinion or statement of the expert; or

(d) with respect to any part of this confidential shelf offering memorandum or of the amendment to this confidential shelf offering memorandum not purporting to be made on an expert's authority and not purporting to be a copy of, or an extract from, the expert's report, opinion or statement, unless the person or company:

(i) did not conduct an investigation, sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; or

(ii) believed that there had been a misrepresentation.

Pursuant to section 141.4 of the Manitoba Act, but subject to the other provisions thereof, no action shall be commenced to enforce any of the foregoing rights more than:

(a) in the case of an action for rescission, 180 days from the date of the transaction that gave rise to the cause of action, or

(b) in the case of an action for damages, the earlier of:

(i) 180 days after the date that the plaintiff first had knowledge of the facts giving rise to the cause of action, or

(ii) two years after the date of the transaction that gave rise to the cause of action.

In an action for damages, the Issuer will not be liable for all or any part of the damages that the Issuer proves do not represent the depreciation in value of the Senior Notes as a result of the misrepresentation relied upon.

The rights of action for rescission or damages under the Manitoba Act are in addition to and do not derogate from any other right that the purchaser may have at law.

This summary is subject to the express provisions of the Manitoba Act and the regulations and rules made under it, and prospective investors should refer to the complete text of those provisions.

Rights for purchasers in Newfoundland and Labrador

In accordance with section 130.1 of the *Securities Act* (Newfoundland and Labrador, hereinafter the "**NL Act**"), in the event this confidential shelf offering memorandum contains a misrepresentation, a purchaser who purchases Senior Notes shall be deemed to have relied upon such misrepresentation if it was a misrepresentation at the time of purchase, in which event the purchaser has, subject to the defences and limitations set out in the NL Act: (a) a right of action for damages against the Issuer and, every trustee of the Issuer at the date of this confidential shelf offering memorandum and every person or company who has signed this confidential shelf offering memorandum; and (b) a right of rescission against the Issuer. Where a right of rescission is exercised, a purchaser shall have no right of action for damages against any other person or company.

For the purposes of the NL Act "misrepresentation" means: (a) an untrue statement of material fact, or (b) an omission to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made.

A person or company is not liable under section 130.1 of the NL Act: (a) if the person or company proves the purchaser had knowledge of the misrepresentation; or (b) in an action for damages, for all or any portion of the damages that the person or company proves do not represent the depreciation in value of the security as a result of the misrepresentation. Additionally, in an action for damages, the amount recoverable under the right of action shall not exceed the purchase price at which the security was offered.

In addition no person or company, other than the Issuer, is liable under section 130.1 of the NL Act if:

(a) the person or company proves that this confidential shelf offering memorandum was sent to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its being sent, the person or company promptly gave reasonable notice to the Issuer that it was sent without the person's or company's knowledge or consent;

(b) the person or company proves that on becoming aware of any misrepresentation in this confidential shelf offering memorandum, the person or company withdrew the person's or company's consent

to this confidential shelf offering memorandum, and gave reasonable notice to the Issuer of the withdrawal and the reason for it;

(c) with respect to any part of this confidential shelf offering memorandum purporting to be made on the authority of an expert (or purporting to be a copy of or an extract from a report, opinion or statement of an expert), the person or company proves they had no reasonable grounds to believe and did not believe that: (i) there had been a misrepresentation; or (ii) the relevant part of this confidential shelf offering memorandum did not fairly represent the report, opinion or statement of the expert, or was not a fair copy of, or an extract from, the report, opinion or statement of the expert; or

(d) with respect to any part of this confidential shelf offering memorandum not purporting to be made on the authority of an expert (and not purporting to be a copy of or an extract from a report, opinion or statement of an expert), unless the person or company: (i) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no misrepresentation; (ii) or believed there had been a misrepresentation.

If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into this confidential shelf offering memorandum, the misrepresentation is deemed to be contained in this confidential shelf offering memorandum.

The foregoing statutory right of action for rescission or damages conferred is in addition to and without derogation from any other right the purchaser may have at law. The liability of all persons and companies referred to above is joint and several.

Pursuant to section 138 of the NL Act, no action shall be commenced to enforce the rights conferred by section 130.1 thereof unless commenced:

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of an action, other than an action for rescission, the earlier of:

(i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action; or

(ii) three years after the date of the transaction that gave rise to the cause of action.

Rights for Purchasers in Alberta, British Columbia, and Québec

By purchasing Senior Notes hereunder, purchasers in Alberta, British Columbia and Québec not entitled to the statutory rights described above, in consideration of their purchase of Senior Notes and upon accepting a purchase confirmation in respect thereof, are hereby granted a contractual right of action for damages or rescission that is the same as the statutory right of action, if any, provided to residents of Ontario who purchase Senior Notes.

General

The foregoing summaries are subject to the express provisions of the applicable securities law of each jurisdiction, and the regulations, rules and policy statements thereunder and reference is made thereto for the complete text of such provisions.

The rights of action described in this confidential shelf offering memorandum are in addition to and without derogation from any other right or remedy that the purchaser may have at law.

INDENTURE TRUSTEE

The Indenture Trustee, BNY Trust Company of Canada, will be the registrar for the Senior Notes, and the register for the transfer of Senior Notes will be kept at its principal office in Toronto, Ontario.

LEGAL MATTERS

Certain Canadian legal matters in connection with the offering of Senior Notes will be passed upon by Torys LLP on behalf of the Issuer and by Osler, Hoskin & Harcourt LLP on behalf of the Agents.

GLOSSARY

~~*[NTD: Glossary in progress. For ease of reference, Torys is considering adding an index or replacing glossary with an index for terms that are defined in the body.]*~~

The following glossary contains definitions of certain terms that are used throughout this confidential shelf offering memorandum.

"**Acceleration**" means, (a) a portion of the principal amount owing in respect of the Funding Obligation has become due and payable by a Financing Entity before the scheduled payment date, maturity date or redemption date, or (b) a party to a derivative agreement in respect of the Funding Obligation has elected to close-out or terminate the agreement, resulting in an obligation on a Financing Entity to pay a termination amount, close-out amount or similar amount.

"**Acceleration Event**" means the acceleration of any Series of Controlling Class Obligations pursuant to and in accordance with its Funding Obligation Agreement.

"**Adherence Compliance Certificate**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Adverse Effect**" has the meaning set out under *"Capital Markets Platform — Conditions Precedent to Incurrence of Obligations Secured — Issuer Funding Obligations"*.

"**Agency Agreement**" has the meaning set out under *"Plan of Distribution"*.

"**Agents**" ~~means the agents designated by the Issuer from time to time and identified in the Term Sheet applicable to such Offering to sell the Senior Notes as described under *"Plan of Distribution"*~~**has the meaning set out on page (ii) of this confidential shelf offering memorandum**.

"**Approved Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Available Collections**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Collection Account"*.

"**Borrowing**" means a borrowing or drawing by the Issuer pursuant to a liquidity agreement, a loan agreement or a credit enhancement agreement.

"**Canadian Insolvency and Restructuring Laws**" has the meaning set out under *"Risk Factors — Risks Associated with the Unusual Nature of the Investment Asset"*.

"**Carrying Costs**" has the meaning ascribed to the term "carrying costs" in the Regulations.

"**CDS**" means ~~CDS Clearing and Depository Services Inc~~**has the meaning set out on page (ii) of this confidential shelf offering memorandum**.

"**Certified Primary Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"Change of Law Protection Agreement" means the change of law protection agreement dated as of December 21, 2017 among the Province, the Issuer and the Indenture Trustee, as amended, supplemented, restated or otherwise modified from time to time.

"**Class**" has the meaning set out under *"Capital Markets Platform — Subordination Provisions"*.

"**Clean Energy Adjustment**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Clean Energy Benefits**" means the value of the benefits determined to be derived by or accruing to Specified Consumers as a result of the Clean Energy Initiative, including as a result of Clean Energy Costs.

"**Clean Energy Costs**" means the value of the costs allocated to Specified Consumers as a result of the Clean Energy Initiative, including as a result of past, present and expected costs incurred in respect of

(a) the amounts to be paid or reflected by the IESO in adjustments made under section 25.33 of the *Electricity Act, 1998* (Ontario) or any provision that is the successor to that provision, which relate to contracts or amounts for

(b)

(i) renewable energy generation or capacity;

(ii)

(iii) conservation and demand management;

(iv)

(v) energy storage;

(vi)

(vii) energy efficiency; and

(viii)

(ix) natural gas generation and capacity, excluding contracts relating to amounts payable by the IESO under section 78.2 of the *Ontario Energy Board Act, 1998* and excluding such other contracts as may be prescribed;

(x)

(c) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(d)

(e) such other costs or estimated costs as may be prescribed by the Regulations.

(f)

"**Clean Energy Initiative**" means the policies of the ~~Government of~~ Ontario **government** related to

(a) eliminating coal generation and fostering the growth of and investment in clean, modern and reliable energy sources and technologies;

(b)

(c) removing barriers to and promoting opportunities for clean and renewable energy sources and

technologies;

(d)

(e) promoting conservation, demand management and energy efficiency; and

(f)

(g) investing in energy infrastructure to ensure a clean, modern and reliable system.

(h)

"**Clearstream, Luxembourg**" ~~means~~**has the meaning set out under *"Depository Services . — DTC, Euroclear and* Clearstream ~~Banking, société anonyme~~*, Luxembourg"**.

"**Collateral**" has the meaning set out under *"Capital Markets Platform — Security"*.

"**Collection Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Collection Account"*.

"**Collection Account Waterfall**" has the meaning set out under *"Capital Markets Platform — Payment Waterfalls Prior to Acceleration — Collection Account"*.

"**Commission**" has the meaning set out under *"Representations and Agreements of Purchasers"*.

"**Confidential Information**" has the meaning set out under *"Confidentiality"*.

"**Controlling Class Creditors**" means the Debtholders holding Controlling Class Obligations.

"**Controlling Class Obligations**" means: (a) Senior Funding Obligations until such time as all Senior Funding Obligations have been paid in full; then (b) if all Senior Funding Obligations have been paid in full, Subordinated Funding Obligations until such time as all Subordinated Funding Obligations have been paid in full; and finally (c) if all Senior Funding Obligations and Subordinated Funding Obligations have been paid in full, Junior Subordinated Funding Obligations until such time as all Junior Subordinated Funding Obligations have been paid in full.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by the FHPA.

"**DBRS**" means DBRS Limited and its successors.

"**Debtholder**" means a Noteholder or a Lender.

"**Debtholder Group**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Declaration of Trust**" ~~has the meaning set out under *"The Issuer"*~~**means the declaration of trust made as of December 20, 2017 under which the Issuer was established, as amended, supplemented, restated or otherwise modified from time to time**.

"**Default**" means the occurrence of any event which, after the passage of time, the required notification to the Indenture Trustee and, if required, approval by the required Controlling Class Creditors, would become an Event of Default.

"~~**Depository**~~**depository**" has the meaning set out under *"Depository Services"*.

"**Derivative Counterparty**" means any party to any derivative agreement other than the Issuer or the Indenture Trustee.

"**Derivative Funding Obligations**" means Funding Obligations arising under, or in connection with, derivative agreements.

"**DTC**" ~~means The Depositary Trust Company~~**has the meaning set out under *"Depository Services . — DTC, Euroclear and Clearstream, Luxembourg"***.

"**Electricity Vendor**" means

(a) a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a "distribution system" within the meaning of that Act;

(b)

(c) a person licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity;

(d)

(e) the IESO in circumstances where it directly invoices a Specified Consumer for electricity used in Ontario; or

(f)

(g) such other person as may be prescribed by the Regulations.

(h)

"**Eligible Deposit Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Eligible Institution**" means (a) a trust company or Schedule I chartered bank (or an affiliate thereof) incorporated under the laws of Canada or any province thereof (i) which has either (x) a long-term unsecured debt rating of "A" or better by DBRS, or (y) a short-term deposit rating of "R-1 (low)" or better by DBRS, and (ii) which has either (x) a long-term unsecured debt rating of "A2" or better by Moody's, or (y) a short-term deposit rating of "P-1" or better by Moody's, or (b) any institution that otherwise satisfies the Rating Agency Condition.

"**Eligible Investments**" means instruments or investment property that evidence:

(a) direct obligations of, or obligations fully and unconditionally guaranteed as to timely payment by, Canada or the United States of America;

(b) demand or time deposits of, unsecured certificates of deposit of, money market deposit accounts of, bank deposit products of or bankers' acceptances issued by, any depository institution (including, but not limited to, bank deposit products of the Indenture Trustee, acting in its commercial capacity) incorporated or organized under the laws of the United States of America, Canada or any state or province thereof and subject to supervision and examination by applicable banking authorities, so long as the commercial paper or other short-term debt obligations of such depository institution are, at the time of deposit, rated at least "R-1 (low)" and "P 1" by each of DBRS and Moody's, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the Issuer or any of the Issuer Funding Obligations;

(c) commercial paper (including commercial paper of the Indenture Trustee, acting in its commercial capacity), which at the time of purchase is rated at least "R-1 (low)" and "P-1" by each of DBRS and Moody's, or such lower rating as will not result in the downgrading or withdrawal of the ratings of the

Issuer or any of the Issuer Funding Obligations;

(d) investments in money market funds having a rating in the highest investment category granted thereby (including funds for which the Indenture Trustee or any of its affiliates is investment manager or advisor) from DBRS and Moody's;

(e) repurchase obligations with respect to any security that is a direct obligation of, or fully guaranteed by, the United States of America, Canada or their respective agencies or instrumentalities, entered into with Eligible Institutions;

(f) repurchase obligations with respect to any security or whole loan entered into with an Eligible Institution or with a registered broker/dealer acting as principal and that meets the ratings criteria set forth below:

(i) a broker/dealer (acting as principal) registered as a broker or dealer under the *Securities Act* (Ontario) (any such broker/dealer being referred to in this definition as a "**broker/dealer**"), the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's and "R-1" by DBRS at the time of entering into such repurchase obligation; or

(ii) an unrated broker/dealer, acting as principal, that is a wholly-owned subsidiary of a non-bank or bank holding company the unsecured short-term debt obligations of which are rated at least "P-1" by Moody's and "R-1" by DBRS at the time of purchase so long as the obligations of such unrated broker/dealer are unconditionally guaranteed by such non-bank or bank holding company; and

(g) any other investment permitted by each of the Rating Agencies;

in each case maturing not later than the business day preceding the next Payment Date, Interest Payment Date or Principal Payment Date, as applicable (for the avoidance of doubt, investments in money market funds or similar instruments that are redeemable on demand shall be deemed to satisfy the foregoing requirement). Notwithstanding the foregoing, no securities or investments that mature in 30 days or more shall be "Eligible Investments" unless the issuer thereof has (x) either a short-term unsecured debt rating of at least "P-1" from Moody's or a long-term unsecured debt rating of at least "A2" from Moody's and also has (y) either a short-term unsecured debt rating of at least "R-1 (low)" from DBRS or a long-term unsecured debt rating of at least "A" from DBRS.

"**Eligible Securities Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Euroclear**" ~~means Euroclear Bank S.A./N.V., as operator of the~~**has the meaning set out under *"Depository Services . — DTC, Euroclear* ~~System~~*and Clearstream, Luxembourg"**.

"**Event of Default**" has the meaning set out under *"Capital Markets Platform — Event of Default"*.

"**Extraordinary Resolution**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Fair Adjustment**" has the meaning set out under *"Ontario's Fair Hydro Plan — Background"*.[59]

"**Fair Allocation Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Fair Allocation Amount and Financing Plan"*.[60]

"**FHPA**" ~~means~~**has** the ~~*Ontario Fair Hydro Plan Act, 2017*~~.**meaning set out on the face page of this confidential**

[59] ~~**Note:** Please consider revising the definition of "Fair Adjustment" if this concept is to be used in the OM. The definition of the "Fair Adjustment" indicates that this term only refers to the rate reduction from July 1, 2017 until April 30, 2018. When the term is then later used in narrative [ex. "…the Financing Entity is financing a portion of the shortfall that results from the Fair Adjustment…"] it refers to the electricity rates that result from the entire fair hydro program.~~

[60] ~~**Note:** Please consider a description of the Fair Allocation Amount that more closely aligns to Section 20(1) of the FHPA.~~

shelf offering memorandum.

"**Finance Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Financial Services Manager**" ~~means OPG, in its capacity as financial services manager appointed under the FHPA to perform the duties assigned to it thereunder~~has the meaning set out on the face page of this confidential shelf offering memorandum.[61]

"**Financing Entity**" has the meaning set out ~~under *"Ontario's Fair Hydro Plan — Background"*~~on the face page of this confidential shelf offering memorandum.

"**Financing Plan**" means the written plan entitled "Financing Plan" prepared by the Financial Services Manager as required under the FHPA to be used by the Financial Services Manager to evaluate whether potential Funding Obligations should be incurred for the purposes of a Financing Entity acquiring and financing an Investment Interest in accordance with the FHPA or for the purposes of a Refinancing, and includes any amendments thereto.

~~"**Funding Obligation**" has the meaning set out under *"Ontario's Fair Hydro Plan — Background"*.~~

~~"**Funding Obligation Agreement**" means any Note, any Supplemental Indenture (including any Terms Document), any liquidity agreement, any credit enhancement agreement or any derivative agreement.~~

"**Funding ~~Rebate~~Obligations**" has the meaning set out ~~under *"Ontario's Fair Hydro Plan — Investment Interest"*~~on the face page of this confidential shelf offering memorandum.

"Funding Obligation Agreement" means any Note, any Supplemental Indenture (including any Terms Document), any liquidity agreement, any liquidity agreement, any credit enhancement agreement or any derivative agreement.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**HOEP**" has the meaning set out under *"The Electricity Industry in Ontario — Electricity Prices"*.

"**IESO**" means the Independent Electricity System Operator.

"**IESO Cash Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — IESO Cash Reserve Account"*.

"**IESO Cash Reserve Deposit Amount**" means an amount equal to the aggregate of:

(a) 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations determined as of the Payment Date occurring in April, 2021; and

(b) an amount estimated by the Manager, acting reasonably, as the amount of Carrying Costs payable by the Issuer during May, June and July, 2021 on outstanding Issuer Funding Obligations and any Issuer Funding Obligations to be issued in accordance with the Financing Plan, provided that such estimate satisfies the Rating Agency Condition.

"**IESO Cash Reserve Required Amount**" means, on any Payment Date on or after the Payment Date in November, 2021, the amount, if any, by which (a) an amount equal to 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations, exceeds (b) the amount on deposit in the Program Cash Reserve Account, determined after giving effect to all

[61] ~~**Note:** Please consider whether there should be disclosure indicating that the FSM is a statutory role from which OPG may be removed.~~

settlements on such Payment Date.

"**IESO Security Agreement**" means the security agreement made by the IESO in favour of the Issuer to secure its obligations to pay the Issuer's Carrying Costs pursuant to the Master Transfer and Servicing Agreement.

"**Indemnity Agreement**" means the Indemnity Agreement dated December 21, 2017 by OPG in favour of the Indenture Trustee.

"**Indenture**" means the Master Trust Indenture, as supplemented by any Supplemental Indenture.

"**Indenture Trustee**" means BNY Trust Company of Canada and its successors.

"**Interest Accrual Amount (Junior Subordinated)**" means, in respect of any Payment Date and all Junior Subordinated Funding Obligations, the amount of interest that accrued on such Junior Subordinated Funding Obligations during the period from and including the issuance date of such Junior Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Junior Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accrual Amount (Senior)**" means, in respect of any Payment Date and all Senior Funding Obligations, the amount of interest that accrued on such Senior Funding Obligations during the period from and including the issuance date of such Senior Funding Obligations or the last date to which interest has been paid in respect of such Senior Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accrual Amount (Subordinated)**" means, in respect of any Payment Date and all Subordinated Funding Obligations, the amount of interest that accrued on such Subordinated Funding Obligations during the period from and including the issuance date of such Subordinated Funding Obligations or the last date to which interest has been paid in respect of such Subordinated Funding Obligations, as applicable, to such Payment Date less any amounts deposited to the Interest Accumulation Account in respect of such interest accruing during such period pursuant to the Collection Account Waterfall and the payment waterfall applicable to the IESO Cash Reserve Account.

"**Interest Accumulation Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Interest Accumulation Account"*.

"**Interest Payment Date**" means each business day on which interest is due and payable in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as set out in the related Funding Obligation Agreement.

"**Investment Asset**" has the meaning set out under *"Ontario's Fair Hydro Plan — Investment Interest"*.

"**Investment Interest**" has the meaning set out under *"Ontario's Fair Hydro Plan — Investment Interest"*.

"**Investor Presentation**" has the meaning set out on ~~the face~~ page **(iii)** of this confidential shelf offering memorandum.

"**Issuer**" ~~means Fair Hydro Trust, a special purpose trust governed by the laws of the Province of Ontario~~**has the meaning set out on the face page of this confidential shelf offering memorandum**.

"**Issuer Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts"*.

"**Issuer Funding Obligation**" means Funding Obligations of the Issuer.

"**Issuer Trustee**" means Computershare Trust Company of Canada.

"**Junior Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Junior Subordinated" in the related Funding Obligation Agreement.

"**Junior Subordinated Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**LDCs**" has the meaning set out under *"The Electricity Industry in Ontario"*.

"**Lender**" means any Person providing credit facilities, note purchase facilities or advances under a liquidity agreement, liquidity agreement or credit enhancement agreement, as applicable.

"**Limited Guarantee**" has the meaning set out under *"Change of Law Protection Agreement"*.

"**Management Agreement**" ~~has the meaning set out under *"The Manager"*~~**means the management agreement dated as of December 20, 2017 between the Manager and the Issuer, and acknowledged by the Indenture Trustee, as amended, supplemented, restated or otherwise modified from time to time**.

"**Manager**" means OPG, as manager of the Issuer appointed under the Management Agreement.

"**Manitoba Act**" ~~means *The Securities Act* (Manitoba)~~**has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in Manitoba"***.

"**Master Agreement**" means an agreement in the form of a Master Agreement as published by ISDA or any replacement or substitute or functional equivalent of such agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated as of December 21, 2017 between the Issuer and the IESO, as amended, supplemented, restated or otherwise modified from time to time.

"**Master Trust Indenture**" means the trust indenture dated as of December 21, 2017 between the Issuer, as issuer, and the Indenture Trustee, as amended, supplemented, restated or otherwise modified from time to time.

"**Material Effect**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Moody's**" means Moody's Investors Service, Inc. and its successors.

"**Moratorium Period**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**MTSA Acknowledgement**" means the acknowledgement and indemnity agreement dated December 21, 2017 by the IESO in favour of the Indenture Trustee.

~~"**MW**" means megawatts.~~[62]

"**NI 31-103**" ~~means National Instrument 31-103 — *Registration Requirements, Exemptions and Ongoing Registrant Obligations*~~**has the meaning set out on page (ii) of this confidential shelf offering memorandum**.

"**NI 45-106**" ~~means National Instrument 45-106 — *Prospectus Exemptions*~~**has the meaning set out on page (ii) of this confidential shelf offering memorandum**.

"**NL Act**" ~~means the *Securities Act* (~~**has the meaning set out under *"Statutory Rights of Action — Rights for***

~~[62] **Note:** Definition not used.~~

Purchasers in Newfoundland and Labrador).".

"**Non-Investment Grade Rated Electricity Vendor**" has the meaning set out under *"The Transferor and Servicer"*.

"**Note**" means any note of any Class, Series or Tranche created pursuant to a Supplemental Indenture and authenticated and delivered from time to time under the Master Trust Indenture.

"**Noteholders**" means a Person in whose name a Note is registered in the Note register or the bearer of any Note held in bearer form (including a global note in bearer form), as the case may be.

"**Obligations Secured**" means all present and future debts, expenses and liabilities, direct or indirect, absolute or contingent, due, owing or accruing due or owing from time to time by the Issuer to the Specified Creditors in their capacity as such. For greater certainty, amounts owing to any Specified Creditors by the Issuer at any time shall include (a) the unpaid face amount of any Notes issued on a discount basis; (b) the principal amount owing at such time, together with the accrued and unpaid interest on interest bearing Notes or Borrowings; (c) accrued fees, whether or not then due and payable; and (d) any evidence of indebtedness issued pursuant to or in respect of an amount owing under a Program Agreement (other than amounts payable by the Issuer to its beneficiaries pursuant to the Declaration of Trust or a promissory note issued by the Issuer to a beneficiary as contemplated in the Declaration of Trust).

"**OEB**" means the Ontario Energy Board.

"**Offering**" means an offering of senior secured notes pursuant to**has the meaning set out on page (ii) of** this confidential shelf offering memorandum and the related Term Sheet as described under *"Plan of Distribution"*.

"**Offering Jurisdiction**" means each of the provinces of Canada**has the meaning set out under *"Representations and Agreements of Purchasers"***.

"**OPA**" means Ontario Power Authority**has the meaning set out under *"The Electricity Industry in Ontario — Key Industry Participants — The IESO***.

"**OPG**" means Ontario Power Generation Inc.

"**Ordinary Resolution**" has the meaning set out under *"Capital Markets Platform — Debtholder Approvals and Meetings — Debtholder Meetings"*.

"**Participants**" has the meaning set out under *"Depository Services"*.

"**Paying Agent**" means any Person authorized by the Issuer to pay any Obligations Secured on behalf of the Issuer.

"**Payment Date**" means the 15th day of each calendar month.

"**Person**" means any individual, corporation, limited liability company, unlimited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Post-Suspension Refinancing**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Pre-Approved Refinancing**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Predecessor IESO**" has the meaning set out under *"The Electricity Industry in Ontario — Key Industry*

Participants — The IESO".

"**Primary Obligation**" has the meaning set out under *"Change of Law Protection Agreement — Approved Obligations & Adherence Conditions"*.

"**Principal Accumulation Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Principal Accumulation Account"*.

"**Principal Accumulation Amount**" means, in respect of any Series of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations and a Payment Date ~~occurring on or after the Principal Accumulation Date for such Series~~, the amount specified for such Payment Date in the related Funding Obligation Agreement plus any amounts specified in the related Funding Obligation Agreement in respect of prior Payment Dates ~~after the Principal Accumulation Date for such Series~~ which were not deposited to the Principal Accumulation Account; provided that if the Issuer has delivered a refinancing notice in respect of such Series, the Principal Accumulation Amounts in respect of such Series shall be adjusted as provided for in such refinancing notice.

"**Principal Accumulation Date**" means, in respect of any Series of Issuer Funding Obligations, other than Derivative Funding Obligations, the date, if any, specified in the related Funding Obligation Agreement.

"**Principal Payment Date**" means each business day on which principal is due and payable in respect of Senior Funding Obligations, Subordinated Funding Obligations or Junior Subordinated Funding Obligations, as set out in the related Funding Obligation Agreement.

"**Principal Payment Default Date**" has, with respect to any Issuer Funding Obligation, the meaning specified in the related Funding Obligation Agreement.

"**Program Account**" means each of the Collection Account, the Principal Accumulation Account, the Interest Accumulation Account, the Program Cash Reserve Account, the IESO Cash Reserve Account, the Refinancing Account and the Protection Account.

"**Program Agreements**" means the Master Trust Indenture, each Supplemental Indenture, the Declaration of Trust, the Management Agreement, the Master Transfer and Servicing Agreement, the MTSA Acknowledgement, the Indemnity Agreement, each transfer notice delivered under the Master Transfer and Servicing Agreement, any Co-Owner Agreements, the IESO Security Agreement, the Change of Law Protection Agreement, the Notes, any derivative agreements, credit enhancement agreements, liquidity agreements, loan agreements, underwriting agreements, agency agreements or note purchase agreements and all other documents and certificates delivered in connection therewith.

"**Program Cash Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Program Cash Reserve Account"*.

"**Program Cash Reserve Required Amount**" means (a) on each Payment Date prior to the Payment Date in May, 2021, nil, and (b) on each Payment Date thereafter, an amount equal to 0.50% of the aggregate outstanding principal amount of the Senior Funding Obligations, Subordinated Funding Obligations and Junior Subordinated Funding Obligations after giving effect to all settlements on such Payment Date, or such lesser amount proposed by the Manager that satisfies the Rating Agency Condition.

"**Protection Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Protection Account"*.

"**Protection Event**" has the meaning set out under *"Change of Law Protection Agreement — Protection Event"*.

"**Rating Agency**" means, with respect to any Issuer Funding Obligation, each nationally recognized statistical rating organization or designated rating organization, as specified in the related Funding Obligation Agreement, selected

by the Manager to rate such Issuer Funding Obligation.

"**Rating Agency Condition**" has the meaning set out under *"Rating Agency Condition"*.

~~"**Readjustment amount**" has the meaning ascribed to the term "readjustment amount" in the FHPA and Regulations.~~

"**Reference Period**" means:

(a) the period beginning on July 1, 2017 and ending on October 31, 2017; and

(b)

(c) during the period beginning on November 1, 2017 and ending on either April 30, 2047 or such later day as may be prescribed by the Regulations

(d)

(i) every six-month period following the period mentioned in (a);

(ii)

(iii) any period shorter than six months, as may be prescribed by the Regulations.

(iv)

"**Refinancing**" has the meaning ascribed to the term "refinancing" in the FHPA.

"**Refinancing Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Program Accounts — Refinancing Account"*.

"**Regulated Price Plan**" or "**RPP**" has the meaning set out under *"The Electricity Industry in Ontario — Electricity Prices*.

"**Regulations**" means the regulations promulgated under the FHPA.

"**Regulatory Asset**" has the meaning set out under *"Ontario's Fair Hydro Plan — Regulatory Asset"*.

"**Required Principal Accumulation Amount (Senior)**" means, in respect of any Principal Payment Date, the aggregate of the Principal Accumulation Amounts in respect of all Senior Funding Obligations for all Payment Dates up to and including such Principal Payment Date, less all amounts that have been applied to principal repayments of Senior Funding Obligations on or prior to such Principal Payment Date.

"**Required Principal Accumulation Amount (Subordinated)**" means, in respect of any Principal Payment Date, the aggregate of the Principal Accumulation Amounts in respect of all Subordinated Funding Obligations for all Payment Dates up to and including such Principal Payment Date, less all amounts that have been applied to principal repayments of Subordinated Funding Obligations on or prior to such Principal Payment Date.

"**Saskatchewan Act**" ~~means *The Securities Act, 1988* (~~**has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in* Saskatchewan~~)~~***"***.

"**Section 130.1**" ~~means section 130.1 of the *Securities Act* (Ontario)~~**has the meaning set out under *"Statutory Rights of Action — Rights for Purchasers in Ontario"***.

"**Section 150**" ~~means section 150 of the *Securities Act* (~~**has the meaning set out under *"Statutory Rights of Action***

— Rights for Purchasers in New Brunswick)".

"**Securities Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Securities Account"*.

"**Senior Funding Obligation**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Senior" in the related Funding Obligation Agreement.

"**Senior Notes**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Senior Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

"**Series**" means, with respect to any Class of Issuer Funding Obligations, the Series of the Class specified in the related Funding Obligation Agreement.

"**Series Account**" means each Series Finance Reserve Account and each Series Capital Reserve Account.

"**Series Capital Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Series Accounts — Series Capital Reserve Account"*.

"**Series Finance Reserve Account**" has the meaning set out under *"Capital Markets Platform — Security — Issuer Accounts — Series Accounts — Series Finance Reserve Account"*.

"**Servicer**" means the IESO, as servicer under the Master Transfer and Servicing Agreement.

"**Servicer Default**" means:

(a) any failure by the Servicer to remit to the Collection Account any required remittance that shall continue unremedied for a period of three business days after written notice of such failure is received by the Servicer from the Issuer or after discovery of such failure by a responsible officer of the Servicer;

(b) any failure on the part of the Servicer or, so long as the Servicer is the IESO, any failure on the part of the IESO, as the case may be, to duly observe or to perform in any respect any covenants or agreements of the Servicer or the IESO, as the case may be, set forth in the Master Transfer and Servicing Agreement or in any other Program Agreement to which it is a party (other than as provided in (a) above), which failure shall (i) materially and adversely affect the rights of the Specified Creditors and (ii) continue unremedied for a period of 30 days after the date on which (A) written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer or the IESO, as the case may be, by the Issuer or (B) such failure is discovered by a responsible officer of the Servicer;

(c) any representation or warranty made by the Servicer in the Master Transfer and Servicing Agreement, any other Program Agreement to which it is a party, any transfer notice or any monthly servicer report shall prove to have been incorrect when made, which has a material adverse effect on the Issuer and which remains unremedied for a period of 30 days after the date on which (i) written notice thereof, requiring the same to be remedied, shall have been delivered to the Servicer by the Issuer or (ii) such failure is discovered by a responsible officer of the Servicer;

(d) an insolvency event occurs with respect to the Servicer or the IESO; or

(e) any additional "Servicer Default" as specified in any Co-Owner Agreement occurs.

"**Specified Claims**" has the meaning set out under *"Change of Law Protection Agreement"*.

"**Specified Consumer**" has the meaning set out under *"Ontario's Fair Hydro Plan — Background"*.

"**Specified Creditors**" means, collectively, Noteholders, Lenders, the Paying Agent, the Indenture Trustee, the Issuer Trustee, the Manager, the Servicer, the Province of Ontario, Derivative Counterparties, credit enhancers, Rating Agencies and counterparties to underwriting agreements, agency agreements or note purchase agreements, in each case, to the extent of their claims related to Program Agreements, and any other Person that is owed a payment obligation by the Issuer that gives rise to a Finance Amount in respect of the Issuer.

"**Subordinated Funding Obligations**" means Funding Obligations arising under, or in connection with, Notes and Borrowings that have been designated as "Subordinated" in the related Funding Obligation Agreement.

"**Subordinated Notes, Series 2017-1**" has the meaning set out under *"Short Term Indebtedness"*.

~~"**Subrogation Amounts**" has the meaning set out under "*Change of Law Protection Agreement — Protection Event*".~~

"**Supplemental Indenture**" means a supplemental indenture to the Master Trust Indenture between the Issuer and the Indenture Trustee.

"**Suspension Event**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Suspension Notice**" has the meaning set out under *"Change of Law Protection Agreement — Suspension Notice & Post-Suspension Refinancings"*.

"**Term Sheet**" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Terms Document**" means, with respect to any Tranche of Notes, a supplement to the related Supplemental Indenture.

"**Tranche**" means, with respect to any Series of Notes, Notes of such Series which have identical terms, conditions and Tranche designation. Notes of a single Tranche may be issued on different dates.

"Transfer" has the meaning specified in the *Ontario Fair Hydro Plan Act, 2017*, and "Transferred" and "Transferee" shall have corresponding meanings.

"**True-up Amount**" has the meaning set out under *"Ontario's Fair Hydro Plan — Clean Energy Adjustment"*.

"**Unitholders**" ~~means FHP2017 Inc., a wholly owned subsidiary of OPG, and the Indenture Trustee~~**has the meaning set out under *"The Issuer"***.

"U.S. Securities Act" has the meaning set out on the face page of this confidential shelf offering memorandum.

"**Warehouse Facilities**" has the meaning set out under *"Short Term Indebtedness"*.

"**Warehouse Obligations**" means Senior Funding Obligations incurred pursuant to a Funding Obligation Agreement that provide the Issuer with a revolving facility under which principal amounts can be advanced, repaid and again advanced during a committed revolving period and does not provide any other type of credit facility.

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SCHEDULE A – CANADIAN PROVINCIAL SECURITIES REGULATORY AUTHORITIES

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: (403) 297-6454
Toll free in Canada: 1-877-355-0585
Facsimile: (403) 297-2082
Public official contact regarding indirect collection of information: FOIP Coordinator

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Inquiries: (604) 899-6854
Toll free in Canada: 1-800-373-6393
Facsimile: (604) 899-6581
Email: FOI-privacy@bcsc.bc.ca
Public official contact regarding indirect collection of information: FOI Inquiries

The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: (204) 945-2561
Toll free in Manitoba 1-800-655-5244
Facsimile: (204) 945-0330
Public official contact regarding indirect collection of information: Director

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: (506) 658-3060
Toll free in Canada: 1-866-933-2222
Facsimile: (506) 658-3059
Email: info@fcnb.ca
Public official contact regarding indirect collection of information: Chief Executive Officer and Privacy Officer

Government of Newfoundland and Labrador Financial Services Regulation Division
P.O. Box 8700
Confederation Building
2nd Floor, West Block
Prince Philip Drive
St. John's, Newfoundland and Labrador A1B 4J6
Attention: Director of Securities
Telephone: (709) 729-4189
Facsimile: (709) 729-6187
Public official contact regarding indirect collection of information: Superintendent of Securities

Nova Scotia Securities Commission
Suite 400, 5251 Duke Street
Duke Tower
P.O. Box 458
Halifax, Nova Scotia B3J 2P8
Telephone: (902) 424-7768
Facsimile: (902) 424-4625
Public official contact regarding indirect collection of information: Executive Director

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Telephone: (416) 593-8314
Toll free in Canada: 1-877-785-1555
Facsimile: (416) 593-8122
Email: exemptmarketfilings@osc.gov.on.ca
Public official contact regarding indirect collection of information: Inquiries Officer

Prince Edward Island Securities Office
95 Rochford Street, 4th Floor Shaw Building
P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: (902) 368-4569
Facsimile: (902) 368-5283
Public official contact regarding indirect collection of information: Superintendent of Securities

Autorité des marchés financiers
800, Square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Telephone: (514) 395-0337 or 1-877-525-0337
Facsimile: (514) 873-6155 (For filing purposes only)
Facsimile: (514) 864-6381 (For privacy requests only)
Email: financementdessocietes@lautorite.qc.ca (For corporate finance issuers)
Public official contact regarding indirect collection of information: Corporate Secretary

Financial and Consumer Affairs Authority of Saskatchewan
Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: (306) 787-5842
Facsimile: (306) 787-5899
Public official contact regarding indirect collection of information: Director

EXHIBIT 1

INVESTOR PRESENTATION

(See attached.)

Document comparison by Workshare Compare on January-17-18 1:28:55 AM

Input:	
Document 1 ID	file://C:\Users\bsaulnie\Desktop\23287504-v7-Fair Hydro OM - Comments of the Province.DOCX
Description	23287504-v7-Fair Hydro OM - Comments of the Province
Document 2 ID	C:\NRPortbl\TorysAtWork\BSAULNIE\24401808_10.docx
Description	C:\NRPortbl\TorysAtWork\BSAULNIE\24401808_10.docx
Rendering set	Firm_Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	584
Deletions	616
Moved from	10
Moved to	10
Style change	0
Format changed	0
Total changes	1220

RE_ Fair Hydro Trust - Disclosure Documents.rtf

From: Ramchandani, Rima [rramchandani@torys.com]
To: 'VINER, JON' [JON.VINER@blakes.com]; LEE John -TREASURY [john.s.lee@opg.com]; 'ken.ryfa@opg.com' [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; LADAK Lubna -TREASURY [lubna.ladak@opg.com]; Mansoori, Nina [nmansoori@torys.com]; Saulnier, Brett [bsaulnier@torys.com]
CC: Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Huang, Jackson (MEDG/MRIS) [Jackson.Huang@ontario.ca]; Sawwaf, Khareem (ENERGY) [Khareem.Sawwaf@ontario.ca]; Lightbody, Ava (ENERGY) [Ava.Lightbody@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]
Subject: RE: Fair Hydro Trust - Disclosure Documents
Date: Tuesday, January 16, 2018 14:14:10
Attachment 1: image001.gif
Attachment 2: image165d84.JPG

Thanks very much Jon. Are you able to send us the Word versions of the OM and Term Sheet reflecting your comments as well (that may facilitate a speedier turn on our end and will also allow us to send you a blackline back to your drafts).

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com
http://www.torys.com/

From: VINER, JON [mailto:JON.VINER@blakes.com]
Sent: January-16-18 10:48 AM
To: LEE John -TREASURY <john.s.lee@opg.com>; 'ken.ryfa@opg.com' <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Ramchandani, Rima <rramchandani@torys.com>
Cc: Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Cayley, Daniel (ENERGY) <Daniel.Cayley@ontario.ca>;

Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Mark Donaldson (MOF) <Mark.Donaldson@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Huang, Jackson (MEDG/MRIS) <Jackson.Huang@ontario.ca>; Sawwaf, Khareem (ENERGY) <Khareem.Sawwaf@ontario.ca>; Lightbody, Ava (ENERGY) <Ava.Lightbody@ontario.ca>; James Rehob (ENERGY) <James.Rehob@ontario.ca>; Gadi Mayman (Gadi.Mayman@ofina.on.ca) <Gadi.Mayman@ofina.on.ca>
Subject: Fair Hydro Trust - Disclosure Documents

All,

Please find attached the Province's comments on the offering memorandum, investor presentation and term sheet. We do not have comments on the additional documents circulated on January 5th.

Please let us know if you would like to discuss.

Kind regards,

Jon

Jon Viner

Associate

jon.viner@blakes.com

Dir: 416-863-2499

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image001.pdf

Blakes

image165d84.pdf

TORYS
LLP

Re_ Fair Hydro Memo.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: Re: Fair Hydro Memo
Date: Friday, February 23, 2018 15:30:49

Cindy thank you for the email. I should have contacted you. Thinking we won't use anyway.
We should connect Monday or Tuesday. Ag call with audit committee on Monday

Sent from my iPhone

On Feb 23, 2018, at 2:29 PM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> Hi Kim – unfortunately our fair hydro memo is not quite ready for distributions – just too many things going on this week to finalize. However, I would be happy to have a call with you and your Audit Committee Chair on Monday if that would be helpful.
>
> Cindy

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Re_ Fair Hydro Plan Question.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Anthony Martinello [Anthony.Martinello@ieso.ca]; lubna.ladak@opg.com [lubna.ladak@opg.com]
Subject: Re: Fair Hydro Plan Question
Date: Wednesday, March 28, 2018 09:09:10

I think we would have to ask fair hydro trust the carrying costs question. I am copying Anthony and Lubna for assistance

Sent from my iPad

On Mar 28, 2018, at 9:06 AM, Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca> wrote:

> Hi Kim -- can you send me the expected amount of regulatory asset that will be recorded/sold to OPG Trust each year for the next three years. I'm looking to quantify what the AG will say our deficit is in each of the next three years. I have a schedule that shows the difference between the amount paid to the generator and the amount collected from customers (which is about $2.2B next year), but I'm assuming that doesn't include the interest paid to OPG Trust during those years.
>
> Thanks,

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RE_ Fair Hydro - Change of Law - Protection and Process Agreements.rtf

From: Saulnier, Brett [bsaulnier@torys.com]
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Milligan, Peter [PMilligan@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]
Subject: RE: Fair Hydro - Change of Law - Protection and Process Agreements
Date: Wednesday, December 13, 2017 12:31:47
Attachment 1: @

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All,

Attached is a revised draft of the definition of “Material Effect” that was proposed by Blakes in the last version of the Protection Agreement (changed page only). The attached reflects O

Attachments:

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_Fair Hydro -- Change of Law Process Agreement.DOCX (58 KB)
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Blackline - Process Agreement.pdf (262 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125774951~201712131634070000~Z~B01519BEB0C9B9F4203E121B34899CB1&AttachmentId=7Blackline - Process Agreement.pdf

RE_ Fair Hydro - Change of Law - Protection and Process Agreements.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Saulnier, Brett [bsaulnier@torys.com]; Milligan, Peter [PMilligan@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]
Subject: RE: Fair Hydro - Change of Law - Protection and Process Agreements
Date: Wednesday, December 13, 2017 12:47:49
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.gif
Attachment 4: image004.jpg
Attachment 5: 23239361-v26-Change of Law - Process Agreement.DOCX
Attachment 6: 23239361-vpdf-Change of Law - Process Agreement.PDF

Hi Brett. In the interest of time, I am attaching my mark-up of the version of the Process Agreement you circulated yesterday morning. The Province is reviewing this concurrently and so it is subject to client input. I will have a look at what you just sent. You will see my mark-up highlights in yellow the items I had heard may be of consequence to the accountants in the definition of Material Effect – it sounds like you may be more up-to-date. If my comments are not self-evident, I can be available after 2:30 if that works. Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Saulnier, Brett [mailto:bsaulnier@torys.com]
Sent: Wednesday, December 13, 2017 11:32 AM
To: ASHBOURNE, STEPHEN; Milligan, Peter; Sebastiano, Rocco; Mansoori, Nina;

'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Olusoga, Yinka; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca); PALMER, AARON; VINER, JON; PRESTAGE, JA; 'MAUTI John -FIN & C CTRL'
Subject: RE: Fair Hydro - Change of Law - Protection and Process Agreements

All,

Attached is a revised draft of the definition of “Material Effect” that was proposed by Blakes in the last version of the Protection Agreement (changed page only). The attached reflects OPG’s discussions with their accountants and with the Province. Also attached is a revised draft of the Process Agreement, clean and blacklined to the last Torys version circulated below, which conforms the Material Effect definition to the Protection Agreement definition and contains a few other minor cleanups/removal of drafting notes. OPG expects to receive confirmation from the accountants this afternoon that they are comfortable with the documents in this form.

We need to provide the draft Process Agreement to the rating agencies as soon as possible today. Accordingly, we would ask that each of Blakes and Osler confirm their sign off on the attached. Given the timing constraints, we would ask that only substantive concerns be raised as we have limited time to address drafting/style changes.

Regards,

Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679

From: Saulnier, Brett
Sent: December-12-17 1:19 AM
To: 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'Milligan, Peter' <PMilligan@osler.com>; 'Sebastiano, Rocco' <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; 'Fullerton, Rick' <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Olusoga, Yinka <yolusoga@torys.com>; 'Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca)' <Tobias.Whitfield@ontario.ca>; 'PALMER, AARON' <AARON.PALMER@blakes.com>; 'VINER, JON' <JON.VINER@blakes.com>; 'PRESTAGE, JA' <JA.PRESTAGE@blakes.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>
Subject: RE: Fair Hydro - Change of Law Process Agreement

All,

In the interest of time, we are circulating concurrently to all parties a revised draft of the Change of Law Process Agreement, clean and blacklined to the last version circulated by Blakes. The attached reflects Torys' attempt to capture the comments and guidance provided by OPG and its accountants and remains subject to their ongoing review. We understand the Province and Blakes will also be discussing the scope of these changes. As there will be limited time to finalize the attached, we suggest discussing next steps to settle this agreement on our 10 a.m. call tomorrow.

Thanks,

Brett

Brett Saulnier

From: Saulnier, Brett
Sent: December-11-17 11:35 PM
To: 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; Milligan, Peter <PMilligan@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>;

Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro - Change of Law Protection Agreement

All,

Attached for your review is a revised draft of the Change of Law Protection Agreement, clean and blacklined to the last version circulated by Blakes and reflecting the meetings held earlier today. As discussed, we need to provide the attached to the rating agencies **by no later than noon tomorrow** in order to meet our end of year financing deadline. Accordingly, we will be circulating a calendar invite to this group for 10 a.m. tomorrow morning to confirm the parties are signed off. If Osler or Blakes have any comments on the attached, we would ask that they be circulated to this group prior to the 10 a.m. call.

Kind regards,

Brett

Brett Saulnier

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: December-08-17 3:16 PM
To: Milligan, Peter <PMilligan@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY'

<may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro - Change of Law Protection Agreement

Hi,

Attached is a revised version of the Change of Law Protection Agreement. I believe that most of the changes reflected from last night's Osler version (blackline is attached) are of a drafting or conforming nature, other than: (1) the Province disagrees that Approved Refinancing terms should be unfettered by adherence conditions post-Suspension Event and (2) the proposed rating-based "materially and adversely" qualification in the definition of Protection Event (and in fact any such qualification) is not acceptable to the Province. With regard to (1), this version comes into line with the proposed approach (i.e., using a modified adherence condition) that was incorporated into the version of the Change of Law Process Agreement I circulated yesterday. A further turn of that Agreement, to conform the open item identified in section 3.02 to the revised Change of Law Protection Agreement, is also included here for your reference.

Please note that the Province is working through the drafting concurrently and so further drafting comments may be provided.

As mentioned yesterday, the Province would like to proceed with the Ministers sign-off briefing early next week, on the basis that these versions (minus the explanatory notes) are now in substantially final form. Please identify if you believe there are other 'must

have' points (other than the 2 mentioned above).

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Milligan, Peter [mailto:PMilligan@osler.com]
Sent: Thursday, December 07, 2017 6:44 PM
To: ASHBOURNE, STEPHEN; Sebastiano, Rocco; Mansoori, Nina
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca); PALMER, AARON; VINER, JON; PRESTAGE, JA
Subject: Fair Hydro - Change of Law Protection Agreement

All,

Attached is a revised comment draft of the Change of Low Protection Agreement reflecting comments from Torys and Osler. In order to meet this transaction's timeline, this comment draft has not been reviewed by OPG or the Dealers and is delivered subject to any comments they may have.

Peter

Peter Milligan

416.862.6634

DIRECT

416.862.6666

FACSIMILE

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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Thursday, December 07, 2017 4:27 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN

PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro -- Change of Law Process Agreement

Hi,

Please find (attached) a further turn of the Change of Law Process Agreement, reflecting the Province's comments on the mark-up of the Agreement circulated yesterday afternoon by Torys. The attached blackline shows changes made to yesterday's Torys mark-up.

This version addresses concerns Rocco raised last night, to the extent the Province feels that the issues can be accommodated. For your information, I have set out below responses to Rocco's comments/observations (in CAPs).

The Province would like to proceed with the Ministers briefing early next week, on the basis that this version (minus the explanatory notes) is now in final form. If there are any critical revisions that the other parties believe reflect 'must have' priority, then the Province would like to have a call to discuss them as soon as possible.

Responses to Rocco's Points:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration. [AGREED. 7.01(b) and 7.01(c) will need to mirror the cure language we settle on in the Process Agreement (see my earlier comments). Perhaps the "which continues …" language in 7.01(B) can be revised to read: "to the extent that the Province would be entitled to provide a Suspension Notice in accordance with the terms of the agreement or agreements between the Province and OPG under which such obligations, requirements and processes arise". SIMILAR CHANGE FOR 7.01(C).

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings. [THAT IS THE INTENDED EFFECT. THE ADHERENCE CONDITIONS WOULD APPLY TO THE REFINANCING, SO IF THE REFINANCING TERMS DEVIATED MATERIALLY (BASED ON THE SUBSTANTIALLY IN THE FORM" THRESHOLD"), THEN OPG WOULD REQUIRE THE PROVINCE NOT TO OBJECT IN ORDER TO PROCEED WITH THOSE NEW TERMS. OTHERWISE, THE REFINANCING COULD INCORPORATE TERMS AND CONDITIONS, WHICH WOULD BIND THE PROVINCE UNDER THE LIMITED GUARANTEE, THAT WOULD BE UNCONSTRAINED AND WITHOUT ANY ACCOUNTABILITY TO THE PROVINCE. IN ROCCO'S EXAMPLE, THAT MIGHT MEAN THAT OPG WOULD NEED TO RESORT TO UNRATED DEBT, IF THE PROVINCE WAS UNWILLING TO ACCEPT THE NEW TERMS. PRESUMABLY EVERYONE WOULD ACT RATIONALLY. HOWEVER, AS A FAILSAFE, OPG COULD OFFER INCREASED PRICING IN ORDER TO ATTRACT INVESTORS TO ACCEPT THE EARLIER VETTED TERMS (BASED ON THE THEN ACCEPTED REVIEWED DOCUMENTATION).]

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable. [THE SUGGESTION REGARDING THE PROVINCE PREVENTING A REFINANCING IS ADDRESSED IN #2. IF THE REFINANCING TERMS WOULD EXCEED THE SCOPE OF THE TRANSACTION DOCUMENTS REVIEWED AND NOT OBJECTED TO BY THE PROVINCE, THEN THAT SUGGESTS THERE IS A MATERIAL EFFECT ON THE PROVINCE AND SO THE PROVINCE WOULD NEED THE ABILITY TO REVIEW AND CONSIDER THE PROPRIETY OF THOSE NEW TERMS FROM ITS PERSPECTIVE. AS FOR THE STANDALONE NATURE OF THE PROCESS AGREEMENT, THE INTENTION IS THAT THE PROCESS AGREEMENT BE UNCOUPLED AND NOT PART OF THE COLLATERAL, AND AS MICHAEL FELDMAN HAS EXPLAINED, LEAVE FUTURE FLEXIBILITY FOR THIS LONG-TERM STRUCTURE. TO ADDRESS ROCCO'S CONCERN THAT THE PROVINCE AND OPG COULD CHANGE THE UNDERLYING OBLIGATIONS APPLICABLE TO ADHERENCE IN RELATION TO A NEW OBLIGATION, REQUIREMENT OR PROCESS IN THE PROCESS AGREEMENT THAT WOULD MAKE A REFINANCING LESS LIKELY TO OCCUR, WE HAVE ADDED AND USED IN THE ATTACHED VERSION A NEW DEFFINTION:

"Approved Refinancing" means a Certified Primary Obligation proposed to be incurred as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions except that the certificate contemplated to be delivered under Section 4.02(b) shall instead confirm that OPG has delivered to the Province a certificate by its applicable officers confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of such existing Certified Primary Obligation." Various references to "Refinancing" in the Protection Agreement can also be revised to refer to "Approved Refinancing", as required.

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, December 06, 2017 7:45 PM

To: Mansoori, Nina; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Milligan, Peter; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka
Subject: RE: Fair Hydro -- Change of Law Process Agreement

I have reviewed the revised draft of the Change of Law Process Agreement that Torys has prepared and would like to pass along the following comments/observations:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration.

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings.

3. Given that the Indenture Trustee is not a party to the Change of Law Process

Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Wednesday, December 06, 2017 4:38 PM
To: 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'JON.VINER@blakes.com' <JON.VINER@blakes.com>; 'JA.PRESTAGE@blakes.com' <JA.PRESTAGE@blakes.com>
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<Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>
Subject: Fair Hydro -- Change of Law Process Agreement

Blakes team,

Please find attached OPG and Torys' comments on the Process Agreement reflecting our discussions from yesterday's call. Please note that this draft is subject to continuing review and comment by Osler and the dealers. As discussed at the tail end of our call yesterday, the section in the Process Agreement that gives the Province the right to object to new and material changes to transaction documents dovetails with the Protection Agreement so additional comments from Oslers may be forthcoming on this draft.

We are working on getting you a revised draft of the Protection Agreement either later today or tomorrow. In the meantime, please let us know if you have any comments or questions on the Process Agreement.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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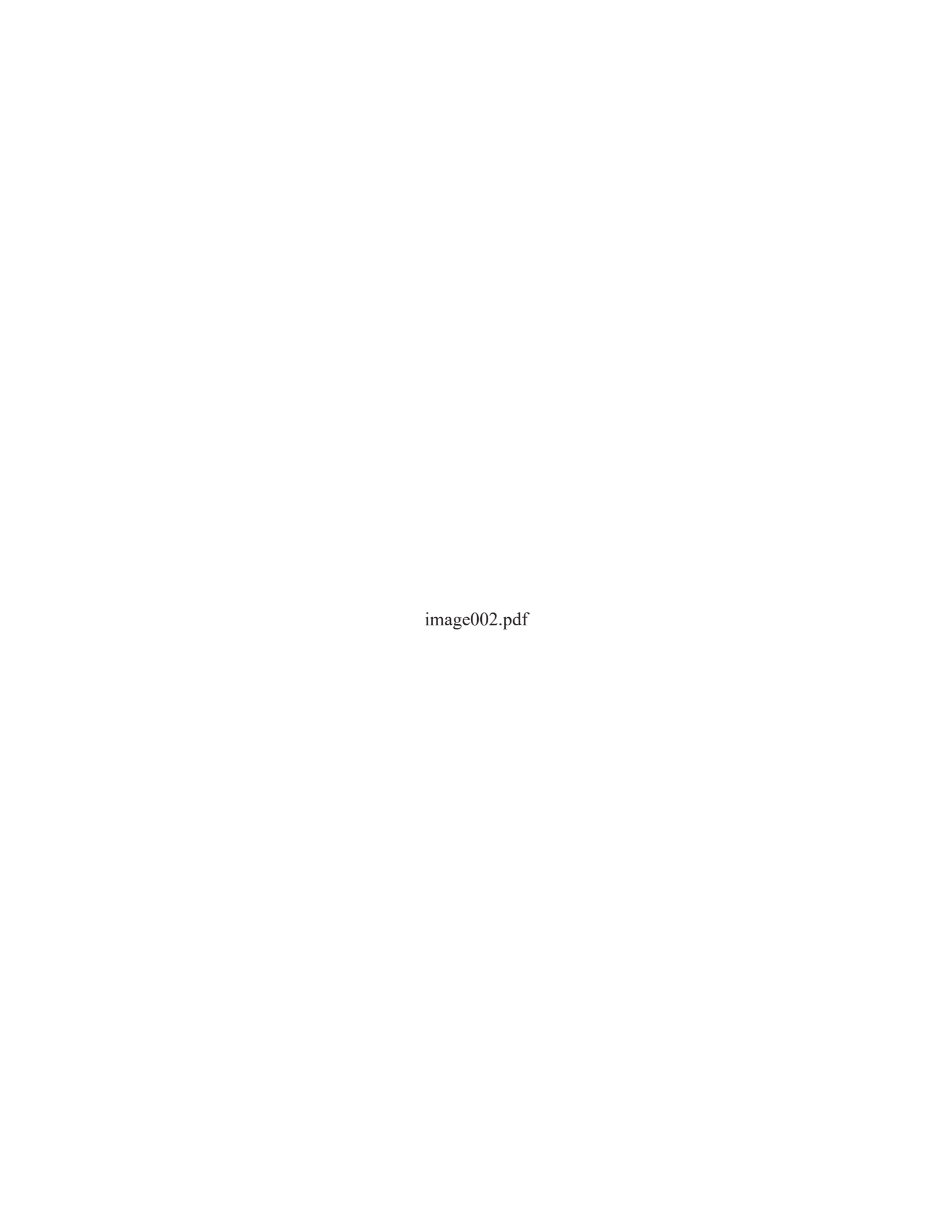
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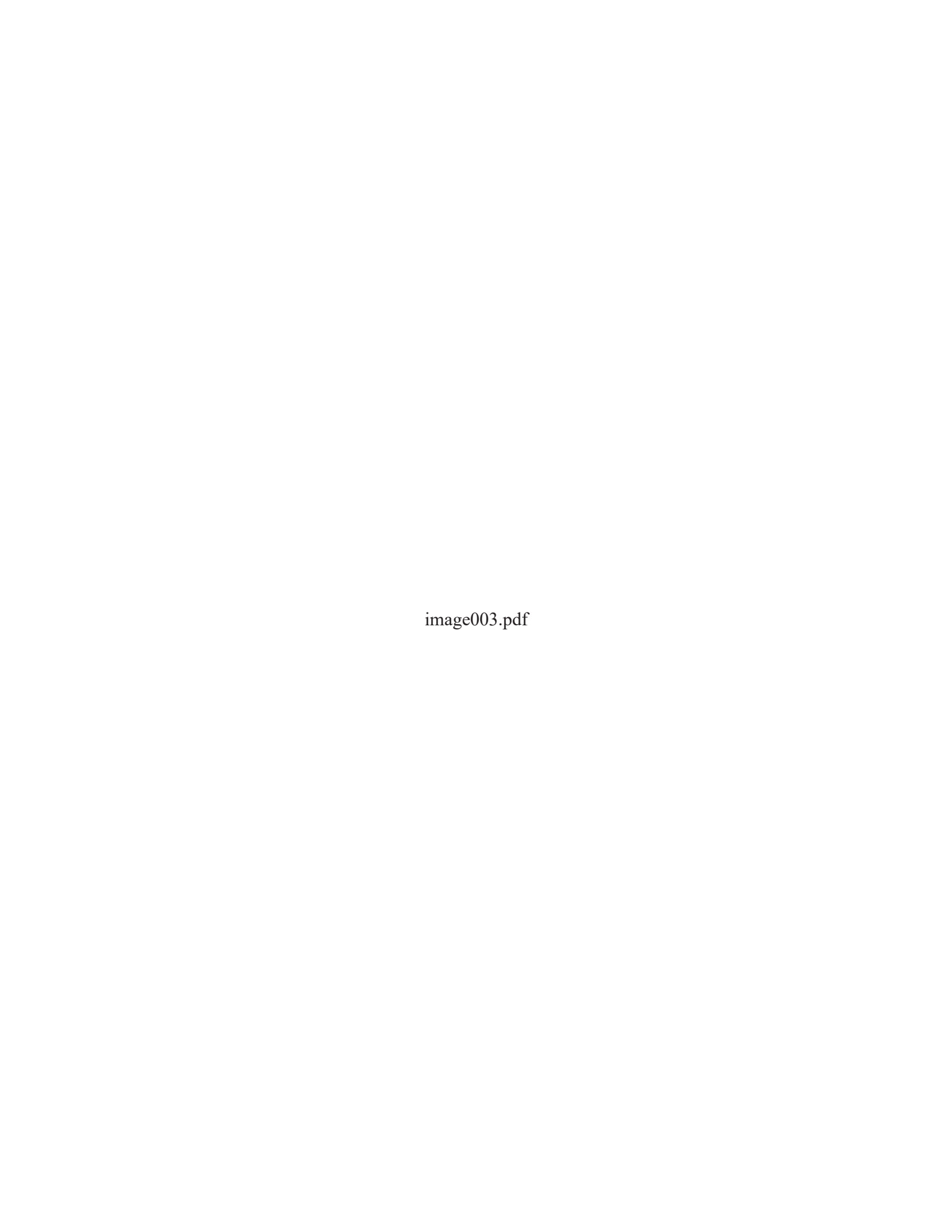
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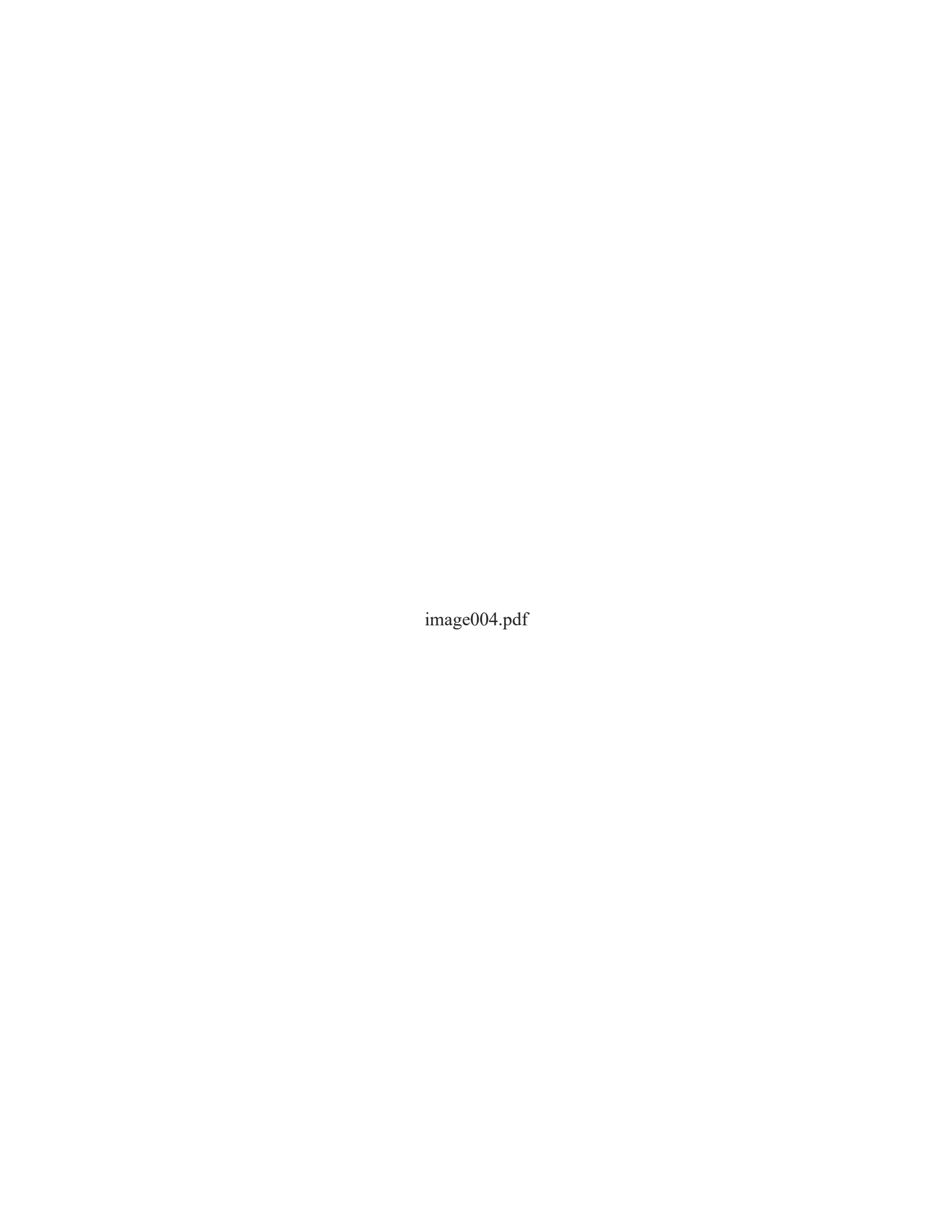
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TORYS
LLP

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**") is made and entered into as of [■], 2017.

RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Pursuant to the Management Agreement dated as of [■], 2017, OPG was appointed the Manager of the Financing Entity.

Concurrent with this Agreement, the Province, OPG (as the FSM and as the Manager), the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the applicable Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with the final forms of certain of the Transaction Documents, as described on Exhibit "A", and the Province has not objected to such forms and hereby confirms to OPG that such Transaction Documents will constitute "Reference Documentation" for purposes of this Agreement.

Prior to entering into this Agreement, OPG, as the FSM, provided the Minister of Energy, in compliance with the Act, with the initial Financing Plan, which includes the initial forecast (the "**Initial Forecast**") setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Obligations Secured to be incurred during the 24 month period from December 1, 2017 to November 30, 2019 (the "**Initial Forecast Period**"). Prior to entering into this Agreement, OPG provided the Province with the initial Protection Agreement Maximum (the "**Initial Protection Agreement Maximum**"). The Province has received the initial Financing Plan and has not disagreed with the Initial Forecast or the Initial Protection Agreement Maximum on the basis of an apparent inaccuracy in the Initial Forecast, an inconsistency between the Initial Forecast and the initial Financing Plan, or as a result of the Initial Protection Agreement Maximum being more than the Initial Forecast.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the applicable Adherence Conditions have been satisfied and maintaining information related to the Program Agreements and the Approved Obligations.

All things necessary to make this Agreement a valid and legally binding agreement of OPG and the Province, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall"; the word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such

other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed; the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 References to the Financing Entity

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND

REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT (ONTARIO).

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days, or such lesser period as the Province may agree to in writing, prior to:

(i) any proposed material change in the terms or conditions applicable to a Primary Obligation in a previously provided Transaction Document becoming effective or otherwise being used; provided, for greater certainty, that a proposed change in particular financial terms, rates or levels shall not constitute a material change for this purpose and, without limitation, any change that could reasonably be expected to have a Material Effect shall constitute a material change for this purpose, and

(ii) any additional, supplemental or replacement Transaction Document becoming effective or otherwise being used,

OPG shall deliver to the Province a copy of such proposed change to the Transaction Document and any such additional, supplemental or replacement Transaction Document.

(c) Without limiting Subsection 2.01(b), promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional, supplemental or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall, except if previously been provided to the Province under Subsection 2.01(b), deliver to the Province a detailed description of such event and the reasons for it, together with any related documents, agreements and instruments.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations

(including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not (unless waived in writing by the Province):

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement, replacement, waiver or consent has or could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any supplement, amendment, modification, restatement, replacement, waiver or consent in respect of particular financial terms, rates or levels;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action has could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any such action taken in respect of particular financial terms, rates or levels; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) If any action restricted pursuant to Section 2.02(a)(v) is reflected in the terms of a Transaction Document (including any proposed change, addition, supplement or replacement to or of a Transaction Document) delivered by OPG to the Province in accordance with Section 2.01(b) and such terms and action are specifically brought to the attention of the Province at the time of such delivery, then the Province shall be deemed to have waived its rights with respect to such action under Section 2.02(a)(v) if the Province has not objected to the terms of such Transaction Document (including any proposed change, addition, supplement or replacement to or of a Transaction Document) under Section 3.04(b) with respect to the taking of such action.

(c) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation;

(iv) notify the Province of (1) the occurrence of any Breach Event and any Program Breach, in each case within 2 Business Days of any such occurrence, and (2) any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Breach Event or a Program Breach, in each case within 1 Business Day of OPG first becoming aware of such event or circumstance; and

(v) after the occurrence of any Protection Event or any Suspension Event (or any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Protection Event or a Suspension Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(d) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement between the Province and OPG dated June 1, 2017 (as

amended, the "**Indemnity Agreement**") are not amended by this Agreement and continue in full force and effect, notwithstanding that this Agreement is entered into subsequent to the Indemnity Agreement.

(e) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement are not amended by the Change of Law Protection Agreement and continue in full force and effect, notwithstanding that the Change of Law Protection Agreement was entered into subsequent to the Indemnity Agreement.

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

OPG shall deliver to the Province a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Province, on or before the incurrence or any amendment of a Funding Obligation (provided that delivery may not be more than 5 Business Days before the incurrence or amendment of the Funding Obligation), in each case setting out the following with respect to such Funding Obligation:

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, OPG's best estimate of the expected notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Funding Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reference Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reference Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum applicable on the date that the Process Certificate is delivered; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

Notwithstanding the foregoing, no Process Certificate shall be required to be delivered in respect of: (x) any Funding Obligation under which not more than $5,000,000 in the aggregate may become payable by the Financing Entity or (y) the incurrence of a Post-Suspension Refinancing that is proposed to be entered into by the Manager in compliance with the requirements of Section 7.03 of the Change of Law Protection Agreement after the Province has elected not to offer to fund such Post-Suspension Refinancing in accordance with such requirements.

3.02 Acknowledgement regarding delivery of certificate under Change of Law Protection Agreement

The Province acknowledges that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) will be authorized by OPG to deliver the certificate referred to in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has complied with all

of its obligations to the Province and internal requirements and processes in connection with adherence of the Limited Guarantee to the incurrence of the Certified Primary Obligations in respect of which the certificate in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement is being delivered; provided that, upon receipt of a Suspension Notice under the Change of Law Protection Agreement, OPG covenants not to not permit the delivery of any further certificates to the Indenture Trustee under Subsection 4.02(a)(ii) of the Change of Law Protection Agreement.

3.03 Suspension Events and Related Matters

(a) The parties acknowledge and agree that the Province is entitled to deliver a Suspension Notice under Section 7.01 of the Change of Law Protection Agreement if a Program Breach or Breach Event has occurred.

(b) The Province agrees not to deliver a Suspension Notice pursuant to Section 7.01 of the Change of Law Protection Agreement unless a Program Breach or a Breach Event has occurred.

(c) The Province acknowledges that it will not be entitled to object to an incurrence by the Financing Entity of a Post-Suspension Refinancing proposed to be entered into by the Manager in compliance with the requirements of Section 7.03 of the Change of Law Protection Agreement after the Province has elected not to offer to fund such Post-Suspension Refinancing in accordance with such requirements. For greater certainty, the requirements of this Agreement shall apply in respect of any Post-Suspension Refinancing, including any Transaction Document that is proposed to be entered into, amended or otherwise affected in connection with implementation of the Post-Suspension Refinancing, except that no Process Certificate shall be required to be delivered to the Province in connection with such an incurrence.

3.04 Meaning of "Reference Documentation"

For the purposes of Subsection 3.01(c), the term "Reference Documentation" shall mean each Transaction Document that, at the relevant time:

(a) is a Transaction Document listed on Exhibit "A"; or

(b) is a Transaction Document (including any amended or amended and restated Transaction Document) delivered to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is so delivered to the Province; provided that the Province (i) shall only be entitled to deliver an objection notice in connection with a change proposed to be made or an action proposed to be taken to or in respect of a previously delivered Transaction Document that forms part of the Reviewed Documentation at the relevant time, or in connection with any additional, supplemental or replacement Transaction Document that contains a term or a condition that differs in any material respect

from the terms or conditions applicable to any other Transaction Document that forms part of the Reviewed Documentation at the relevant time, in each case if such change, action, addition, supplement or replacement to, of or in respect of the applicable Transaction Document has or could reasonably be expected to have a Material Effect and (ii) shall not be entitled to deliver an objection notice in respect of the incurrence of a Post-Suspension Refinancing that is proposed to be entered into by the Manager in compliance with the requirements of Section 7.03 of the Change of Law Protection Agreement after the Province has elected not to offer to fund such Post-Suspension Refinancing in accordance with such requirements.

3.05 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation that has or could have a Material Effect; provided, however, that the foregoing does not apply to any particular financial terms, rates or levels; and

(b) with respect to the Reference Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Obligations Secured that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Obligations Secured to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is more than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(c) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM or as the Manager, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM and as the Manager under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM or as the Manager has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with

the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
BREACH EVENTS

6.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, by OPG of Section 2.01(b)(i), Section 2.02(b)(iv) or Section 3.01;

(b) a default in the performance, or breach, of any other covenants of OPG under this Agreement (excluding Section 2.01(b)(i), Section 2.02(b)(iv) and Section 3.01), which, if curable in a way such that the default or breach would not have or have had a material adverse effect on the rights and interests of the Province, is not so cured within thirty (30) days;

(c) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Subsection 4.02 of the Change of Law Protection Agreement, proves to be incorrect in any material respect on the date made and which, if curable in a way such that the incorrect representation or warranty may be remedied without having or having had a material adverse effect on the rights and interests of the Province as a result of the Province's reliance thereon, is not so cured within thirty (30) days; or

(d) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

ARTICLE VII
MISCELLANEOUS

7.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

7.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(b) if to the Province:

Deputy Minister of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Deputy Ministry of Energy

[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 7.02.

7.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 7.03 shall be null and void.

7.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

7.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

7.06 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____

Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 6.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, OPG (as the FSM and the Manager) and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**IESO Security Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Initial Forecast**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast Period**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Protection Agreement Maximum**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Material Effect**" means:

(a) with respect to any change or action, as applicable, to or in respect of a previously delivered Transaction Document that forms part of the Reviewed Documentation at the relevant time; and

(b) with respect to any additional, supplemental or replacement Transaction Document proposed to form part of the Reviewed Documentation and that contains a term or a condition that differs in any material respect from the terms or conditions applicable to any other Transaction Document that forms part of the Reviewed Documentation at the relevant time,

that the making of such change, the taking of such action, or the entering into of such addition, supplement or replacement, as applicable, has or could reasonably be expected to have a material effect on the obligations (including as a result of a change in the nature, scope or extent of the

Primary Obligation and the effect on the Province's obligations therefor under the Limited Guarantee) or the rights of the Province under the Limited Guarantee, the Change of Law Protection Agreement or this Agreement, in each case that could reasonably be expected to affect (i) the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization); (ii) the appointment, obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Financing Entity or the Financing Entity Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province as a Specified Creditor; [(v) the limitations and requirements otherwise applicable to the capital structure of the Financing Entity under any existing Program Agreement;] (vi) the payment provisions and associated priorities set forth in the Trust Indenture; [(vii) the obligations or liability of the Financing Entity to pay any tax;] (viii) compliance by the FSM or the Manager with the then applicable Financing Plan; [(ix) the circumstances in which a Protection Event could arise;] (x) compliance by the FSM, the Manager, the Financing Entity or IESO with the Act or the General Regulation; (xi) the nature or character of the payment obligations (but, subject to compliance with the Financing Plan, irrespective of the amount payable thereunder) that could become payable under the Limited Guarantee; or (xii) the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of this Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Section 4.01.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Documentation**" has the meaning ascribed thereto in Section 3.04.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.05.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that could affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

EXHIBIT "A"
INITIAL REFERENCE DOCUMENTATION

- Declaration of Trust;
- Management Agreement;
- Master Transfer and Servicing Agreement;
- Acknowledgement and indemnity agreement dated as of [■], 2017 made by IESO in favour of the Indenture Trustee;
- IESO Security Agreement;
- Trust Indenture;
- Warehouse Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017; and
- Warehouse Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**") is made and entered into as of [■], 2017.

RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Pursuant to the Management Agreement dated as of [■], 2017, OPG was appointed the Manager of the Financing Entity.

Concurrent with this Agreement, the Province, OPG (as the FSM and as the Manager), the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the applicable Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with the final forms of certain of the Transaction Documents, as described on Exhibit "A", and the Province has not objected to such forms and hereby confirms to OPG that such Transaction Documents will constitute "Reference Documentation" for purposes of this Agreement.

Prior to entering into this Agreement, OPG, as the FSM, provided the Minister of Energy, in compliance with the Act, with the initial Financing Plan, which includes the initial forecast (the "**Initial Forecast**") setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Obligations Secured to be incurred during the 24 month period from December 1, 2017 to November 30, 2019 (the "**Initial Forecast Period**"). Prior to entering into this Agreement, OPG provided the Province with the initial Protection Agreement Maximum (the "**Initial Protection Agreement Maximum**"). The Province has received the initial Financing Plan and has not disagreed with the Initial Forecast or the Initial Protection Agreement Maximum on the basis of an apparent inaccuracy in the Initial

Forecast, an inconsistency between the Initial Forecast and the initial Financing Plan, or as a result of the Initial Protection Agreement Maximum being more than the Initial Forecast.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the applicable Adherence Conditions have been satisfied and maintaining information related to the Program Agreements and the Approved Obligations.

All things necessary to make this Agreement a valid and legally binding agreement of OPG and the Province, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall"; the word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed; the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 References to the Financing Entity

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT (ONTARIO).

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days, or such lesser period as the Province may agree to in writing, prior to:

(i) any proposed material change in the terms or conditions applicable to a Primary Obligation in a previously provided Transaction Document becoming effective or otherwise being used; provided, for greater certainty, that a proposed change in particular financial terms, rates or levels shall not constitute a material change for this purpose and, without limitation, any change that could reasonably be expected to have a Material Effect shall constitute a material change for this purpose, and

(ii) any additional, supplemental or replacement Transaction Document becoming effective or otherwise being used,

OPG shall deliver to the Province a copy of such proposed change to the Transaction Document and any such additional, supplemental or replacement Transaction Document.

(c) Without limiting Subsection 2.01(b), ~~and except as has previously been provided to the Province under Subsection 2.01(b),~~ promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional, supplemental or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall, except if previously been provided to the Province under Subsection 2.01(b), deliver to the Province a detailed description of such event and the reasons for it, together with any related documents, agreements and instruments. ~~*[Note to Province/Blakes: We assume that if the change is provided pursuant to Subsection 2.01(b) that it may not be redelivered under this section.]*~~

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not (unless waived in writing by the Province):

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement, replacement, waiver or consent has or could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any supplement, amendment, modification, restatement, replacement, waiver or consent in respect of particular financial terms, rates or levels;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action has could reasonably be considered to have a Material Effect;

provided, however, that the foregoing does not apply to any such action taken in respect of particular financial terms, rates or levels; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) If any action restricted pursuant to Section 2.02(a)(v) is reflected in ~~a delivery required to be made~~the terms of a Transaction Document (including any proposed change, addition, supplement or replacement to or of a Transaction Document) delivered by OPG to the Province ~~pursuant to~~in accordance with Section 2.01(b) and ~~is not objected to by the Province under Section 3.04(b),~~such terms and action are specifically brought to the attention of the Province at the time of such delivery, then the Province shall be deemed to have waived its rights ~~under Section 2.02(a)(v)~~with respect to such action under Section 2.02(a)(v) if the Province has not objected to the terms of such Transaction Document (including any proposed change, addition, supplement or replacement to or of a Transaction Document) under Section 3.04(b) with respect to the taking of such action.

(c) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; ~~and~~

(iv) notify the Province of (1) the occurrence of any Breach Event and any Program Breach, in each case within 2 Business Days of any such occurrence, and (2) any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Breach Event or a Program Breach, in each case within 1 Business Day of OPG first becoming aware of such event or circumstance; and

(v) after the occurrence of any Protection Event or any Suspension Event (or any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Protection Event or a Suspension Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation

under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(d) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement between the Province and OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") are not amended by this Agreement and continue in full force and effect, notwithstanding that this Agreement is entered into subsequent to the Indemnity Agreement.

(e) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement are not amended by the Change of Law Protection Agreement and continue in full force and effect, notwithstanding that the Change of Law Protection Agreement was entered into subsequent to the Indemnity Agreement.

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

OPG shall deliver to the Province a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Province, on or before the incurrence or any amendment of a Funding Obligation~~, other than any Funding Obligation under which not more than $5,000,000 in the aggregate may become payable by the Financing Entity~~ (provided that delivery may not be more than 5 Business Days before the incurrence or amendment of the Funding Obligation), in each case setting out the following with respect to such Funding Obligation:

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, OPG's best estimate of the expected notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Funding Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reference Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a

reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reference Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum applicable on the date that the Process Certificate is delivered; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

Notwithstanding the foregoing, no Process Certificate shall be required to be delivered in respect of: (x) any Funding Obligation under which not more than $5,000,000 in the aggregate may become payable by the Financing Entity or (y) the incurrence of a Post-Suspension Refinancing that is proposed to be entered into by the Manager in compliance with the requirements of Section 7.03 of the Change of Law Protection Agreement after the Province has elected not to offer to fund such Post-Suspension Refinancing in accordance with such requirements.

3.02 Acknowledgement regarding delivery of certificate under Change of Law Protection Agreement

The Province acknowledges ~~and agrees~~ that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) ~~are~~will be authorized by OPG to deliver the certificate referred to in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with adherence of the Limited Guarantee to the incurrence of the Certified Primary Obligations in respect of which the certificate in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement is being delivered; provided that, upon receipt of a Suspension Notice under the Change of Law Protection Agreement, OPG covenants not to ~~deliver~~not permit the delivery of any further certificates to the Indenture Trustee under Subsection 4.02(a)(ii) of the Change of Law Protection Agreement.

3.03 ~~Acknowledgement regarding delivery of~~ Suspension ~~Notice~~ Events and Related Matters

(a) The parties acknowledge and agree that the Province is entitled to deliver a Suspension Notice under Section 7.01 of the Change of Law Protection Agreement if a Program Breach or Breach Event has occurred. ~~The Province agrees not to deliver a Suspension Notice pursuant to Section 7.01 of the Change of Law Protection Agreement unless a Program Breach or a Breach Event has occurred.~~

(b) The Province agrees not to deliver a Suspension Notice pursuant to Section 7.01 of the Change of Law Protection Agreement unless a Program Breach or a Breach Event has occurred.

(c) The Province acknowledges that it will not be entitled to object to an incurrence by the Financing Entity of a Post-Suspension Refinancing proposed to be entered into by the Manager in compliance with the requirements of Section 7.03 of the Change of Law Protection Agreement after the Province has elected not to offer to fund such Post-Suspension Refinancing in accordance with such requirements. For greater certainty, the requirements of this Agreement shall apply in respect of any Post-Suspension Refinancing, including any Transaction Document that is proposed to be entered into, amended or otherwise affected in connection with implementation of the Post-Suspension Refinancing, except that no Process Certificate shall be required to be delivered to the Province in connection with such an incurrence.

3.04 Meaning of "Reference Documentation"

For the purposes of Subsection 3.01(c), the term "Reference Documentation" shall mean each Transaction Document that, at the relevant time:

(a) is a Transaction Document listed on Exhibit "A"; or

(b) is a Transaction Document (including any amended or amended and restated Transaction Document) ~~provided~~delivered to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is ~~provided~~so delivered to the Province; provided that the Province (i) shall only be entitled to deliver an objection notice ~~if the Transaction Document (including any amended or amended and restated Transaction Document) has~~in connection with a change proposed to be made or an action proposed to be taken to or in respect of a previously delivered Transaction Document that forms part of the Reviewed Documentation at the relevant time, or in connection with any additional, supplemental or replacement Transaction Document that contains a term or a condition that differs in any material respect from the terms or conditions applicable to any other Transaction Document that forms part of the Reviewed Documentation at the relevant time, in each case if such change, action, addition, supplement or replacement to, of or in respect of the applicable Transaction Document has or could reasonably be expected to have a Material Effect and (ii) shall not be entitled to deliver an objection notice in respect of the incurrence of a Post-Suspension Refinancing that is proposed to be entered into by the Manager in compliance with the requirements of Section 7.03 of the Change of Law Protection Agreement after the Province has elected not to offer to fund such Post-Suspension Refinancing in accordance with such requirements.

3.05 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation that has or could have a Material Effect; provided, however, that the foregoing does not apply to any particular financial terms, rates or levels; and

(b) with respect to the Reference Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Obligations Secured that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Obligations Secured to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast. ~~*[Note to Province/Blakes: Change made to be consistent with changes in recitals and to reflect what is provided in the Financing Plan.]*~~

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is more than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(c) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM or as the Manager, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM and as the Manager under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM or as the Manager has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
BREACH EVENTS

6.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, by OPG of Section 2.01(b)(i), Section 2.02(b)(iv) or Section 3.01;

(b) a default in the performance, or breach, of any other covenants of OPG under this Agreement (excluding Section 2.01(b)(i), Section 2.02(b)(iv) and Section 3.01), which, if curable in a way such that the default or breach would not have or have had a ~~Material Effect~~material adverse effect on the rights and interests of the Province, is not so cured within thirty (30) days;

(c) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Subsection 4.02 of the Change of Law Protection Agreement, proves to be incorrect in ~~a~~any material respect on the date made and which, if curable in a way such that the incorrect representation or warranty may be remedied without ~~any Material Effect having occurred~~having or having had a material adverse effect on the rights and interests of the Province as a result of the Province's reliance thereon, is not so cured within thirty (30) days; or ~~*[Note to Province/Blakes: Change made to be consistent with description of Breach Event in the Change of Law Protection Agreement.]*~~

(d) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

ARTICLE VII
MISCELLANEOUS

7.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

7.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(b) if to the Province:

Deputy Minister of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Deputy Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 7.02.

7.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 7.03 shall be null and void.

7.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

7.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

7.06 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____

Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 6.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, OPG (as the FSM and the Manager) and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**IESO Security Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Initial Forecast**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast Period**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Protection Agreement Maximum**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Material Effect**" means ~~(i) with respect to a previously provided Transaction Document, any change or action, as applicable, that could affect the timing of or circumstances under which related payments would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that could adversely affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or (ii) with respect to any additional, supplemental or replacement Transaction Document, such Transaction Document contains a term that (X) could adversely affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or (Y) relates to the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration,~~

~~termination, wind-up, liquidation or realization) that is different in any material respect than the equivalent terms contained in any previously provided Reference Documentation.~~:

(a) with respect to any change or action, as applicable, to or in respect of a previously delivered Transaction Document that forms part of the Reviewed Documentation at the relevant time; and

(b) with respect to any additional, supplemental or replacement Transaction Document proposed to form part of the Reviewed Documentation and that contains a term or a condition that differs in any material respect from the terms or conditions applicable to any other Transaction Document that forms part of the Reviewed Documentation at the relevant time,

that the making of such change, the taking of such action, or the entering into of such addition, supplement or replacement, as applicable, has or could reasonably be expected to have a material effect on the obligations (including as a result of a change in the nature, scope or extent of the Primary Obligation and the effect on the Province's obligations therefor under the Limited Guarantee) or the rights of the Province under the Limited Guarantee, the Change of Law Protection Agreement or this Agreement, in each case that could reasonably be expected to affect (i) the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization); (ii) the appointment, obligations or duties of OPG as the Manager; (iii) the existence, powers or authority of the Financing Entity or the Financing Entity Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province as a Specified Creditor; [(v) the limitations and requirements otherwise applicable to the capital structure of the Financing Entity under any existing Program Agreement;] (vi) the payment provisions and associated priorities set forth in the Trust Indenture; [(vii) the obligations or liability of the Financing Entity to pay any tax;] (viii) compliance by the FSM or the Manager with the then applicable Financing Plan; [(ix) the circumstances in which a Protection Event could arise;] (x) compliance by the FSM, the Manager, the Financing Entity or IESO with the Act or the General Regulation; (xi) the nature or character of the payment obligations (but, subject to compliance with the Financing Plan, irrespective of the amount payable thereunder) that could become payable under the Limited Guarantee; or (xii) the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of this Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Section 4.01.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Documentation**" has the meaning ascribed thereto in Section 3.04.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.05.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that could affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

EXHIBIT "A"
INITIAL REFERENCE DOCUMENTATION

- Declaration of Trust;
- Management Agreement;
- Master Transfer and Servicing Agreement;
- Acknowledgement and indemnity agreement dated as of [■], 2017 made by IESO in favour of the Indenture Trustee;
- IESO Security Agreement;
- Trust Indenture;
- Warehouse Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017; and
- Warehouse Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

Document comparison by Workshare Compare on Wednesday, December 13, 2017 11:04:49 AM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23239361/25
Description	TOR_2528-#23239361-v25-Change_of_Law_-_Process_Agreement
Document 2 ID	PowerDocs://TOR_2528/23239361/26
Description	TOR_2528-#23239361-v26-Change_of_Law_-_Process_Agreement
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	59
Deletions	39
Moved from	9
Moved to	9
Style change	0
Format changed	0
Total changes	116

RE_ Fair Hydro - Change of Law Process Agreement.rtf

From: Saulnier, Brett [bsaulnier@torys.com]
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Milligan, Peter [PMilligan@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]
Subject: RE: Fair Hydro - Change of Law Process Agreement
Date: Tuesday, December 12, 2017 02:18:42
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717456~201712120620330000~Z~00916DCB5CEB8B851561D00BDCF17EC1
View the original item

All,

In the interest of time, we are circulating concurrently to all parties a revised draft of the Change of Law Process Agreement, clean and blacklined to the last version circulated by Blak

Attachments:

image001.gif (1 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717456~201712120620330000~Z~00916DCB5CEB8B851561D00BDCF17EC1&AttachmentId=1image001.gif

image002.gif (1 KB)
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#24622622v2_TorysAtWork_ - 23239361-v24-Change of Law - Process Agreemen....docx (58 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717456~201712120620330000~Z~00916DCB5CEB8B851561D00BDCF17EC1&AttachmentId=5#24622622v2_TorysAtWork_ - 23239361-v24-Change of Law - Process Agreemen....docx

Blackline_24622622v1 - 24622622_2.pdf (281 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717456~201712120620330000~Z~00916DCB5CEB8B851561D00BDCF17EC1&AttachmentId=6Blackline_24622622v1 - 24622622_2.pdf

RE_ Fair Hydro - Change of Law Process Agreement.rtf

From: Saulnier, Brett [bsaulnier@torys.com]
To: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Milligan, Peter [PMilligan@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]
Subject: RE: Fair Hydro - Change of Law Process Agreement
Date: Tuesday, December 12, 2017 02:18:42
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.gif
Attachment 4: image004.jpg
Attachment 5: #24622622v2_TorysAtWork_ - 23239361-v24-Change of Law - Process Agreemen....docx
Attachment 6: Blackline_24622622v1 - 24622622_2.pdf

All,

In the interest of time, we are circulating concurrently to all parties a revised draft of the Change of Law Process Agreement, clean and blacklined to the last version circulated by Blakes. The attached reflects Torys' attempt to capture the comments and guidance provided by OPG and its accountants and remains subject to their ongoing review. We understand the Province and Blakes will also be discussing the scope of these changes. As there will be limited time to finalize the attached, we suggest discussing next steps to settle this agreement on our 10 a.m. call tomorrow.

Thanks,

Brett

Brett Saulnier

P. 416.865.8148 | F. 416.865.7380 | 1.800.505.8679

From: Saulnier, Brett
Sent: December-11-17 11:35 PM
To: 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; Milligan, Peter <PMilligan@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro - Change of Law Protection Agreement

All,

Attached for your review is a revised draft of the Change of Law Protection Agreement, clean and blacklined to the last version circulated by Blakes and reflecting the meetings held earlier today. As discussed, we need to provide the attached to the rating agencies **by no later than noon tomorrow** in order to meet our end of year financing

deadline. Accordingly, we will be circulating a calendar invite to this group for 10 a.m. tomorrow morning to confirm the parties are signed off. If Osler or Blakes have any comments on the attached, we would ask that they be circulated to this group prior to the 10 a.m. call.

Kind regards,

Brett

Brett Saulnier

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: December-08-17 3:16 PM
To: Milligan, Peter <PMilligan@osler.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca) <Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA

<JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro - Change of Law Protection Agreement

Hi,

Attached is a revised version of the Change of Law Protection Agreement. I believe that most of the changes reflected from last night's Osler version (blackline is attached) are of a drafting or conforming nature, other than: (1) the Province disagrees that Approved Refinancing terms should be unfettered by adherence conditions post-Suspension Event and (2) the proposed rating-based "materially and adversely" qualification in the definition of Protection Event (and in fact any such qualification) is not acceptable to the Province. With regard to (1), this version comes into line with the proposed approach (i.e., using a modified adherence condition) that was incorporated into the version of the Change of Law Process Agreement I circulated yesterday. A further turn of that Agreement, to conform the open item identified in section 3.02 to the revised Change of Law Protection Agreement, is also included here for your reference.

Please note that the Province is working through the drafting concurrently and so further drafting comments may be provided.

As mentioned yesterday, the Province would like to proceed with the Ministers sign-off briefing early next week, on the basis that these versions (minus the explanatory notes) are now in substantially final form. Please identify if you believe there are other 'must have' points (other than the 2 mentioned above).

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

From: Milligan, Peter [mailto:PMilligan@osler.com]
Sent: Thursday, December 07, 2017 6:44 PM
To: ASHBOURNE, STEPHEN; Sebastiano, Rocco; Mansoori, Nina
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca); PALMER, AARON; VINER, JON; PRESTAGE, JA
Subject: Fair Hydro - Change of Law Protection Agreement

All,

Attached is a revised comment draft of the Change of Low Protection Agreement reflecting comments from Torys and Osler. In order to meet this transaction's timeline, this comment draft has not been reviewed by OPG or the Dealers and is delivered subject to any comments they may have.

Peter

Peter Milligan

416.862.6634

DIRECT

416.862.6666

FACSIMILE

pmilligan@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Thursday, December 07, 2017 4:27 PM
To: Sebastiano, Rocco <RSebastiano@osler.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca)

<Tobias.Whitfield@ontario.ca>; PALMER, AARON <AARON.PALMER@blakes.com>; VINER, JON <JON.VINER@blakes.com>; PRESTAGE, JA <JA.PRESTAGE@blakes.com>
Subject: RE: Fair Hydro -- Change of Law Process Agreement

Hi,

Please find (attached) a further turn of the Change of Law Process Agreement, reflecting the Province's comments on the mark-up of the Agreement circulated yesterday afternoon by Torys. The attached blackline shows changes made to yesterday's Torys mark-up.

This version addresses concerns Rocco raised last night, to the extent the Province feels that the issues can be accommodated. For your information, I have set out below responses to Rocco's comments/observations (in CAPs).

The Province would like to proceed with the Ministers briefing early next week, on the basis that this version (minus the explanatory notes) is now in final form. If there are any critical revisions that the other parties believe reflect 'must have' priority, then the Province would like to have a call to discuss them as soon as possible.

Responses to Rocco's Points:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration. [AGREED. 7.01(b) and 7.01(c) will need to mirror the cure language we settle on in the Process Agreement (see my earlier comments). Perhaps the "which continues …" language in 7.01(B) can be revised to read: "to the extent that the Province would be entitled to provide a Suspension Notice in accordance with the terms of the agreement or agreements between the Province and OPG under which such obligations, requirements and processes arise". SIMILAR CHANGE FOR 7.01(C).

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings. [THAT IS THE INTENDED EFFECT. THE ADHERENCE CONDITIONS WOULD APPLY TO THE REFINANCING, SO IF THE REFINANCING TERMS DEVIATED MATERIALLY (BASED ON THE SUBSTANTIALLY IN THE FORM" THRESHOLD"), THEN OPG WOULD REQUIRE THE PROVINCE NOT TO OBJECT IN ORDER TO PROCEED WITH THOSE NEW TERMS. OTHERWISE, THE REFINANCING COULD INCORPORATE TERMS AND CONDITIONS, WHICH WOULD BIND THE PROVINCE UNDER THE LIMITED GUARANTEE, THAT WOULD BE UNCONSTRAINED AND WITHOUT ANY ACCOUNTABILITY TO THE PROVINCE. IN ROCCO'S EXAMPLE, THAT MIGHT MEAN THAT OPG WOULD NEED TO RESORT TO UNRATED DEBT, IF THE PROVINCE WAS UNWILLING TO ACCEPT THE NEW TERMS. PRESUMABLY EVERYONE WOULD ACT RATIONALLY. HOWEVER, AS A FAILSAFE, OPG COULD OFFER INCREASED PRICING IN ORDER TO ATTRACT INVESTORS TO ACCEPT THE EARLIER VETTED TERMS (BASED ON THE THEN ACCEPTED REVIEWED DOCUMENTATION).]

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be

preferable. [THE SUGGESTION REGARDING THE PROVINCE PREVENTING A REFINANCING IS ADDRESSED IN #2. IF THE REFINANCING TERMS WOULD EXCEED THE SCOPE OF THE TRANSACTION DOCUMENTS REVIEWED AND NOT OBJECTED TO BY THE PROVINCE, THEN THAT SUGGESTS THERE IS A MATERIAL EFFECT ON THE PROVINCE AND SO THE PROVINCE WOULD NEED THE ABILITY TO REVIEW AND CONSIDER THE PROPRIETY OF THOSE NEW TERMS FROM ITS PERSPECTIVE. AS FOR THE STANDALONE NATURE OF THE PROCESS AGREEMENT, THE INTENTION IS THAT THE PROCESS AGREEMENT BE UNCOUPLED AND NOT PART OF THE COLLATERAL, AND AS MICHAEL FELDMAN HAS EXPLAINED, LEAVE FUTURE FLEXIBILITY FOR THIS LONG-TERM STRUCTURE. TO ADDRESS ROCCO'S CONCERN THAT THE PROVINCE AND OPG COULD CHANGE THE UNDERLYING OBLIGATIONS APPLICABLE TO ADHERENCE IN RELATION TO A NEW OBLIGATION, REQUIREMENT OR PROCESS IN THE PROCESS AGREEMENT THAT WOULD MAKE A REFINANCING LESS LIKELY TO OCCUR, WE HAVE ADDED AND USED IN THE ATTACHED VERSION A NEW DEFFINTION:

"Approved Refinancing" means a Certified Primary Obligation proposed to be incurred as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions except that the certificate contemplated to be delivered under Section 4.02(b) shall instead confirm that OPG has delivered to the Province a certificate by its applicable officers confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of such existing Certified Primary Obligation." Various references to "Refinancing" in the Protection Agreement can also be revised to refer to "Approved Refinancing", as required.

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, December 06, 2017 7:45 PM
To: Mansoori, Nina; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Milligan, Peter; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka
Subject: RE: Fair Hydro -- Change of Law Process Agreement

I have reviewed the revised draft of the Change of Law Process Agreement that Torys has prepared and would like to pass along the following comments/observations:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration.

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings.

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Wednesday, December 06, 2017 4:38 PM
To: 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'JON.VINER@blakes.com' <JON.VINER@blakes.com>; 'JA.PRESTAGE@blakes.com' <JA.PRESTAGE@blakes.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>
Subject: Fair Hydro -- Change of Law Process Agreement

Blakes team,

Please find attached OPG and Torys' comments on the Process Agreement reflecting our discussions from yesterday's call. Please note that this draft is subject to continuing

review and comment by Osler and the dealers. As discussed at the tail end of our call yesterday, the section in the Process Agreement that gives the Province the right to object to new and material changes to transaction documents dovetails with the Protection Agreement so additional comments from Oslers may be forthcoming on this draft.

We are working on getting you a revised draft of the Protection Agreement either later today or tomorrow. In the meantime, please let us know if you have any comments or questions on the Process Agreement.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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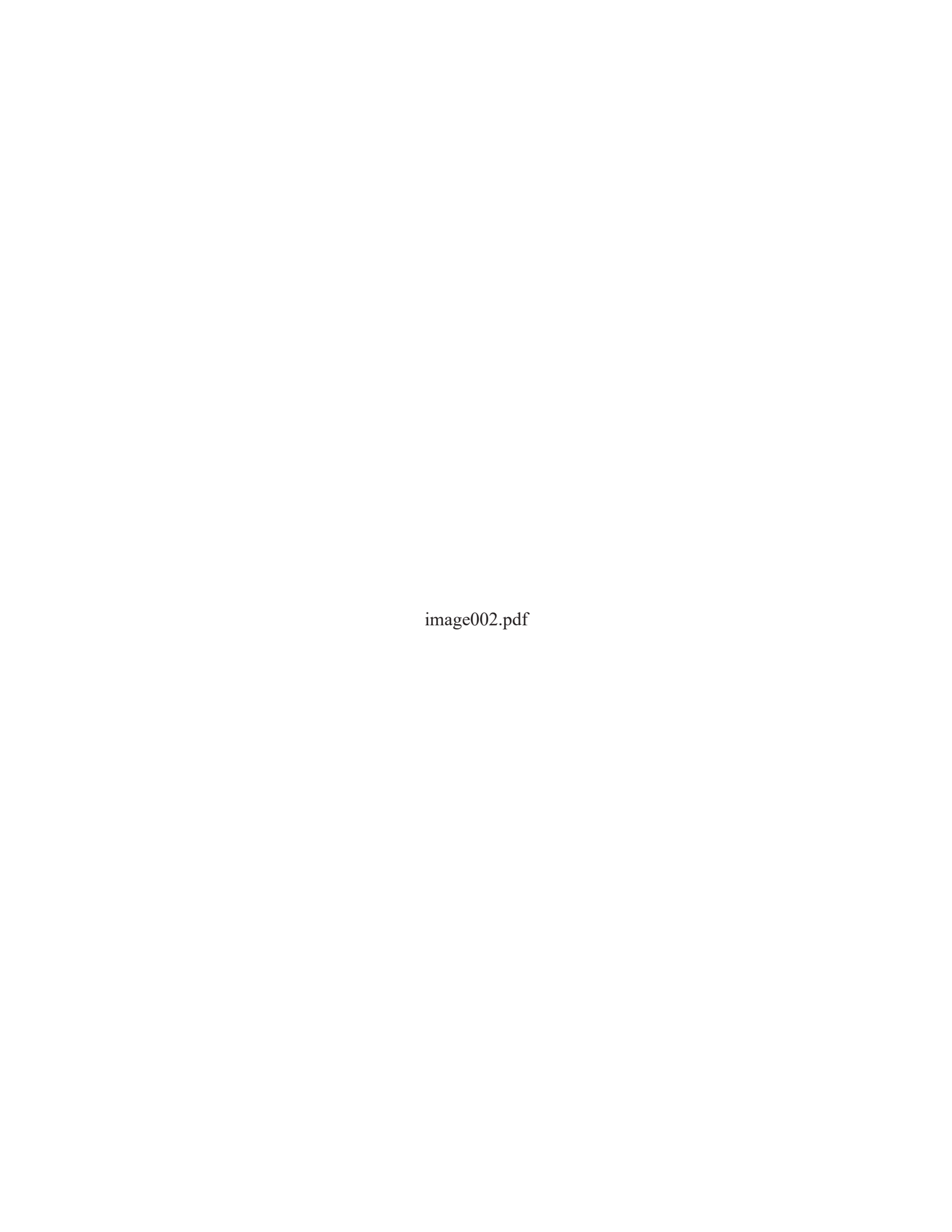
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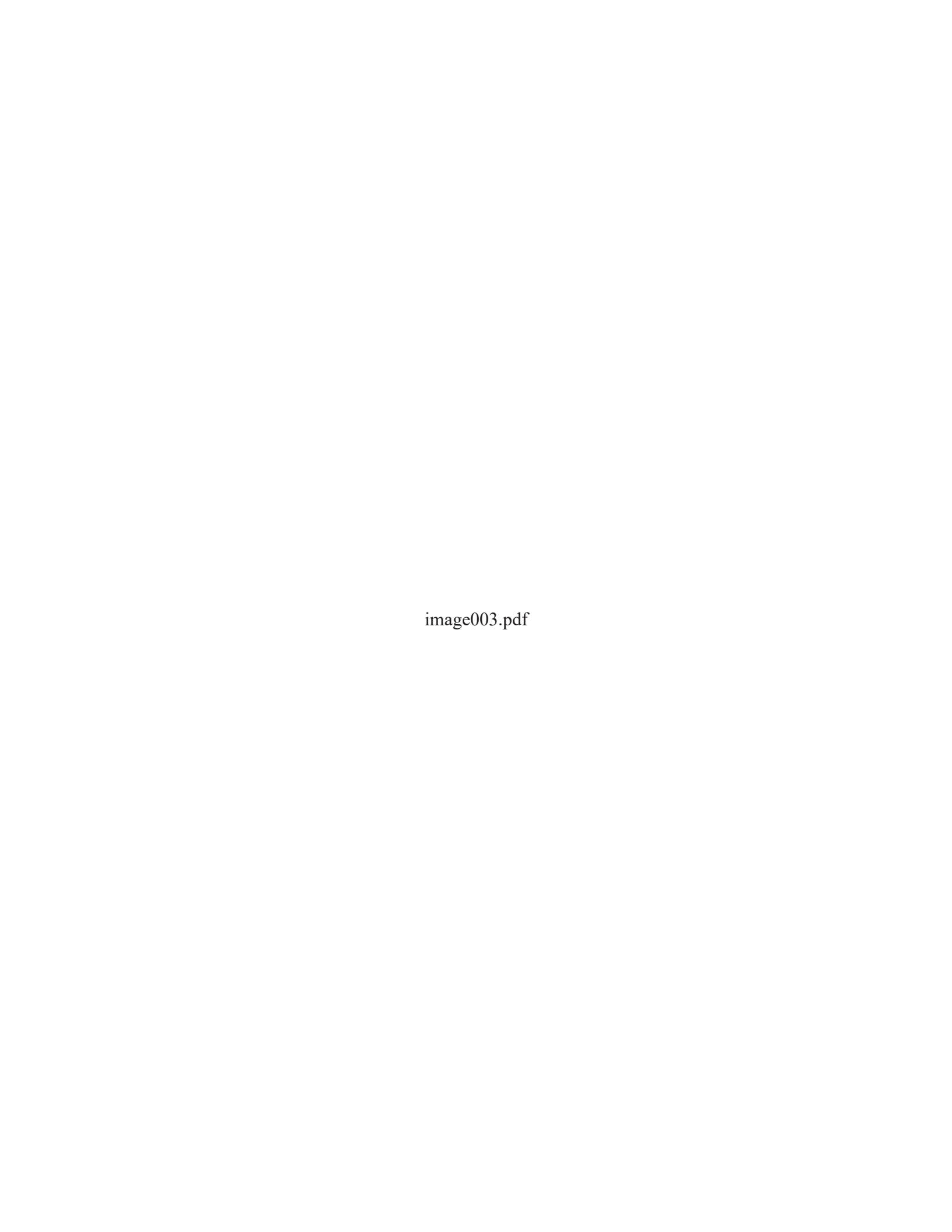
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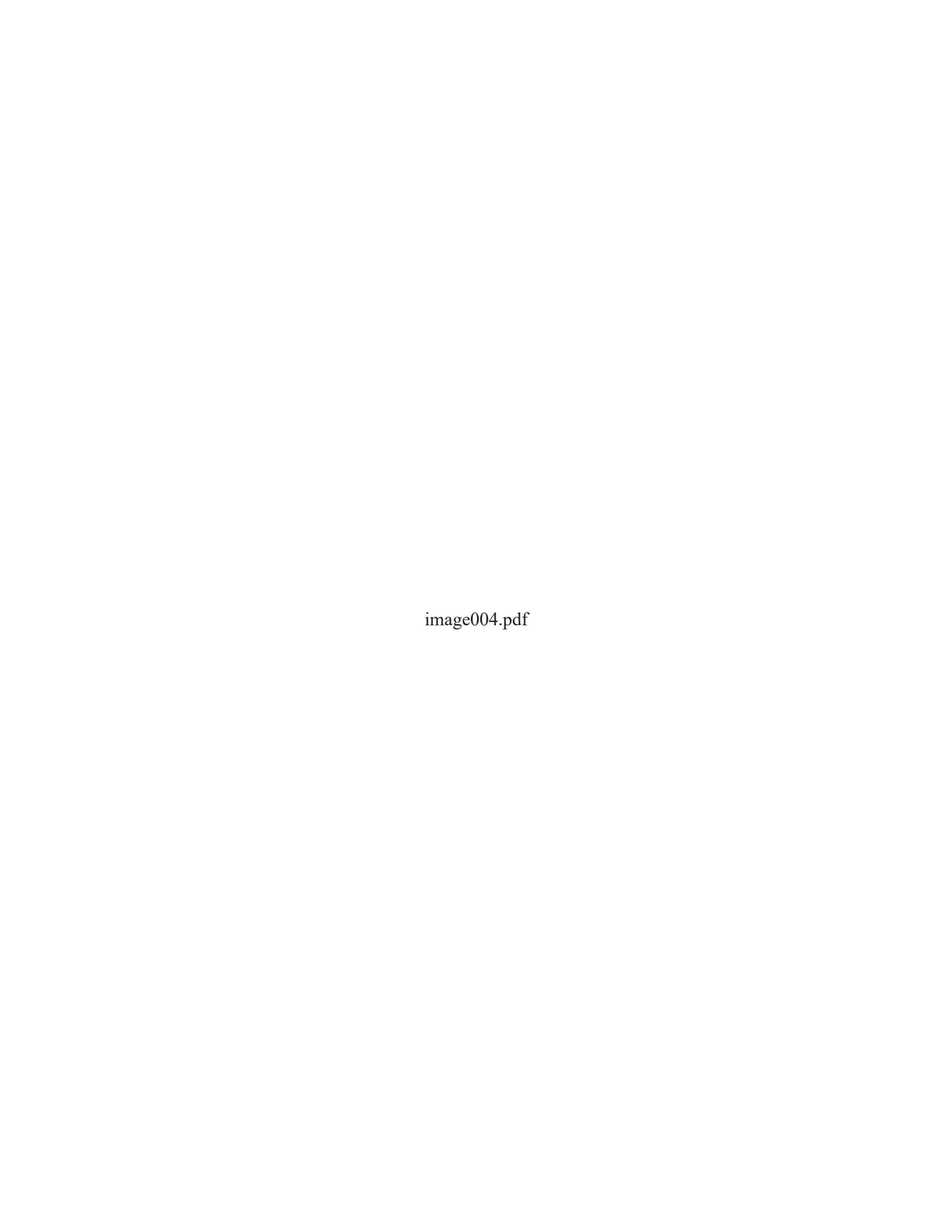
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TORYS
LLP

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**") is made and entered into as of [■], 2017.

RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the applicable Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with the final forms of certain of the Transaction Documents, as described on Exhibit "A", and the Province has not objected to such forms and hereby confirms to OPG that such Transaction Documents will constitute "Reference Documentation" for purposes of this Agreement.

Prior to entering into this Agreement, OPG, as the FSM, provided the Minister of Energy, in compliance with the Act, with the initial Financing Plan, which includes the initial forecast (the "**Initial Forecast**") setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Obligations Secured to be incurred during the 24 month period from December 1, 2017 to November 30, 2019 (the "**Initial Forecast Period**"). Prior to entering into this Agreement, OPG provided the Province with the initial Protection Agreement Maximum (the "**Initial Protection Agreement Maximum**"). The Province has received the initial Financing Plan and has not disagreed with the Initial Forecast or the Initial Protection Agreement Maximum on the basis of an apparent inaccuracy in the Initial Forecast, an inconsistency between the Initial Forecast and the initial Financing Plan, or as a result of the Initial Protection Agreement Maximum being more than the Initial Forecast.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the

Change of Law Protection Agreement, including for the purposes of determining whether the applicable Adherence Conditions have been satisfied and maintaining information related to the Program Agreements and the Approved Obligations.

All things necessary to make this Agreement a valid and legally binding agreement of OPG and the Province, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall"; the word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may

from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed; the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 References to the Financing Entity

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND

REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT (ONTARIO).

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days, or such lesser period as the Province may agree to in writing, prior to:

(i) any proposed material change in the terms or conditions applicable to a Primary Obligation in a previously provided Transaction Document becoming effective or otherwise being used; provided, for greater certainty, that a proposed change in particular financial terms, rates or levels shall not constitute a material change, and

(ii) any additional, supplemental or replacement Transaction Document becoming effective or otherwise being used,

OPG shall deliver to the Province a copy of such proposed change to the Transaction Document and any such additional, supplemental or replacement Transaction Document.

(c) Without limiting Subsection 2.01(b), and except as has previously been provided to the Province under Subsection 2.01(b), promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional, supplemental or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments. ***[Note to Province/Blakes: We assume that if the change is provided pursuant to Subsection 2.01(b) that it may not be redelivered under this section.]***

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations

(including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not (unless waived in writing by the Province):

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement, replacement, waiver or consent could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any supplement, amendment, modification, restatement, replacement, waiver or consent in respect of particular financial terms, rates or levels;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any such action taken in respect of particular financial terms, rates or levels; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) If any action restricted pursuant to Section 2.02(a)(v) is reflected in a delivery required to be made by OPG to the Province pursuant to Section 2.01(b) and is not objected to by the Province under Section 3.04(b), the Province shall be deemed to have waived its rights under Section 2.02(a)(v).

(c) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iv) notify the Province of (1) the occurrence of any Breach Event and any Program Breach, in each case within 2 Business Days of any such occurrence, and (2) any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Breach Event or a Program Breach, in each case within 1 Business Day of OPG first becoming aware of such event or circumstance; and

(v) after the occurrence of any Protection Event (or any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(d) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement between the Province and OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") are not amended by this Agreement and continue in full force and effect, notwithstanding that this Agreement is entered into subsequent to the Indemnity Agreement.

(e) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement are not amended by the Change of Law Protection Agreement and continue in full force and effect, notwithstanding that the Change of Law Protection Agreement was entered into subsequent to the Indemnity Agreement.

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Province, on or before the incurrence or any amendment of a Funding Obligation, other than any Funding Obligation under which not more than $5,000,000 in the aggregate may become payable by the Financing Entity (provided that delivery may not be more than 5 Business Days before the incurrence or amendment of the Funding Obligation), setting out the following with respect to such Funding Obligation:

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, OPG's best estimate of the expected notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Funding Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reference Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reference Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum applicable on the date that the Process Certificate is delivered; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

3.02 Acknowledgement regarding delivery of certificate under Change of Law Protection Agreement

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) are authorized to deliver the certificate referred to in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with adherence of the Limited Guarantee to the incurrence of the Certified Primary Obligations in respect of which the certificate in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement is being delivered; provided that, upon receipt of a Suspension Notice under the Change of Law Protection Agreement, OPG covenants not to deliver any further certificates to the Indenture Trustee under Subsection 4.02(a)(ii) of the Change of Law Protection Agreement.

3.03 Acknowledgement regarding delivery of Suspension Notice

The parties acknowledge and agree that the Province is entitled to deliver a Suspension Notice under Section 7.01 of the Change of Law Protection Agreement if a Program Breach or Breach Event has occurred. The Province agrees not to deliver a Suspension Notice pursuant to Section 7.01 of the Change of Law Protection Agreement unless a Program Breach or a Breach Event has occurred.

3.04 Meaning of "Reference Documentation"

For the purposes of Subsection 3.01(c), the term "Reference Documentation" shall mean each Transaction Document that, at the relevant time:

(a) is a Transaction Document listed on Exhibit "A"; or

(b) is a Transaction Document (including any amended or amended and restated Transaction Document) provided to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is provided to the Province; provided that the Province (i) shall only be entitled to deliver an objection notice if the Transaction Document (including any amended or amended and restated Transaction Document) has a Material Effect and (ii) shall not be entitled to deliver an objection notice in respect of a Post-Suspension Refinancing.

3.05 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation that could have a Material Effect; provided, however, that the foregoing does not apply to any particular financial terms, rates or levels; and

(b) with respect to the Reference Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Obligations Secured that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Obligations Secured to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation

shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast. ***[Note to Province/Blakes: Change made to be consistent with changes in recitals and to reflect what is provided in the Financing Plan.]***

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is more than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(c) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this

Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any

of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
BREACH EVENTS

6.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, by OPG of Section 2.01(b)(i), Section 2.02(b)(iv) or Section 3.01;

(b) a default in the performance, or breach, of any other covenants of OPG under this Agreement (excluding Section 2.01(b)(i), Section 2.02(b)(iv) and Section 3.01), which, if curable in a way such that the default or breach would not have or have had a Material Effect, is not so cured within thirty (30) days;

(c) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Subsection 4.02 of the Change of Law Protection Agreement,

proves to be incorrect in a material respect on the date made and which, if curable in a way such that the incorrect representation or warranty may be remedied without any Material Effect having occurred as a result of the Province's reliance thereon, is not so cured within thirty (30) days; or ***[Note to Province/Blakes: Change made to be consistent with description of Breach Event in the Change of Law Protection Agreement.]***

(d) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

ARTICLE VII
MISCELLANEOUS

7.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

7.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(b) if to the Province:

Deputy Minister of Finance
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

and

Deputy Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 7.02.

7.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 7.03 shall be null and void.

7.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

7.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

7.06 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____

Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 6.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, OPG (as the FSM and the Manager) and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**IESO Security Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Initial Forecast**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast Period**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Protection Agreement Maximum**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Material Effect**" means (i) with respect to a previously provided Transaction Document, any change or action, as applicable, that could affect the timing of or circumstances under which related payments would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that could adversely affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or (ii) with respect to any additional, supplemental or replacement Transaction Document, such Transaction Document contains a term that (X) could adversely affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or (Y) relates to the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration,

termination, wind-up, liquidation or realization) that is different in any material respect than the equivalent terms contained in any previously provided Reference Documentation.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Section 4.01.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Documentation**" has the meaning ascribed thereto in Section 3.04.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.05.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any

other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that could affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

EXHIBIT "A"
INITIAL REFERENCE DOCUMENTATION

- Declaration of Trust;
- Management Agreement;
- Master Transfer and Servicing Agreement;
- Acknowledgement and indemnity agreement dated as of [■], 2017 made by IESO in favour of the Indenture Trustee;
- IESO Security Agreement;
- Trust Indenture;
- Warehouse Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017; and
- Warehouse Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**") is made and entered into as of [■], 2017.

RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the applicable Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with the final forms of certain of the Transaction Documents, as described on Exhibit "A", and the Province has not objected to such forms and hereby confirms to OPG that such Transaction Documents will constitute "Reference Documentation" for purposes of this Agreement.

Prior to entering into this Agreement, OPG, as the FSM, provided the Minister of Energy, in compliance with the Act, with the initial Financing Plan, which includes the initial forecast (the "**Initial Forecast**") setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Obligations Secured to be incurred during the 24 month period from December 1, 2017 to November 30, 2019 (the "**Initial Forecast Period**"). Prior to entering into this Agreement, OPG provided the Province with the initial Protection Agreement Maximum (the "**Initial Protection Agreement Maximum**"). The Province has received the initial Financing Plan and has not disagreed with the Initial Forecast or the Initial Protection Agreement Maximum on the basis of an apparent inaccuracy in the Initial Forecast, an inconsistency between the Initial Forecast and the initial Financing Plan, or as a result of the Initial Protection Agreement Maximum being more than the Initial Forecast.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the

applicable Adherence Conditions have been satisfied and maintaining information related to the Program Agreements and the Approved Obligations.

All things necessary to make this Agreement a valid and legally binding agreement of OPG and the Province, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall"; the word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed; the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 References to the Financing Entity

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein ~~and~~ are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT (ONTARIO).

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days, or such lesser period as the Province may agree to in writing, prior to:

(i) any proposed **material** change in the terms or conditions applicable to a Primary Obligation in a previously provided Transaction Document becoming effective or otherwise being used ~~that could reasonably be expected to have a Material Effect~~[1]; provided, ~~however~~**for greater certainty**, that a proposed change in particular financial terms, rates ~~and~~**or** levels ~~would~~**shall** not ~~be such a material change other than a proposed change to any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the previously provided Transaction Document and that would have a Material Effect~~**constitute a material change**, and

(ii) any additional, supplemental[2] or replacement Transaction Document becoming effective or otherwise being used,

OPG shall deliver to the Province a copy of such proposed change to the Transaction Document and any such additional, supplemental or replacement Transaction Document.

(c) Without limiting Subsection 2.01(b), **and except as has previously been provided to the Province under Subsection 2.01(b),** promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional, supplemental or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved

[1] ~~Explanatory Note: New term to encapsulate and consistently use the materiality language previously incorporated in the "Substantially in the Form" provision.~~

[2] ~~Explanatory Note: Supplement (e.g., indenture supplement) needs to be captured. Supplement concept has been reinserted.~~

Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments. ***[Note to Province/Blakes: We assume that if the change is provided pursuant to Subsection 2.01(b) that it may not be redelivered under this section.]***

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not (unless waived in writing by the Province):

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement, replacement, waiver or consent could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any ~~supplementation~~**supplement**, amendment, modification, restatement, replacement, waiver or consent ~~of, to or~~ in respect of particular financial terms, rates ~~and levels other than a~~

~~supplementation, amendment, modification, restatement, replacement, waiver or consent to or in respect of any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the applicable Program Agreement and that would have a Material Effect~~**or levels**;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any such action taken in respect of particular financial terms, rates ~~and levels other than such an action taken in respect of any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the applicable Program Agreement and that would have a Material Effect~~**or levels**; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) If any action restricted pursuant to Section 2.02(a)(v) is reflected in a delivery required to be made by OPG to the Province pursuant to Section 2.01(b) and is not objected to by the Province under Section 3.04(b), the Province shall be deemed to have waived its rights under Section 2.02(a)(v).

(c) ~~(b)~~ OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iv) notify the Province of (1) the occurrence of any Breach Event and any Program Breach, in each case within 2 Business Days of any such occurrence, and (2) any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Breach Event or a

Program Breach, in each case within 1 Business Day of OPG first becoming aware of such event or circumstance; and[3]

(v) after the occurrence of any Protection Event (or any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(d) ~~(c)~~ The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement between the Province and OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") are not amended by this Agreement and continue in full force and effect, notwithstanding that this Agreement is entered into subsequent to the Indemnity Agreement.

(e) ~~(d)~~ The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement are not amended by the Change of Law Protection Agreement and continue in full force and effect, notwithstanding that the Change of Law Protection Agreement was entered into subsequent to the Indemnity Agreement.

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Province, on or before the incurrence or any amendment of a Funding Obligation, other than any Funding Obligation under which not more than $5,000,000 in the aggregate may become payable by the Financing Entity (provided that delivery may not be more than 5 Business Days before the incurrence or amendment of the Funding Obligation), setting out the following with respect to such Funding Obligation:

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, OPG's best estimate of the expected notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

[3] ~~Explanatory Note: This is especially needed in light of Province's passive role and reliance on OPG.~~

(b) if an existing Funding Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reference Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reference Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum applicable on the date that the Process Certificate is delivered; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

3.02 Acknowledgement regarding delivery of certificate under Change of Law Protection Agreement

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) are authorized to deliver the certificate referred to in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with adherence of the Limited Guarantee to the incurrence of the Certified Primary Obligations in respect of which the certificate in Subsection 4.02(a)(ii) of the Change of Law Protection Agreement is being delivered; provided that, upon receipt of a Suspension Notice under the Change of Law Protection Agreement, OPG covenants not to deliver any further certificates to the Indenture Trustee under Subsection 4.02(a)(ii) of the Change of Law Protection Agreement ~~but, for greater certainty, OPG, as FSM, may deliver a certificate referred to in Subsection 4.02(b)(ii) of the Change of Law Protection Agreement to the Indenture Trustee and the Province in connection with an Approved Refinancing~~.

3.03 Acknowledgement regarding delivery of Suspension Notice

The parties acknowledge and agree that the Province is entitled to deliver a Suspension Notice under Section 7.01 of the Change of Law Protection Agreement if a Program Breach or Breach Event has occurred. The Province agrees not to deliver a Suspension Notice pursuant to Section 7.01 of the Change of Law Protection Agreement unless a Program Breach or a Breach Event has occurred.

3.04 Meaning of "Reference Documentation"

For the purposes of Subsection 3.01(c), the term "Reference Documentation" shall mean each Transaction Document that, at the relevant time:

(a) is a Transaction Document listed on Exhibit "A"; or

(b) is a Transaction Document (including any amended or amended and restated Transaction Document) provided to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is provided to the Province**; provided that the Province (i) shall only be entitled to deliver an objection notice if the Transaction Document (including any amended or amended and restated Transaction Document) has a Material Effect and (ii) shall not be entitled to deliver an objection notice in respect of a Post-Suspension Refinancing**.

3.05 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation that could have a Material Effect; provided, however, that the foregoing does not apply to any particular financial terms, rates ~~and levels set forth in the proposed documents other than to the extent that the forms of Reference Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters~~**or levels**; and

(b) with respect to the Reference Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under ~~Approved~~ Obligations **Secured** that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under ~~Approved~~ Obligations **Secured** to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast. ***[Note to Province/Blakes: Change made to be consistent with changes in recitals and to reflect what is provided in the Financing Plan.]***

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is more than the further Forecast. If

the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(c) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect

affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
BREACH EVENTS

6.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, by OPG of Section 2.01(b)(i), Section 2.02(b)(iv)[4] or Section 3.01[5];

(b) a default in the performance, or breach, of any other covenants of OPG under this Agreement (excluding Section 2.01(b)(i), Section 2.02(b)(iv) and Section 3.01), which, if curable in a way such that the default or breach would not have or have had a Material Effect[6], is not so cured within thirty (30) days;

(c) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Subsection 4.02 of the Change of Law Protection Agreement, proves to be incorrect **in a material respect** on the date made and which, if curable in a way such that the incorrect representation or warranty may be remedied without any Material Effect[7] having occurred as a result of the Province's reliance thereon, is not so cured within thirty (30) days; or ***[Note to Province/Blakes: Change made to be consistent with description of Breach Event in the Change of Law Protection Agreement.]***

(d) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

[4] ~~Explanatory Note: This recognizes that a failure to notify the Province of an event that would allow it to deliver a Suspension Notice cannot itself be cured since that would create a self-defeating loop from the Province's standpoint.~~

[5] ~~Explanatory Note: This recognizes that a failure to deliver a Process Certificate when required cannot be cured, as this goes to the workability of the corresponding provisions in the Protection Agreement. It would defeat the structure to allow a Protection Agreement certificate to be delivered to satisfy the adherence conditions based on the idea that a default cure period had not yet lapsed in connection with a failure to deliver a Process Certificate.~~

[6] ~~Explanatory Note: This recognizes that a cure period will only be reasonable if the consequence of a possible cure would be that no Material Effect would be/have been created.~~

[7] ~~Explanatory Note: Same.~~

ARTICLE VII
MISCELLANEOUS

7.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

7.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(b) if to the Province:

Deputy Minister of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Deputy Ministry of Energy
[Address]

Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 7.02.

7.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 7.03 shall be null and void.

7.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

7.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

7.06 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____

Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

~~"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~

~~"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement, and, for greater certainty, will include any Approved Refinancing.~~

~~"**Approved Refinancing**" means a Certified Primary Obligation proposed to be incurred on or after the occurrence of a Suspension Event, as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions except that the certificate contemplated to be delivered under Section 4.02(b) shall instead confirm that OPG has delivered to the Province a certificate by its applicable officers confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of such existing Certified Primary Obligation.~~

~~"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~

"**Breach Event**" has the meaning ascribed thereto in Section 6.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

~~"**Certified Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, OPG (as the FSM and the Manager) and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

~~"**Executive Officer**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

~~"**Financing Entity Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**IESO Security Agreement**" has the meaning ascribed thereto in the Trust Indenture.

~~"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~

"**Initial Forecast**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast Period**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Protection Agreement Maximum**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

~~"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~

~~"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~

~~"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Material Effect**" means ~~a material effect on the obligations (including as a result of a change in the nature, scope or extent of the Primary Obligation and the effect on the Province's obligations therefor under the Limited Guarantee) or rights of the Province under the Limited Guarantee, the Change of Law Protection Agreement or this Agreement, including any proposed~~**(i) with respect to a previously provided Transaction Document, any** change **or action, as applicable,** that could affect the timing of or circumstances under which related payments would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that could **adversely** affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation **or (ii) with respect to any additional, supplemental or replacement Transaction Document, such Transaction Document contains a term that (X) could adversely affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of** the Change of Law Protection Agreement**) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation or (Y) relates to the timing of or circumstances under which Primary Obligations would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization) that is different in any material respect than the equivalent terms contained in any previously provided Reference Documentation**.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

~~"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

~~"**Program Breach**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Section 4.01.

~~"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Documentation**" has the meaning ascribed thereto in Section 3.04.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

~~"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.~~

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.05.

~~"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.~~

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or

other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial obligation or that could affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

EXHIBIT "A"
INITIAL REFERENCE DOCUMENTATION[8]

- Declaration of Trust;
- Management Agreement;
- Master Transfer and Servicing Agreement;
- Acknowledgement and indemnity agreement dated as of [■], 2017 made by IESO in favour of the Indenture Trustee;
- IESO Security Agreement;
- Trust Indenture;
- Warehouse Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017; and
- ~~[~~Warehouse Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.~~]~~[9]

[8] ~~Explanatory Note: The Province is limiting this to the documents required to complete the warehouse financing. Term issuance related documents will be considered by the Province once received under 2.01(b)(ii) and become part of the Reviewed Documentation in accordance with 3.04(b).~~

[9] ~~Explanatory Note: This should be deleted unless it will be used in the initial transaction.~~

Document comparison by Workshare Compare on December-12-17 1:16:49 AM

Input:	
Document 1 ID	interwovenSite://INVENTORYS1/TorysAtWork/24622622/1
Description	#24622622v1<TorysAtWork> - 23239361-v24-Change of Law - Process Agreement (Dec 11)
Document 2 ID	C:\NRPortbl\TorysAtWork\BSAULNIE\24622622_2.docx
Description	C:\NRPortbl\TorysAtWork\BSAULNIE\24622622_2.docx
Rendering set	Firm_Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	34
Deletions	63
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	99

RE_ Fair Hydro - Change of Law Protection Agreement.rtf

From: Milligan, Peter [PMilligan@osler.com]
To: Saulnier, Brett [bsaulnier@torys.com]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]
Subject: RE: Fair Hydro - Change of Law Protection Agreement
Date: Tuesday, December 12, 2017 14:43:02
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717487~201712121843240000~Z~00916EFD7A3B09AAB8FAD1D33085BCB1
View the original item

All,

Further to our call this morning, attached is a comparison document showing our comments on “Post-Suspension Refinancing” and “Protection Event”.

We will comment on Material Eff

Attachments:

image001.gif (1 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717487~201712121843240000~Z~00916EFD7A3B09AAB8FAD1D33085BCB1&AttachmentId=1image001.gif

image002.gif (1 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=

184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717487~201712121843240000~Z~00916EFD7A3B09AAB8FAD1D33085BCB1&AttachmentId=2image002.gif

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Osler_Dealer Protection Agr Comments - Dec 12.PDF (52 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125717487~201712121843240000~Z~00916EFD7A3B09AAB8FAD1D33085BCB1&AttachmentId=5Osler_Dealer Protection Agr Comments - Dec 12.PDF

RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Mansoori, Nina [nmansoori@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]
CC: 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Ramchandani, Rima [rramchandani@torys.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Emes, Aaron [aemes@torys.com]
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Sunday, October 22, 2017 09:42:58

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Hi Nina,

We do think that it is important for the wording of the protection agreement to appropriately encompass the financing and various instruments that are to be guaranteed by the Province shou

RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Mansoori, Nina [nmansoori@torys.com]
CC: LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Ramchandani, Rima [rramchandani@torys.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Thursday, October 19, 2017 09:27:59
Attachment 1: image001.jpg

Thanks Nina. That would seem to be one of the important documents.

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 19, 2017 9:26 AM
To: Hanslep, Malle (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Whitfield, Tobias P. (MOF)
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

My pleasure, Malle. Yes, there will be a supplemental indenture for the long term financing. Oslers is working on that but we have not yet received a draft. Once it is in an advanced form, we will also provide that to this group.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: October-19-17 9:22 AM
To: Mansoori, Nina <nmansoori@torys.com>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Nina,

Thanks for this. Will there also be a draft supplemental for a bond/note issuance?

Best,

Malle

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 19, 2017 9:17 AM
To: Hanslep, Malle (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Whitfield, Tobias P. (MOF); Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good Morning Malle,

In terms of Program Agreements, here is an update:

-we have previously circulated the MTI and MTSA to Blakes. Both of these agreements are in mid-turn but we will send you the next circulation of these agreements once available.

-we received an initial draft supplemental for the warehouse facility on Tuesday from the dealers' counsel. We have not yet reviewed it nor have we discussed it with Oslers so we will send you the next circulation of this document.

-I am attaching the most current versions of the Declaration of Trust and the Management Agreement (which are subject to the continuing review of the working group).

-we'll have a form of ISDA Schedule to you soon.

-we don't expect to have a substantially advanced draft of the OM to share until November.

Please let me know if you have any questions.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: October-18-17 7:02 PM
To: Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Nina,

We will be reviewing your comments and mark-up.

On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the Province. If they are not yet available, when are they expected to be available?

Thank you.

Malle

Malle Hanslep

Deputy Director

Ministry of the Attorney General

Ministry of Finance Legal Services Branch

Telephone: 416-325-1457

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From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 18, 2017 9:53 AM
To: Whitfield, Tobias P. (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: October-13-17 4:47 PM
To: Mansoori, Nina <nmansoori@torys.com>

Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 6, 2017 5:58 PM
To: Whitfield, Tobias P. (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

Accounting Issues:

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

Practical Issues:

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want

comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.

- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

Drafting Issues:

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

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From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: September-27-17 4:21 PM
To: Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: September 25, 2017 12:21 PM
To: 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

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From: Ramchandani, Rima
Sent: September-19-17 9:55 PM
To: 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
Subject: Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

Obligor Approval

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing

Entity to issue in accordance with the Financing Plan in the next two years (a “Two Year Forecast”). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor’s approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

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image001.pdf

TORYS
LLP

RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Mansoori, Nina [nmansoori@torys.com]
CC: LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Ramchandani, Rima [rramchandani@torys.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Thursday, October 19, 2017 09:27:59
Attachment 1: @

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Thanks Nina. That would seem to be one of the important documents.

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 19, 2017 9:26 AM
To: Hanslep, Malle (MOF)
Cc: LEE John
Attachments:
image001.jpg (5 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201711221324045~201710191327590000~Z~2123BC7A90E6F7034E15C26645E58FB1&AttachmentId=1image001.jpg

RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Mansoori, Nina [nmansoori@torys.com]
CC: LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Ramchandani, Rima [rramchandani@torys.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Thursday, October 19, 2017 09:21:50
Attachment 1: image001.jpg

Hi Nina,

Thanks for this. Will there also be a draft supplemental for a bond/note issuance?

Best,

Malle

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 19, 2017 9:17 AM
To: Hanslep, Malle (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Whitfield, Tobias P. (MOF); Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good Morning Malle,

In terms of Program Agreements, here is an update:

-we have previously circulated the MTI and MTSA to Blakes. Both of these agreements are in mid-turn but we will send you the next circulation of these agreements once available.

-we received an initial draft supplemental for the warehouse facility on Tuesday from the dealers' counsel. We have not yet reviewed it nor have we discussed it with Oslers so we will send you the next circulation of this document.

-I am attaching the most current versions of the Declaration of Trust and the Management Agreement (which are subject to the continuing review of the working group).

-we'll have a form of ISDA Schedule to you soon.

-we don't expect to have a substantially advanced draft of the OM to share until November.

Please let me know if you have any questions.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: October-18-17 7:02 PM
To: Mansoori, Nina <nmansoori@torys.com>; Whitfield, Tobias P. (MOF)

<Tobias.Whitfield@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Hi Nina,

We will be reviewing your comments and mark-up.

On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the Province. If they are not yet available, when are they expected to be available?

Thank you.

Malle

Malle Hanslep

Deputy Director

Ministry of the Attorney General

Ministry of Finance Legal Services Branch

Telephone: 416-325-1457

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From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 18, 2017 9:53 AM
To: Whitfield, Tobias P. (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement

(blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: October-13-17 4:47 PM
To: Mansoori, Nina <nmansoori@torys.com>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com'

<STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 6, 2017 5:58 PM
To: Whitfield, Tobias P. (MOF)

Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

Accounting Issues:

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and

they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

Practical Issues:

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

Drafting Issues:

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: September-27-17 4:21 PM
To: Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>;

Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: September 25, 2017 12:21 PM
To: 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

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Toronto, Ontario M5K 1N2 Canada | www.torys.com

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From: Ramchandani, Rima
Sent: September-19-17 9:55 PM
To: 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
Subject: Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it

with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions.
-- Rima

Obligor Approval

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a “Two Year Forecast”). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor’s approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be

deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

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image001.pdf

TORYS
LLP

RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Mansoori, Nina [nmansoori@torys.com]
CC: LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Ramchandani, Rima [rramchandani@torys.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Thursday, October 19, 2017 09:21:50
Attachment 1: @

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https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201711221324043~201710191321510000~Z~2123BA3B7DD1786E481269C30DD08041View the original item

Hi Nina,

Thanks for this. Will there also be a draft supplemental for a bond/note issuance?

Best,

Malle

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Octobe
Attachments:
image001.jpg (5 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201711221324043~201710191321510000~Z~2123BA3B7DD1786E481269C30DD08041&AttachmentId=1image001.jpg

RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Mansoori, Nina [nmansoori@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]
CC: LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Ramchandani, Rima [rramchandani@torys.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Wednesday, October 18, 2017 19:01:45
Attachment 1: image001.jpg

Hi Nina,

We will be reviewing your comments and mark-up.

On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a proposed issuance by the financing entity and that we have previously discussed and requested copies of such as a draft supplemental indenture, draft disclosure documents, drafts of other agreements referenced in the master trust indenture to the extent they would be used in or related to an issuance by the Financing Entity etc. The Protection Agreement is proposed to work in the context of these other agreements and this would provide a better context for review by the Province. If they are not yet available, when are they expected to be available?

Thank you.

Malle

Malle Hanslep

Deputy Director

Ministry of the Attorney General

Ministry of Finance Legal Services Branch

Telephone: 416-325-1457

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From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 18, 2017 9:53 AM
To: Whitfield, Tobias P. (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process

(which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: October-13-17 4:47 PM
To: Mansoori, Nina <nmansoori@torys.com>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for

ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 6, 2017 5:58 PM
To: Whitfield, Tobias P. (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'

Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

Accounting Issues:

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

Practical Issues:

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

Drafting Issues:

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.

- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: September-27-17 4:21 PM
To: Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: September 25, 2017 12:21 PM
To: 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

http://www.torys.com/

From: Ramchandani, Rima
Sent: September-19-17 9:55 PM
To: 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
Subject: Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions.
-- Rima

Obligor Approval

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the

application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a “Two Year Forecast”). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor’s approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement;

and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

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image001.pdf

TORYS
LLP

RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Mansoori, Nina [nmansoori@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]
CC: LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Ramchandani, Rima [rramchandani@torys.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Wednesday, October 18, 2017 19:01:45
Attachment 1: @

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Hi Nina,

We will be reviewing your comments and mark-up.

On a related point, do you have available yet drafts of any of the other agreements that will be required in connection with a

Attachments:
image001.jpg (5 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201711221324034~201710182301450000~Z~2123BC3257DAA4173799757F585A9151&AttachmentId=1image001.jpg

RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Ramchandani, Rima [rramchandani@torys.com]
CC: Mansoori, Nina [nmansoori@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; STEPHEN.ASHBOURNE@blakes.com [STEPHEN.ASHBOURNE@blakes.com]; LADAK Lubna -TREASURY [lubna.ladak@opg.com]; Emes, Aaron [aemes@torys.com]; Hill, Krista [khill@torys.com]
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Tuesday, October 24, 2017 11:06:38

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View the original item

Thanks Rima. Would you please also circulate to Tom McKinlay in addition to the others noted below.

Malle

-----Original Message-----
From: Ramchandani, Rima [mailto:rramchandani@torys.com]
S

RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]
CC: 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Ramchandani, Rima [rramchandani@torys.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Emes, Aaron [aemes@torys.com]; Mansoori, Nina [nmansoori@torys.com]
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Saturday, October 21, 2017 23:28:13
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201711221384639~201710220328390000~Z~E00D140E8BA6080EEAC65770D8231241View the original item

Toby,

Thanks for your email. Based on the term sheet, since the Province isn’t guaranteeing the obligations under these agreements but only stepping in if there is a change of law “protection event

Attachments:

Warehouse Supplement - October 17, 2017.doc (352 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201711221384639~201710220328390000~Z~E00D140E8BA6080EEAC65770D8231241&AttachmentId=1Warehouse Supplement - October 17, 2017.doc

RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]
CC: 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Ramchandani, Rima [rramchandani@torys.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Emes, Aaron [aemes@torys.com]; Mansoori, Nina [nmansoori@torys.com]
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Friday, October 20, 2017 10:22:33
Attachment 1: image001.jpg
Attachment 2: Change of Law Procedures Agreement - Fair Hydro.DOCX

Toby,

In the interest of time, we have drafted a procedures agreement incorporating the approval mechanics we circulated below. As noted in previous correspondence, we think the approval process should be the subject of a separate agreement and not included in the Change of Law Protection Agreement you are drafting. Please note that the attached remains subject to the continuing review of OPG and Torys.

Can you please also let us know when we can expect to see a draft of the Change of Law Protection Agreement?

Many thanks,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Mansoori, Nina
Sent: October-18-17 9:53 AM
To: 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Mansoori, Nina <nmansoori@torys.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,

Nina

Nina Mansoori

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: October-13-17 4:47 PM
To: Mansoori, Nina <nmansoori@torys.com>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include

also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 6, 2017 5:58 PM
To: Whitfield, Tobias P. (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst

ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

Accounting Issues:

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

Practical Issues:

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

Drafting Issues:

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: September-27-17 4:21 PM
To: Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: September 25, 2017 12:21 PM
To: 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

http://www.torys.com/

From: Ramchandani, Rima
Sent: September-19-17 9:55 PM
To: 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
Subject: Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

Obligor Approval

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity,

the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material

respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a “Two Year Forecast”). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor’s approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

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image001.pdf

TORYS
LLP

Change of Law Procedures Agreement - Fair Hydro.pdf

CHANGE OF LAW PROCEDURES AGREEMENT

THIS AGREEMENT made as of the ■ day of ■, 2017.

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE ACTING TOGETHER

– and –

ONTARIO POWER GENERATION INC.

RECITALS:

WHEREAS the Government of Ontario has enacted the *Ontario Fair Hydro Act, 2017*, S.O. 2017, c. 16, Schedule 1 (the "**Act**") for the purpose of, among other things, ensuring that Clean Energy Costs and Clean Energy Benefits are fairly allocated among present and future Specified Consumers;

AND WHEREAS under the Act, the IESO is required to establish and maintain the Fair Hydro Variance Account, and has the right under the Act and the regulations thereunder to record certain amounts in such account and recover the balance from time to time of the Fair Hydro Variance Account from Specified Consumers (such right, the "**Regulatory Asset**");

AND WHEREAS the IESO may from time to time, in accordance with the Act, Transfer a specified portion of the Regulatory Asset to the Issuer on a fully-serviced basis and such Transfer shall result in (i) a reduction in the balance in the Fair Hydro Variance Account, (ii) the corresponding adjustment of the Regulatory Asset, and (iii) the acquisition by the Issuer of an Investment Interest corresponding to the specified portion of the Regulatory Asset;

AND WHEREAS the Issuer may finance the acquisition from the IESO, from time to time, of an Investment Interest through the incurrence of Funding Obligations under the Indenture;

AND WHEREAS the Province has agreed in favour of the Indenture Trustee in the Change of Law Protection Agreement to make regularly scheduled payments on certain of the Funding Obligations and related obligations of the Issuer (the "**Specified Claims**") in certain circumstances;

AND WHEREAS the parties hereto wish to set out the procedures by which the Province provides its approval to the Manager to certify that an incurrence of Specified Claims by the Issuer from time to time is covered under the Change of Law Protection Agreement;

NOW THEREFORE in consideration of one dollar ($1.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties covenant and agree, each with the other, as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

(a) In this Agreement, except where the context otherwise requires, the following terms will have the following meanings:

"**Act**" has the meaning given to that term in the recitals.

"**Agreement**" means this Change of Law Procedures Agreement.

"**Business Day**" means every day except a Saturday or Sunday, or a day which is a statutory or civic holiday in the Province of Ontario.

"**Certification**" means the certification by the Manager described in Section ■[1] of the Change of Law Protection Agreement.

"**Change of Law Protection Agreement**" means the change of law protection agreement dated ■, 2017 between the Province, as obligor, the Indenture Trustee, and the Issuer.

"**Disclosure Document**" means the form of disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of any Funding Obligations.

"**Forecast**" has the meaning attributed to such term in Section 2.2(a).

"**IESO**" means the Independent Electricity System Operator.

"**Indenture**" has the meaning attributed to such term in Section 2.3(a)(iv).

"**Indenture Trustee**" means ■, a trust company existing under the laws of Canada and duly authorized to carry on the business of a trust company in all of the provinces and territories of Canada, as indenture trustee for the benefit of certain specified creditors, or any successor thereto, under the Indenture.

"**Issuer**" means ■, a trust formed under the laws of the Province of Ontario.

"**Manager**" means Ontario Power Generation Inc., in its capacity as manager appointed under the management agreement referenced in Section 2.3(a)(ii) to administer the Investment Interests and perform such other duties assigned to it thereunder.

"**Person**" means any natural person, partnership, limited partnership, limited liability partnership, joint venture, syndicate, sole proprietorship, company or corporation (with or without share capital), limited liability corporation, unlimited liability company, joint stock company, unincorporated association, trust, trustee, executor, administrator or other legal

[1] This will be the section of the Change of Law Protection Agreement which sets out that a Specified Claim will be covered under the Change of Law Protection Agreement if the Manager delivers a certificate, signed by at least two executive officers of the Manager and addressed to one or more third parties (including, without limitation, the Indenture Trustee), confirming that such Specified Claim is covered by the Change of Law Protection Agreement.

personal representative, regulatory body or agency, government or governmental agency, authority or entity however designated or constituted and pronouns have a similarly extended meaning.

"**Program Maximum**" means the maximum Canadian dollar amount determined and confirmed in writing in accordance with Section 2.2.

"**Protection Event**" has the meaning attributed to such term in the Change of Law Protection Agreement.

"**Regulatory Asset**" has the meaning attributed to such term in the recitals.

"**Reviewed Documentation**" has the meaning attributed to such term in Section 2.3.

"**Specified Claims**" has the meaning attributed to such term in the recitals.

"**Substantially in the Form**" means:

(i) with respect to the Reviewed Documentation referred to in 2.3(a)(i) to 2.3(a)(xiv), that the covenants of the Issuer are no more onerous in any material respect and there are events of default that are consistent in all material respects, respectively, with the covenants of the Issuer and events of default contained in the Reviewed Documentation; and

(ii) with respect to the Disclosure Document referred to in 2.3(a)(xv), that there are no material differences between the form and substance of the proposed disclosure document and such disclosure document complies in all material respects with all securities disclosure requirements relating to the Funding Obligations subject to distribution thereunder.

(b) Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed thereto in the Act and the regulations made thereunder or incidental thereto.

1.2 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement are for convenience of reference only and will not affect the construction or interpretation hereof.

1.3 Interpretation

In this Agreement, unless the context otherwise requires:

1.3.1 words importing the singular shall include the plural and vice versa, words importing gender shall include all genders or the neuter, and words importing the neuter shall include all genders;

1.3.2 the words "include", "includes", "including", or any variations thereof, when following any general term or statement, are not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar items or matters, but rather

as referring to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;

1.3.3 references to any Person include such Person's successors and permitted assigns;

1.3.4 except as otherwise provided in this Agreement, any reference in this Agreement to a statute, regulation, policy, rule or instrument shall include, and shall be deemed to be a reference also to, all rules and regulations made under such statute, in the case of a statute, all amendments made to such statute, regulation, policy, rule or instrument, and any statute, regulation, policy, rule or instrument that may be passed which has the effect of supplementing or superseding the statute, regulation, policy, rule or instrument so referred to;

1.3.5 any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

1.3.6 in the event that any day on which any amount is to be determined or any action is required to be taken hereunder is not a Business Day, then such amount shall be determined or such action shall be required to be taken at or before the requisite time on the next succeeding day that is a Business Day.

1.4 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect. The parties will engage in good faith negotiations to replace any provision which is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision which it replaces.

1.5 Entire Agreement

This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement.

1.6 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

1.7 Governing Law

This Agreement will be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

ARTICLE 2
APPROVAL PROCESS

2.1 Approval Process

The Manager is authorized to make a Certification in respect of a specific incurrence of Funding Obligations and other Specified Claims upon the following conditions precedent having been satisfied:

(a) at the time such Funding Obligations are to be incurred, the maximum aggregate payment amounts due or becoming due under such Funding Obligations, together with all other outstanding or committed Specified Claims previously subject to a Certification, do not exceed the Program Maximum in effect at that time; and

(b) The Manager delivers a certificate, signed by at least two of its executive officers and addressed to the Province, not less than **[■]** Business Days prior to the incurrence of such Funding Obligations:

(i) setting out the material terms of such Funding Obligations pertaining to principal amount, pricing and third party fees; and

(ii) confirming that:

(A) the Funding Obligations (1) will arise under terms and conditions that are "Substantially in the Form" of the Reviewed Documentation applicable thereto; (2) in the opinion of such officers, are reasonably incurred in compliance with the Act and the regulations made thereunder, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and

(B) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reviewed Documentation.

2.2 Program Maximum

(a) The initial Program Maximum will be determined prior to the initial issuance of Funding Obligations under the Indenture in accordance with this Section 2.2. The Program Maximum will be based on the Manager's forecast of the maximum payment obligations expected to arise under Specified Claims during the next 24 month period, based on and in accordance with the applicable Financing Plan (the "**Forecast**"). The Manager will be required to deliver the Forecast to the Province

not less than **[thirty (30)]** Business Days prior to the proposed incurrence of the initial Funding Obligations under the Indenture. If the Province agrees that the Forecast is consistent with the Financing Plan and the Finance Amounts contemplated thereunder for the applicable Reference Periods are reasonably expected to align with the Fair Allocation Amounts in respect of such Reference Periods, then the Province will confirm in writing to the Manager within **[thirty (30)]** Business Days of receipt of the Forecast that it agrees with the Program Maximum.

(b) The Forecast will be updated and delivered to the Province between nine (9) and twelve (12) months prior to the expiry of the then current Forecast, based on and in accordance with the applicable Financing Plan. Upon receiving an updated Forecast, the Province will confirm that the Forecast is consistent with the Financing Plan and the Finance Amounts contemplated thereunder for the applicable Reference Periods are reasonably expected to align with the Fair Allocation Amounts in respect of such Reference Periods.

(c) If the Province does not agree with the determination of the Program Maximum, then the Province and the Manager will discuss and address any inaccuracies in the Financing Plan to the satisfaction of both parties, and the Program Maximum will be revised within **[thirty (30)]** Business Days of receipt of the Forecast. Any determination to revise the Program Maximum will be confirmed by setting out a new Program Maximum in a written notice from the Province to the Manager, the delivery of which will be conclusive evidence that such new Program Maximum will apply until further so revised.

2.3 Reviewed Documentation

(a) The Manager will ensure that not less than **[■]** Business Days prior to the initial issuance of any Funding Obligations under the Indenture, the Province will have received copies, in substantially final form, of the following documents:

(i) the declaration of trust made as of ■, 2017 under which the Issuer was established;

(ii) the management agreement dated ■, 2017 between the Manager and the Issuer;

(iii) the master transfer and servicing agreement dated ■, 2017 between the Issuer, the IESO and the Indenture Trustee;

(iv) the master trust indenture dated ■, 2017 between the Issuer and the Indenture Trustee (the "**Indenture**");

(v) the Senior Series 2017-1 Supplemental Indenture to the Indenture dated ■, 2017, along with the Senior Series 2017-1 Notes;

(vi) the Subordinated Series 2017-1 Supplemental Indenture to the Indenture dated ■, 2017, along with the Subordinated Series 2017-1 Notes;

(vii) the Senior Series 2017-2 Supplemental Indenture to the Indenture dated ■, 2017, along with the Senior Series 2017-2 Notes;

(viii) the Subordinated Series 2017-2 Supplemental Indenture to the Indenture dated ■, 2017, along with the Subordinated Series 2017-2 Notes;

(ix) the Agency Agreement dated ■, 2017 between ■;

(x) the Subscription Agreement dated ■, 2017 between ■;

(xi) the schedule to an ISDA Master Agreement dated ■, 2017 governing derivative transactions that may be entered into by the Issuer from time to time;

(xii) if applicable, any other agreement or instrument under which a Funding Obligation may arise or be affected;

(xiii) if applicable, any other agreement between, *inter alia*, the Issuer and any other owner or owners of an Investment Interest as contemplated by subsection 29(5) of the Act;

(xiv) the security agreement dated ■, 2017 granted by the IESO to the Issuer; and

(xv) the Preliminary and Final Offering Memorandums of the Issuer together with any related material information.

(b) The Province will confirm within **[■]** Business Days of receipt of the documents referenced in Section 2.3(a) if such reviewed documents shall be the "Reviewed Documentation" for the purposes of this Agreement; provided that the Province agrees that it will not be entitled to provide input on the Reviewed Documentation other than in its capacity as obligor under the Change of Law Protection Agreement.

(c) Any proposed material amendments, additions or supplements to the Reviewed Documentation will be provided to the Province not less than **[fifteen (15)]** Business Days prior to any proposed use or such documents becoming effective. Such material amendments, additional or supplemental documentation will only become "Reviewed Documentation" for the purposes of this Agreement if the Province confirms the same within **[fifteen (15)]** Business Days of receipt of such proposed material changes, additions or supplements to the Reviewed Documentation.

2.4 Termination

This Agreement will continue in full force and effect so long as any Specified Claims remain outstanding and until the Issuer has satisfied all of its obligations under the Reviewed Documentation.

ARTICLE 3
COVENANTS OF MANAGER

3.1 Reporting

Promptly after the issuance of any Funding Obligations by the Issuer (or an amendment or replacement thereof) from time to time, the Manager will provide the Province with:

(a) a copy of the then most recent Financing Plan;

(b) electronic copies of all related closing documents executed by or on behalf of the Issuer in connection with such incurrence, amendment or replacement of such Funding Obligations that would affect the Issuer's assets or obligations (including, for greater certainty, any Disclosure Documents); and

(c) all additional information and documentation as the Province requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

3.2 Other Covenants

(a) The Manager will comply and ensure compliance by the Issuer with the Act and the regulations made thereunder and any other enactment related thereto;

(b) After the occurrence of any Protection Event (or any event that with the passage of time or the giving of notice would be a Protection Event), the Manager will not, without the Province's prior written consent, permit any Issuer to exercise any redemption, pre-payment, early termination right in respect of any Specified Claim or exercise any other election or privilege in respect of any Specified Claim, in each case, if as a result the obligations applicable to the Specified Claim under the Change of Law Protection Agreement would be accelerated; and

(c) The Manager will ensure that any disclosure (including in any Disclosure Document) that refers to or describes the terms, effect or adherence of the Change of Law Protection Agreement and this Agreement will be subject to the prior review and approval of the Province unless that disclosure is substantially in a form previously approved by the Province.

3.3 Validity

For greater certainty, a failure by the Manager to perform the covenants in this Article 3 will not affect the validity of a Certification made under the Change of Law Protection Agreement in accordance with requirements of Section 2.1 of this Agreement.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

4.1 Province

The Province hereby represents and warrants to the Manager that:

(a) the Province has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Province of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law, and do not and will not constitute (with due notice or lapse of time or both) a breach of or default under any agreement to which the Province is a party or by which it is bound;

(c) all necessary action has been taken by the Province including, without limitation, under sections 5(2) and 5(3) of the Act and section 28(1.1) of the *Financial Administration Act*, R.S.O. 1990 c. F. 12, to authorize the execution and delivery of this Agreement by the Province and the performance by the Province of its obligations thereunder;

(d) no consent, approval or authorization from any Person that has not otherwise been obtained is required to be attained by the Province in order to consummate the transactions contemplated herein; and

(e) this Agreement has been duly authorized, executed and delivered on behalf of the Province and is or, if applicable, will then be a legal, valid and binding obligation of the Province, enforceable against it in accordance with its terms, subject to:

(i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, reorganization, moratorium, winding-up, arrangement, fraudulent preference and conveyance and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(ii) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments; and

(iii) statutory limitations of general application respecting the enforceability of claims against the Province or its property.

4.2 The Manager

The Manager hereby represents and warrants to the Province that:

(a) the Manager has the necessary power, authority and capacity to execute and perform its obligations under this Agreement;

(b) the execution, delivery and performance by the Manager of this Agreement and the completion of the transactions contemplated hereby do not and will not result in a violation of any applicable law, and do not and will not constitute (with due notice

or lapse of time or both) a breach of or default under any agreement to which the Manager is a party or by which it is bound;

(c) all necessary action has been taken by the Manager to authorize the execution and delivery of this Agreement by the Manager and the performance by the Manager of its obligations thereunder;

(d) no consent, approval or authorization from any Person that has not otherwise been obtained is required to be attained by the Province in order to consummate the transactions contemplated herein; and

(e) this Agreement has been duly authorized, executed and delivered on behalf of the Manager and is or, if applicable, will then be a legal, valid and binding obligation of the Manager, enforceable against it in accordance with its terms, subject to:

(i) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, reorganization, moratorium, winding-up, arrangement, fraudulent preference and conveyance and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law); and

(ii) general equitable principles.

ARTICLE 5
GENERAL PROVISIONS

5.1 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 5.1 shall be null and void.

5.2 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

5.3 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the

time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this section. Notices and other communications will be addressed as follows:

(a) if to the Province:

Ministry of Finance
7 Queen's Park Crescent, 7th Floor
Toronto, Ontario M7A 1Y7

Attention: Minister of Finance
Facsimile: (416) 325-0374

and

Ministry of Energy
5th Floor
56 Wellesley Street West
Toronto, Ontario M7A 2E7

Attention: Legal Director
Facsimile: (416) 325-1781

(b) if to the Manager:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6

Attention: ■
Facsimile: ■

or to such other addresses as a party may from time to time notify the others in accordance with this Section 5.3.

5.4 Further Assurances

Each of the parties hereto will promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement and will use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.

5.5 Counterparts; Electronic Delivery

This Agreement may be signed in counterparts and each of such counterparts will constitute an original document and such counterparts, taken together, will constitute one and the same instrument. Delivery of an executed signature page to this Agreement by either party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

ONTARIO POWER GENERATION INC., in its capacity as Manager

By: _____
Name:
Title:

By: _____
Name:
Title:

HER MAJESTY THE QUEEN AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____
Name:
Title:

HER MAJESTY THE QUEEN AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____
Name:
Title:

RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]
CC: 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Ramchandani, Rima [rramchandani@torys.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Emes, Aaron [aemes@torys.com]; Mansoori, Nina [nmansoori@torys.com]
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Friday, October 20, 2017 10:22:33
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201711221324075~201710201423010000~Z~2123BE3FA0A3FEA4605066BDD38E9BE1
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Toby,

In the interest of time, we have drafted a procedures agreement incorporating the approval mechanics we circulated below. As noted in previous correspondence, we think the approval proce

Attachments:

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Change of Law Procedures Agreement - Fair Hydro.DOCX (56 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201711221324075~201710201423010000~Z~2123BE3FA0A3FEA4605066BDD38E9BE1&AttachmentId=2Change of Law Procedures Agreement - Fair Hydro.DOCX

RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Ramchandani, Rima [rramchandani@torys.com]
CC: Mansoori, Nina [nmansoori@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; STEPHEN.ASHBOURNE@blakes.com [STEPHEN.ASHBOURNE@blakes.com]; LADAK Lubna -TREASURY [lubna.ladak@opg.com]; Emes, Aaron [aemes@torys.com]; Hill, Krista [khill@torys.com]
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Tuesday, October 24, 2017 11:06:38

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View the original item

Thanks Rima. Would you please also circulate to Tom McKinlay in addition to the others noted below.

Malle

-----Original Message-----
From: Ramchandani, Rima [mailto:rramchandani@torys.com]
S

RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Mansoori, Nina [nmansoori@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]
CC: 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Ramchandani, Rima [rramchandani@torys.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Emes, Aaron [aemes@torys.com]
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Sunday, October 22, 2017 09:42:58

Hi Nina,

We do think that it is important for the wording of the protection agreement to appropriately encompass the financing and various instruments that are to be guaranteed by the Province should one of the events as set out in the term sheet occur. The Province has not determined whether the approach suggested to separate the two documents is appropriate. If it is the proposed long term financing that is planned to be done by year-end and there is a desire to substantially settle the terms of the Protection Agreement by the early November, I don't understand why a draft of the long term financing supplemental indenture would not be available for review yet.

When is it expected that the warehousing facility would be put in place?

Thanks.

Malle

-----Original Message-----
From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 21, 2017 11:28 PM
To: Whitfield, Tobias P. (MOF)
Cc: 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Emes, Aaron; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thanks for your email. Based on the term sheet, since the Province isn't guaranteeing the obligations under these agreements but only stepping in if there is a change of law "protection event", we did not expect the drafting of the Change of Law Protection Agreement would be implicated by these other agreements (particularly now that we have proposed dealing with the Province's approval of the various program agreements in a separate procedures document). We also understand that in order to be in a position to close on a financing before year end, the Change of Law Protection Agreement needs to be substantially settled by early November. If that is still the case, then we expect the dealers and their counsel will need to see a draft in this coming week.

In the interest of time, we have attached an initial draft of the supplemental indenture for the warehouse facility which, as noted previously, has not yet been reviewed by OPG and Torys. The supplemental for the long term financing will be a simpler document - with mechanics for issuing the notes and pricing information but likely no additional covenants and events of default and no drawdown mechanics like the warehouse facility.

We will start copying the Province and Blakes on circulations of all documents going forward. Please let us know if the entire team on this email should be copied or only Blakes and the Provincial legal team.

Best Regards,
Nina

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

Torys LLP
79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada | www.torys.com

-----Original Message-----
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: October-21-17 8:53 AM
To: Mansoori, Nina <nmansoori@torys.com>
Cc: 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>
Subject: Re: Fair Hydro -- Change of Law Assumption Agreement

Nina,

We are working on a draft of the Change of Law Protection Agreement, but cannot complete the drafting until we have seen a draft of the Supplemental Indenture and the other instruments that are to be guaranteed.

We are also working on drafting some responses and comments to your comments from Wednesday on the approval process document, and will get back to you with those soon.

Best

Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
777 Bay Street, 11th Floor
Toronto, ON, M5G 2C8
tobias.whitfield@ontario.ca
Phone: 416-325-1456
From: Mansoori, Nina
Sent: Friday, October 20, 2017 10:23 AM
To: Whitfield, Tobias P. (MOF)
Cc: 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'; Emes, Aaron; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

In the interest of time, we have drafted a procedures agreement incorporating the approval mechanics we circulated below. As noted in previous correspondence, we think the approval process should be the subject of a separate agreement and not included in the Change of Law Protection Agreement you are drafting. Please note that the attached remains subject to the continuing review of OPG and Torys.

Can you please also let us know when we can expect to see a draft of the Change of Law Protection Agreement?

Many thanks,
Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
From: Mansoori, Nina
Sent: October-18-17 9:53 AM
To: 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; Mansoori, Nina <nmansoori@torys.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby – further to discussions between OPG and the Province, please find attached comments on the draft proposal under the Change of Law Protection Agreement (blacklined to the draft circulated below). The attached reflects our comments from accounting, operational and financeability perspectives. In particular, the financeability of the program will turn on whether there is a clear and concise way for investors to determine that an incurrence of funding obligations will be covered under the Change of Law Protection Agreement and that, once confirmed, the confirmation is irrevocable. Accordingly, we have proposed in the attached that a simple confirmation from OPG to a third party binds the Province in respect of the incurrence of the applicable funding obligations provided that OPG has satisfied the requirements of the approval process (which we propose be the subject of a separate procedures agreement or memo). Please note that the attached remains subject to the review of the working group including the dealers and the rating agencies.

Best Regards,
Nina

Nina Mansoori

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: October-13-17 4:47 PM
To: Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>
Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Olusoga, Yinka <yolusoga@torys.com<mailto:yolusoga@torys.com>>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF) <John.Cengarle@ontario.ca<mailto:John.Cengarle@ontario.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF) <Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA) <Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA) <John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Please find attached our comments on your response of October 6. We have moved the text of your email to the attached document and responded inline in square brackets for ease of review.

We recognize that we are running out of time, and that we should discuss and move this forward at the beginning of next week.

We also generally recognize that, although there are still some gaps in our respective approaches, we would find it helpful to have some more specific suggestions and comments on our Sept. 27 draft in order to help move this forward. This might include also the timing issues, with some indication of where, if OPG finds the timing does not work, some alternatives can be suggested for consideration.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: October 6, 2017 5:58 PM
To: Whitfield, Tobias P. (MOF)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Ramchandani, Rima; Feldman, Michael; Olusoga, Yinka; Donaldson, Mark (TBS); Manning, Mike (OFA); Mayman, Gadi (OFA); Kwan, Ronald (OFA); Kandeepan, Ken (OFA); Nelms, Scott (MOF); Devine, James (OFA); Yep, Carlos (OFA); Strathy, Anna (OFA); Cengarle, John (MOF); Kwan, Ronald (OFA); Katona, Keley (MOF); He, Gavin (OFA); Hirani, Anis (OFA); Kim, John (OFA); Veinot, Cindy (TBS); Hanslep, Malle (MOF); Thouin, Alena (ENERGY); McKinlay, Tom (MAG); 'STEPHEN.ASHBOURNE@blakes.com'; 'LADAK Lubna -TREASURY'
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,
Nina

Accounting Issues:
E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence -that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt -the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts) -the negative pledge with respect to the exercise of certain options on the debt -the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have

reviewed the proposal.

Practical Issues:

* The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
* In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

Drafting Issues:

* Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
* We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
* There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
* We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679
From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: September-27-17 4:21 PM
To: Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>
Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca<mailto:Mark.Donaldson@ontario.ca>>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca<mailto:Mike.Manning@ofina.on.ca>>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca<mailto:Gadi.Mayman@ofina.on.ca>>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca<mailto:Ken.Kandeepan@ofina.on.ca>>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>>; Devine, James (OFA) <James.Devine@ofina.on.ca<mailto:James.Devine@ofina.on.ca>>; Yep, Carlos (OFA)

<Carlos.Yep@ofina.on.ca<mailto:Carlos.Yep@ofina.on.ca>>; Strathy, Anna (OFA)
<Anna.Strathy@ofina.on.ca<mailto:Anna.Strathy@ofina.on.ca>>; Cengarle, John (MOF)
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<Ronald.Kwan@ofina.on.ca<mailto:Ronald.Kwan@ofina.on.ca>>; Katona, Keley (MOF)
<Keley.Katona@ontario.ca<mailto:Keley.Katona@ontario.ca>>; He, Gavin (OFA)
<Gavin.He@ofina.on.ca<mailto:Gavin.He@ofina.on.ca>>; Hirani, Anis (OFA)
<Anis.Hirani@ofina.on.ca<mailto:Anis.Hirani@ofina.on.ca>>; Kim, John (OFA)
<John.Kim@ofina.on.ca<mailto:John.Kim@ofina.on.ca>>; Veinot, Cindy (TBS)
<Cindy.Veinot@ontario.ca<mailto:Cindy.Veinot@ontario.ca>>; Hanslep, Malle (MOF)
<Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Thouin, Alena (ENERGY)
<Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; McKinlay, Tom (MAG)
<Tom.McKinlay@ontario.ca<mailto:Tom.McKinlay@ontario.ca>>;
'STEPHEN.ASHBOURNE@blakes.com'
<STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best
Toby

Tobias Whitfield
Counsel, Legal Services Branch
Ministry of Finance
tobias.whitfield@ontario.ca<mailto:tobias.whitfield@ontario.ca>
Phone: 416-325-1456

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: September 25, 2017 12:21 PM
To: 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,
Rima

Rima Ramchandani

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79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada | www.torys.com<http://www.torys.com>

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From: Ramchandani, Rima
Sent: September-19-17 9:55 PM
To: 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com<mailto:STEPHEN.ASHBOURNE@blakes.com>>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>
Cc: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>
Subject: Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

Obligor Approval

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;
(ii) the management agreement between the Financing Entity and OPG;
(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;
(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;
(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;
(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;
(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and
(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and

events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a “Two Year Forecast”). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor’s approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

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RE_ Fair Hydro -- Change of Law Process Agreement.rtf

From: Hanslep, Malle (MOF) []
To: Mansoori, Nina [nmansoori@torys.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]; 'JON.VINER@blakes.com' [JON.VINER@blakes.com]; 'JA.PRESTAGE@blakes.com' [JA.PRESTAGE@blakes.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Milligan, Peter' [PMilligan@osler.com]; 'Fullerton, Rick' [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Saulnier, Brett [bsaulnier@torys.com]; Olusoga, Yinka [yolusoga@torys.com]
Subject: RE: Fair Hydro -- Change of Law Process Agreement
Date: Thursday, December 07, 2017 11:28:13
Attachment 1: image001.jpg

Hi all,

I have added Toby Whitfield to this group email. Please include him on future emails – for some reason his name dropped off. Thanks.

Malle

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: December 6, 2017 4:38 PM
To: 'ASHBOURNE, STEPHEN'; 'JON.VINER@blakes.com'; 'JA.PRESTAGE@blakes.com'
Cc: Kandeepan, Ken (OFA); 'LADAK Lubna -TREASURY'; Strathy, Anna (OFA); Veinot, Cindy (TBS); McKinlay, Tom (MAG); Donaldson, Mark (TBS); Cayley, Daniel (ENERGY); Thouin, Alena (ENERGY); Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; 'Sebastiano, Rocco'; 'Milligan, Peter'; 'Fullerton, Rick'; Mayman, Gadi (OFA); Manning, Mike (OFA); Hanslep, Malle (MOF); 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; Hume, Steen (ENERGY); Mansoori, Nina; Saulnier, Brett; Olusoga, Yinka

Subject: Fair Hydro -- Change of Law Process Agreement

Blakes team,

Please find attached OPG and Torys' comments on the Process Agreement reflecting our discussions from yesterday's call. Please note that this draft is subject to continuing review and comment by Osler and the dealers. As discussed at the tail end of our call yesterday, the section in the Process Agreement that gives the Province the right to object to new and material changes to transaction documents dovetails with the Protection Agreement so additional comments from Oslers may be forthcoming on this draft.

We are working on getting you a revised draft of the Protection Agreement either later today or tomorrow. In the meantime, please let us know if you have any comments or questions on the Process Agreement.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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image001.pdf

TORYS
LLP

RE_ Fair Hydro -- Change of Law Process Agreement.rtf

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To: Mansoori, Nina [nmansoori@torys.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]; 'JON.VINER@blakes.com' [JON.VINER@blakes.com]; 'JA.PRESTAGE@blakes.com' [JA.PRESTAGE@blakes.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Milligan, Peter' [PMilligan@osler.com]; 'Fullerton, Rick' [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Saulnier, Brett [bsaulnier@torys.com]; Olusoga, Yinka [yolusoga@torys.com]
Subject: RE: Fair Hydro -- Change of Law Process Agreement
Date: Thursday, December 07, 2017 11:28:13
Attachment 1: @

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Hi all,

I have added Toby Whitfield to this group email. Please include him on future emails – for some reason his name dropped off. Thanks.

Malle

From: Mansoori, Nina [mailto

Attachments:

image001.jpg (5 KB)

https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801095534004~201712071528140000~Z~E098EB705225C581013CB1177D142C11&AttachmentId=1image001.jpg

RE_ Fair Hydro -- Change of Law Process Agreement.rtf

From: Sebastiano, Rocco [RSebastiano@osler.com]
To: Mansoori, Nina [nmansoori@torys.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]; 'JON.VINER@blakes.com' [JON.VINER@blakes.com]; 'JA.PRESTAGE@blakes.com' [JA.PRESTAGE@blakes.com]
CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Milligan, Peter [PMilligan@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Saulnier, Brett [bsaulnier@torys.com]; Olusoga, Yinka [yolusoga@torys.com]
Subject: RE: Fair Hydro -- Change of Law Process Agreement
Date: Wednesday, December 06, 2017 20:44:37
Attachment 1: image001.jpg

I have reviewed the revised draft of the Change of Law Process Agreement that Torys has prepared and would like to pass along the following comments/observations:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration.

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings.

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Wednesday, December 06, 2017 4:38 PM
To: 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'JON.VINER@blakes.com' <JON.VINER@blakes.com>; 'JA.PRESTAGE@blakes.com' <JA.PRESTAGE@blakes.com>
Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com'

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Subject: Fair Hydro -- Change of Law Process Agreement

Blakes team,

Please find attached OPG and Torys' comments on the Process Agreement reflecting our discussions from yesterday's call. Please note that this draft is subject to continuing review and comment by Osler and the dealers. As discussed at the tail end of our call yesterday, the section in the Process Agreement that gives the Province the right to object to new and material changes to transaction documents dovetails with the Protection Agreement so additional comments from Oslers may be forthcoming on this draft.

We are working on getting you a revised draft of the Protection Agreement either later today or tomorrow. In the meantime, please let us know if you have any comments or questions on the Process Agreement.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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RE_ Fair Hydro -- Change of Law Process Agreement.rtf

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To: Mansoori, Nina [nmansoori@torys.com]; 'ASHBOURNE, STEPHEN' [STEPHEN.ASHBOURNE@blakes.com]; 'JON.VINER@blakes.com' [JON.VINER@blakes.com]; 'JA.PRESTAGE@blakes.com' [JA.PRESTAGE@blakes.com]
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Subject: RE: Fair Hydro -- Change of Law Process Agreement
Date: Wednesday, December 06, 2017 20:44:37
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1. The change of t

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CC: Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Milligan, Peter [PMilligan@osler.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Saulnier, Brett [bsaulnier@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]
Subject: RE: Fair Hydro -- Change of Law Process Agreement
Date: Thursday, December 07, 2017 17:26:33
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23239361-v23-Change of Law - Process Agreement.DOCX (51 KB)

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RE_ Fair Hydro -- Change of Law Process Agreement.rtf

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Subject: RE: Fair Hydro -- Change of Law Process Agreement
Date: Thursday, December 07, 2017 17:26:33
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Attachment 2: image0f40c1.GIF
Attachment 3: 23239361-v23-Change of Law - Process Agreement.DOCX
Attachment 4: 23239361-vpdf-Change of Law - Process Agreement.PDF

Hi,

Please find (attached) a further turn of the Change of Law Process Agreement, reflecting the Province's comments on the mark-up of the Agreement circulated yesterday afternoon by Torys. The attached blackline shows changes made to yesterday's Torys mark-up.

This version addresses concerns Rocco raised last night, to the extent the Province feels that the issues can be accommodated. For your information, I have set out below responses to Rocco's comments/observations (in CAPs).

The Province would like to proceed with the Ministers briefing early next week, on the basis that this version (minus the explanatory notes) is now in final form. If there are any critical revisions that the other parties believe reflect 'must have' priority, then the Province would like to have a call to discuss them as soon as possible.

<u>Responses to Rocco's Points</u>:

1. The change of the definition of Breach Event in Section 6.01 (i.e., the change to clause (a) and the addition of clause (b)) will result in an inconsistency with section 7.01(b) of the Change of Law Protection Agreement. This will require further consideration. [AGREED. 7.01(b) and 7.01(c) will need to mirror the cure language we settle on in the Process Agreement (see my earlier comments). Perhaps the "which continues …" language in 7.01(B) can be revised to read: "to the extent that the Province would be entitled to provide a Suspension Notice in accordance with the terms of the agreement or agreements between the Province and OPG under which such obligations, requirements and processes arise". SIMILAR CHANGE FOR 7.01(C).

2. The right of the Province to issue an objection notice under Section 3.04(b) in connection with a Transaction Document provided to the Province which is required for a Refinancing of an Approved Obligation remains an outstanding issue. Clearly, this will depend upon what Adherence Conditions will be required under Section 4.02 of the Change of Law Protection Agreement in order to permit such Refinancing to become an Approved Obligation. If the Adherence Conditions set out in Section 4.02(a) of the Province's draft of the Change of Law Protection Agreement of December 4 were to apply to such Refinancing, to the extent that such refinancing required a change to a Transaction Document (e.g., as a result of a change to some rating agency condition or criteria), the Province's ability to issue an objection notice and thereby prevent the issuance of a Process Certificate under Section 3.01 (by virtue of Section 3.04) would have the effect of preventing a Refinancing. We trust that this was an unintended outcome of the drafting of Section 3.04 and/or the Adherence Conditions applicable to Refinancings. [THAT IS THE INTENDED EFFECT. THE ADHERENCE CONDITIONS WOULD APPLY TO THE REFINANCING, SO IF THE REFINANCING TERMS DEVIATED MATERIALLY (BASED ON THE SUBSTANTIALLY IN THE FORM" THRESHOLD"), THEN OPG WOULD REQUIRE THE PROVINCE NOT TO OBJECT IN ORDER TO PROCEED WITH THOSE NEW TERMS. OTHERWISE, THE REFINANCING COULD INCORPORATE TERMS AND CONDITIONS, WHICH WOULD BIND THE PROVINCE UNDER THE LIMITED GUARANTEE, THAT WOULD BE UNCONSTRAINED AND WITHOUT ANY ACCOUNTABILITY TO THE PROVINCE. IN ROCCO'S EXAMPLE, THAT MIGHT MEAN THAT OPG WOULD NEED TO RESORT TO UNRATED DEBT, IF THE PROVINCE WAS UNWILLING TO ACCEPT THE NEW TERMS. PRESUMABLY EVERYONE WOULD ACT RATIONALLY. HOWEVER, AS A FAILSAFE, OPG COULD OFFER INCREASED PRICING IN ORDER TO ATTRACT INVESTORS TO ACCEPT THE EARLIER VETTED TERMS (BASED ON THE THEN ACCEPTED REVIEWED DOCUMENTATION).]

3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this

agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable. [THE SUGGESTION REGARDING THE PROVINCE PREVENTING A REFINANCING IS ADDRESSED IN #2. IF THE REFINANCING TERMS WOULD EXCEED THE SCOPE OF THE TRANSACTION DOCUMENTS REVIEWED AND NOT OBJECTED TO BY THE PROVINCE, THEN THAT SUGGESTS THERE IS A MATERIAL EFFECT ON THE PROVINCE AND SO THE PROVINCE WOULD NEED THE ABILITY TO REVIEW AND CONSIDER THE PROPRIETY OF THOSE NEW TERMS FROM ITS PERSPECTIVE. AS FOR THE STANDALONE NATURE OF THE PROCESS AGREEMENT, THE INTENTION IS THAT THE PROCESS AGREEMENT BE UNCOUPLED AND NOT PART OF THE COLLATERAL, AND AS MICHAEL FELDMAN HAS EXPLAINED, LEAVE FUTURE FLEXIBILITY FOR THIS LONG-TERM STRUCTURE. TO ADDRESS ROCCO'S CONCERN THAT THE PROVINCE AND OPG COULD CHANGE THE UNDERLYING OBLIGATIONS APPLICABLE TO ADHERENCE IN RELATION TO A NEW OBLIGATION, REQUIREMENT OR PROCESS IN THE PROCESS AGREEMENT THAT WOULD MAKE A REFINANCING LESS LIKELY TO OCCUR, WE HAVE ADDED AND USED IN THE ATTACHED VERSION A NEW DEFFINTION:

"Approved Refinancing" means a Certified Primary Obligation proposed to be incurred as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions except that the certificate contemplated to be delivered under Section 4.02(b) shall instead confirm that OPG has delivered to the Province a certificate by its applicable officers confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of such existing Certified Primary Obligation." Various references to "Refinancing" in the Protection Agreement can also be revised to refer to "Approved Refinancing", as required.

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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From: Sebastiano, Rocco [mailto:RSebastiano@osler.com]
Sent: Wednesday, December 06, 2017 7:45 PM
To: Mansoori, Nina; ASHBOURNE, STEPHEN; VINER, JON; PRESTAGE, JA
Cc: 'Ken Kandeepan'; 'LADAK Lubna -TREASURY'; 'Anna Strathy'; 'Veinot, Cindy (TBS)'; 'McKinlay, Tom (MAG)'; 'Donaldson, Mark (TBS)'; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)'; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)'; Ramchandani, Rima; 'LEE John -TREASURY'; 'RYFA Ken -TREASURY'; 'HAHN PARKER Janet -TREASURY'; 'MAUTI John -FIN & C CTRL'; 'LAURETA LAPIRA May -TREASURY'; Feldman, Michael; 'WONG Leslie -LAWDIV'; Milligan, Peter; Fullerton, Rick; 'Mayman, Gadi (OFA)'; 'Manning, Mike (OFA)'; 'Hanslep, Malle (MOF)'; 'ian.benaiah@rbccm.com'; 'Khan, Nur (nur.khan@rbccm.com)'; 'brent.r.taylor@rbccm.com'; 'katrina.niehaus@gs.com'; 'brian.delaney@gs.com'; 'Maciel, Andrew'; 'Adalja, Sunil'; 'Persad, Nicole'; 'Persaud, Donnie - Debt Capital Markets'; 'Steen Hume (CAB)'; Saulnier, Brett; Olusoga, Yinka

Subject: RE: Fair Hydro -- Change of Law Process Agreement

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3. Given that the Indenture Trustee is not a party to the Change of Law Process Agreement, the Province and OPG can amend the terms and conditions of this agreement without the consent of the indenture Trustee. Specified Creditors under an Approved Obligation need to be assured that the Province cannot prevent a Refinancing of an Approved Obligation either by virtue of the objection notice discussed in point #2 above or as a result of a future amendment to the agreement. There are a couple of ways to deal with this point. The first is to a add a beneficiary/third party rights clause in the Change of Law Process Agreement which acknowledges that the Indenture Trustee is a beneficiary of certain provisions of this agreement and as a result, the agreement cannot be amended without the consent of the Indenture Trustee. The second is to ensure that the Adherence Conditions relating to Refinancings under the Change of Law Protection Agreement are not dependent upon the terms of the Change of Law Process Agreement. In light of the desire to not disclose the terms and conditions of the Change of Law Process Agreement to the rating agencies, especially at this late stage in the process, we would expect that the latter approach would be preferable.

Regards, Rocco

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Wednesday, December 06, 2017 4:38 PM
To: 'ASHBOURNE, STEPHEN' <STEPHEN.ASHBOURNE@blakes.com>; 'JON.VINER@blakes.com' <JON.VINER@blakes.com>; 'JA.PRESTAGE@blakes.com' <JA.PRESTAGE@blakes.com>

Cc: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>; 'LADAK Lubna -TREASURY' <lubna.ladak@opg.com>; 'Anna Strathy' <Anna.Strathy@ofina.on.ca>; 'Veinot, Cindy (TBS)' <Cindy.Veinot@ontario.ca>; 'McKinlay, Tom (MAG)' <Tom.McKinlay@ontario.ca>; 'Donaldson, Mark (TBS)' <Mark.Donaldson@ontario.ca>; 'Cayley, Daniel (ENERGY) (Daniel.Cayley@ontario.ca)' <Daniel.Cayley@ontario.ca>; 'Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca)' <Alena.Thouin@ontario.ca>; Ramchandani, Rima <rramchandani@torys.com>; 'LEE John -TREASURY' <john.s.lee@opg.com>; 'RYFA Ken -TREASURY' <ken.ryfa@opg.com>; 'HAHN PARKER Janet -TREASURY' <j.hahnparker@opg.com>; 'MAUTI John -FIN & C CTRL' <john.mauti@opg.com>; 'LAURETA LAPIRA May -TREASURY' <may.lapira@opg.com>; Feldman, Michael <mfeldman@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Sebastiano, Rocco <RSebastiano@osler.com>; Milligan, Peter <PMilligan@osler.com>; Fullerton, Rick <RFullerton@osler.com>; 'Mayman, Gadi (OFA)' <Gadi.Mayman@ofina.on.ca>; 'Manning, Mike (OFA)' <Mike.Manning@ofina.on.ca>; 'Hanslep, Malle (MOF)' <Malle.Hanslep@ontario.ca>; 'ian.benaiah@rbccm.com' <ian.benaiah@rbccm.com>; 'Khan, Nur (nur.khan@rbccm.com)' <nur.khan@rbccm.com>; 'brent.r.taylor@rbccm.com' <brent.r.taylor@rbccm.com>; 'katrina.niehaus@gs.com' <katrina.niehaus@gs.com>; 'brian.delaney@gs.com' <brian.delaney@gs.com>; 'Maciel, Andrew' <Andrew.Maciel@cibc.com>; 'Adalja, Sunil' <Sunil.Adalja@cibc.com>; 'Persad, Nicole' <Nicole.Persad@cibc.com>; 'Persaud, Donnie - Debt Capital Markets' <Donnie.Persaud@cibc.com>; 'Steen Hume (CAB)' <Steen.Hume@ontario.ca>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Olusoga, Yinka <yolusoga@torys.com>
Subject: Fair Hydro -- Change of Law Process Agreement

Blakes team,

Please find attached OPG and Torys' comments on the Process Agreement reflecting our discussions from yesterday's call. Please note that this draft is subject to continuing review and comment by Osler and the dealers. As discussed at the tail end of our call yesterday, the section in the Process Agreement that gives the Province the right to object to new and material changes to transaction documents dovetails with the Protection Agreement so additional comments from Oslers may be forthcoming on this draft.

We are working on getting you a revised draft of the Protection Agreement either later today or tomorrow. In the meantime, please let us know if you have any comments or questions on the Process Agreement.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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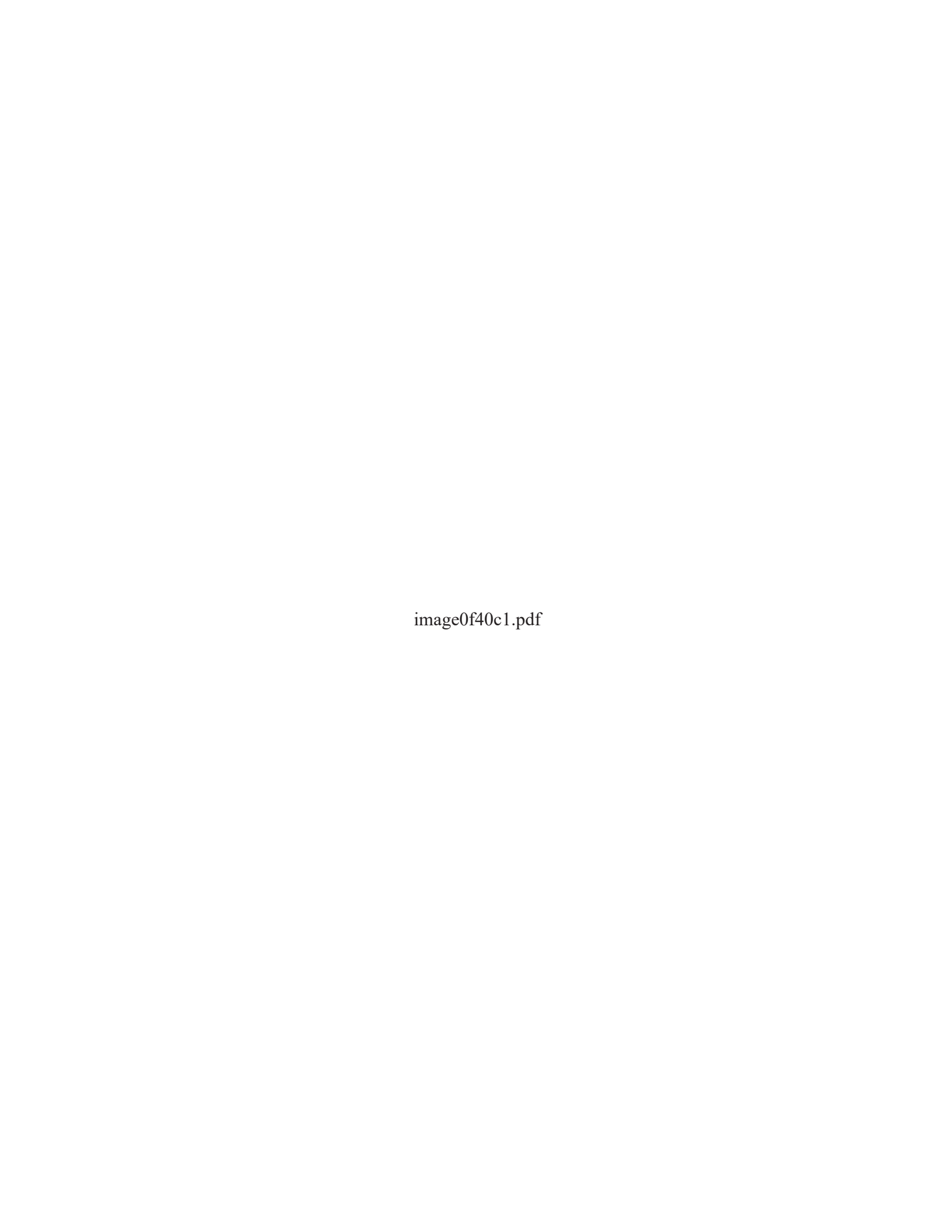
TORYS
LLP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Blakes

23239361-v23-Change of Law - Process Agreement.pdf

Draft: December 7, 2017

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT

Dated as of [■], 2017

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**") is made and entered into as of [■], 2017.

RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the applicable Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with the final forms of certain of the Transaction Documents, as described on Exhibit "A", and the Province has not objected to such forms and hereby confirms to OPG that such Transaction Documents will constitute "Reference Documentation" for purposes of this Agreement.

Prior to entering into this Agreement, OPG, as the FSM, provided the Minister of Energy, in compliance with the Act, with the initial Financing Plan, which includes the initial forecast (the "**Initial Forecast**") setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Obligations Secured to be incurred during the 24 month period from December 1, 2017 to November 30, 2019 (the "**Initial Forecast Period**"). Prior to entering into this Agreement, OPG provided the Province with the initial Protection Agreement Maximum (the "**Initial Protection Agreement Maximum**"). The Province has received the initial Financing Plan and has not disagreed with the Initial Forecast or the Initial Protection Agreement Maximum on the basis of an apparent inaccuracy in the Initial Forecast, an inconsistency between the Initial Forecast and the initial Financing Plan, or as a result of the Initial Protection Agreement Maximum being more than the Initial Forecast.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the

applicable Adherence Conditions have been satisfied and maintaining information related to the Program Agreements and the Approved Obligations.

All things necessary to make this Agreement a valid and legally binding agreement of OPG and the Province, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall"; the word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed; the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 References to the Financing Entity

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT (ONTARIO).

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days, or such lesser period as the Province may agree to in writing, prior to:

(i) any proposed change in the terms or conditions applicable to a Primary Obligation in a previously provided Transaction Document becoming effective or otherwise being used that could reasonably be expected to have a Material Effect[1]; provided, however, that a proposed change in particular financial terms, rates and levels would not be such a material change other than a proposed change to any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the previously provided Transaction Document and that would have a Material Effect, and

(ii) any additional, supplemental[2] or replacement Transaction Document becoming effective or otherwise being used,

OPG shall deliver to the Province a copy of such proposed change to the Transaction Document and any such additional, supplemental or replacement Transaction Document.

(c) Without limiting Subsection 2.01(b), promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional, supplemental or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

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[1] Explanatory Note: New term to encapsulate and consistently use the materiality language previously incorporated in the "Substantially in the Form" provision.

[2] Explanatory Note: Supplement (e.g., indenture supplement) needs to be captured. Supplement concept has been reinserted.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not (unless waived in writing by the Province):

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement, replacement, waiver or consent could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any supplementation, amendment, modification, restatement, replacement, waiver or consent of, to or in respect of particular financial terms, rates and levels other than a supplementation, amendment, modification, restatement, replacement, waiver or consent to or in respect of any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the applicable Program Agreement and that would have a Material Effect;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action could reasonably be considered to have a Material Effect; provided, however, that the foregoing does not apply to any such action taken in respect of particular financial terms, rates and levels other than such an action taken in respect of any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the applicable Program Agreement and that would have a Material Effect; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iv) notify the Province of (1) the occurrence of any Breach Event and any Program Breach, in each case within 2 Business Days of any such occurrence, and (2) any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Breach Event or a Program Breach, in each case within 1 Business Day of OPG first becoming aware of such event or circumstance; and[3]

(v) after the occurrence of any Protection Event (or any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

[3] Explanatory Note: This is especially needed in light of Province's passive role and reliance on OPG.

(c) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement between the Province and OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") are not amended by this Agreement and continue in full force and effect, notwithstanding that this Agreement is entered into subsequent to the Indemnity Agreement.

(d) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement are not amended by the Change of Law Protection Agreement and continue in full force and effect, notwithstanding that the Change of Law Protection Agreement was entered into subsequent to the Indemnity Agreement.

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Province, on or before the incurrence or any amendment of a Funding Obligation, other than any Funding Obligation under which not more than $5,000,000 in the aggregate may become payable by the Financing Entity (provided that delivery may not be more than 5 Business Days before the incurrence or amendment of the Funding Obligation), setting out the following with respect to such Funding Obligation:

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features, structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, OPG's best estimate of the expected notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights;

(b) if an existing Funding Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reference Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering

and sale of notes, bonds or other securities is Substantially in the Form of the Reference Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum applicable on the date that the Process Certificate is delivered; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

3.02 Acknowledgement regarding delivery of certificate under Change of Law Protection Agreement

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) are authorized to deliver the certificate referred to in Subsection [4.02(a)(ii)][4] of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with adherence of the Limited Guarantee to the incurrence of the Certified Primary Obligations in respect of

[4] Section change to be confirmed once Protection Agreement is recirculated.

which the certificate in Subsection [4.02(a)(ii)] of the Change of Law Protection Agreement is being delivered; provided that, upon receipt of a Suspension Notice under the Change of Law Protection Agreement, OPG covenants not to deliver any further certificates to the Indenture Trustee under Subsection [4.02(a)(ii)] of the Change of Law Protection Agreement [but, for greater certainty, OPG, as FSM, may deliver a certificate referred to in Subsection [4.02(b)(ii)] of the Change of Law Protection Agreement to the Indenture Trustee and the Province in connection with an Approved Refinancing of a Primary Obligation in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied at the time such Primary Obligation was incurred.][5]

3.03 Acknowledgement regarding delivery of Suspension Notice

The parties acknowledge and agree that the Province is entitled to deliver a Suspension Notice under Section 7.01 of the Change of Law Protection Agreement if a Program Breach or Breach Event has occurred. The Province agrees not to deliver a Suspension Notice pursuant to Section 7.01 of the Change of Law Protection Agreement unless a Program Breach or a Breach Event has occurred.

3.04 Meaning of "Reference Documentation"

For the purposes of Subsection 3.01(c), the term "Reference Documentation" shall mean each Transaction Document that, at the relevant time:

(a) is a Transaction Document listed on Exhibit "A"; or

(b) is a Transaction Document (including any amended or amended and restated Transaction Document) provided to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is provided to the Province.

3.05 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation that could have a Material Effect; provided, however, that the foregoing does not apply to any particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reference Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

[5] Explanatory Note: The changes proposed to be made to the Protection Agreement have not yet been circulated to the Province, so we are unable to understand the nature of the changes made to this provision.

(b) with respect to the Reference Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is more than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(c) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
BREACH EVENTS

6.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, by OPG of Section 2.01(b)(i), Section 2.02(b)(iv)[6] or Section 3.01[7];

(b) a default in the performance, or breach, of any other covenants of OPG under this Agreement (excluding Section 2.01(b)(i), Section 2.02(b)(iv) and Section 3.01), which, if curable in a way such that the default or breach would not have or have had a Material Effect[8], is not so cured within thirty (30) days;

(c) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Subsection 4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and which, if curable in a way such that the incorrect representation or warranty may be remedied without any Material Effect[9] having occurred as a result of the Province's reliance thereon, is not so cured within thirty (30) days; or

(d) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

ARTICLE VII
MISCELLANEOUS

7.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

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[6] Explanatory Note: This recognizes that a failure to notify the Province of an event that would allow it to deliver a Suspension Notice cannot itself be cured since that would create a self-defeating loop from the Province's standpoint.

[7] Explanatory Note: This recognizes that a failure to deliver a Process Certificate when required cannot be cured, as this goes to the workability of the corresponding provisions in the Protection Agreement. It would defeat the structure to allow a Protection Agreement certificate to be delivered to satisfy the adherence conditions based on the idea that a default cure period had not yet lapsed in connection with a failure to deliver a Process Certificate.

[8] Explanatory Note: This recognizes that a cure period will only be reasonable if the consequence of a possible cure would be that no Material Effect would be/have been created.

[9] Explanatory Note: Same.

7.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(b) if to the Province:

Deputy Minister of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Deputy Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 7.02.

7.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 7.03 shall be null and void.

7.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

7.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

7.06 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____

Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement, and, for greater certainty, will include any Approved Refinancing.

"**Approved Refinancing**" means a Certified Primary Obligation proposed to be incurred on or after the occurrence of a Suspension Event, as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions except that the certificate contemplated to be delivered under Section 4.02(b) shall instead confirm that OPG has delivered to the Province a certificate by its applicable officers confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of such existing Certified Primary Obligation.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 6.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Certified Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, the Financing Entity, OPG (as the FSM and the Manager) and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Executive Officer**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**IESO Security Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast Period**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Protection Agreement Maximum**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Material Effect**" means a material effect on the obligations (including as a result of a change in the nature, scope or extent of the Primary Obligation and the effect on the Province's obligations therefor under the Limited Guarantee) or rights of the Province under the Limited Guarantee, the Change of Law Protection Agreement or this Agreement, including any proposed change that could affect the timing of or circumstances under which related payments would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that could affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with Section 4.01.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Documentation**" has the meaning ascribed thereto in Section 3.04.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.05.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial

obligation or that could affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

EXHIBIT "A"
INITIAL REFERENCE DOCUMENTATION[10]

- Declaration of Trust;
- Management Agreement;
- Master Transfer and Servicing Agreement;
- Acknowledgement and indemnity agreement dated as of [■], 2017 made by IESO in favour of the Indenture Trustee;
- IESO Security Agreement;
- Trust Indenture;
- Warehouse Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017; and
- [Warehouse Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.][11]

[10] Explanatory Note: The Province is limiting this to the documents required to complete the warehouse financing. Term issuance related documents will be considered by the Province once received under 2.01(b)(ii) and become part of the Reviewed Documentation in accordance with 3.04(b).

[11] Explanatory Note: This should be deleted unless it will be used in the initial transaction.

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY AND THE MINISTER OF FINANCE

AND

ONTARIO POWER GENERATION INC.

CHANGE OF LAW PROCESS AGREEMENT[1]

Dated as of [■], 2017

[1] ~~Explanatory Note: Closing mechanics under consideration by the Province. Province to advise what is under consideration.~~

This **CHANGE OF LAW PROCESS AGREEMENT**, between Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and the Minister of Finance (the "**Province**"), and Ontario Power Generation Inc. ("**OPG**") is made and entered into as of [■], 2017.

RECITALS

OPG is appointed as the Financial Services Manager under Section 18 of the *Ontario Fair Hydro Plan Act, 2017* (the "**Act**").

Pursuant to Section 22(2) of the Act, OPG, in its capacity as the Financial Services Manager (the "**FSM**"), may establish or cause to be established one or more financing entities (as defined in the Act), which may incur Funding Obligations in accordance with the Act.

Pursuant to a Declaration of Trust dated as of [■], 2017, the Financing Entity was established as a "financing entity" (as defined in the Act) for the purposes contemplated in the Act.

Concurrent with this Agreement, the Province, the FSM, the Financing Entity and the Indenture Trustee will enter into the Change of Law Protection Agreement under which the Province will agree to provide protections and assurances to the Indenture Trustee, for the benefit of the Beneficiaries, in respect of Obligations Secured that constitute Approved Obligations, in order to address concerns that would arise from a change or adverse determination of law, subject in each case to the satisfaction of the applicable Adherence Conditions.

Prior to entering into this Agreement, OPG provided the Province with the ~~proposed~~final forms of certain of the Transaction Documents ~~listed~~, as described on Exhibit "A", and the Province has not objected to such forms and ~~has confirmed~~hereby confirms to OPG that such Transaction Documents will constitute "Reference Documentation" for purposes of this Agreement.

Prior to entering into this Agreement, OPG, as the FSM, provided the ~~Province~~Minister of Energy, in compliance with the Act, with the initial Financing Plan, which includes the initial forecast (the "**Initial Forecast**") setting out OPG's expectations regarding the aggregate maximum amount of Repayments that would arise in the future under ~~Approved~~ Obligations Secured to be incurred during the 24 month period from December 1, 2017 to November 30, 2019 (the "**Initial Forecast Period**") ~~and~~. Prior to entering into this Agreement, OPG provided the Province with the initial Protection Agreement Maximum (the "**Initial Protection Agreement Maximum**"). The Province has ~~acknowledged receipt of~~received the initial Financing Plan and has not ~~objected to~~disagreed with the Initial Forecast or the Initial Protection Agreement Maximum on the basis of an apparent inaccuracy in the Initial Forecast, an inconsistency between the Initial Forecast and the initial Financing Plan, or as a result of the Initial Protection Agreement Maximum being more than the Initial Forecast.

This Agreement sets out the obligations OPG has agreed to perform and assurances OPG has agreed to provide and on which the Province will rely in entering into and implementing the Change of Law Protection Agreement, including for the purposes of determining whether the applicable Adherence Conditions have been satisfied and maintaining information related to the Program Agreements and the Approved Obligations.

All things necessary to make this Agreement a valid and legally binding agreement of OPG and the Province, have been done.

AGREEMENT OF THE PARTIES

In consideration of the respective agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

1.01 Interpretation

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) the terms used in this Agreement that are defined in Schedule A have the meanings assigned to them in Schedule A;

(b) the terms used in this Agreement that are not defined in this Agreement shall have the meanings assigned to them in the Change of Law Protection Agreement;

(c) words importing the singular shall include the plural and vice versa, words importing general shall include all genders or the neuter, and words importing the neuter shall include all genders;

(d) all references to any Person shall include such Person's permitted successors and assigns, and any reference to a Person in a particular capacity excludes such Person in other capacities;

(e) references to any law, rule, regulation or order of a Governmental Authority (including, for greater certainty, references to the Act and the General Regulation) shall include such law, rule, regulation or order as from time to time in effect, including any amendment, modification, codification, replacement or reenactment thereof or any substitution therefor;

(f) the word "will" shall be construed to have the same meaning and effect as the word "shall"; the word "or" is not exclusive;

(g) any reference to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or, as the case may be, such

other agreement, document or instrument as the same may have been, or may from time to time be, amended, varied, replaced, amended and restated, supplemented or otherwise modified;

(h) all references in this Agreement to designated "Articles", "Sections", "Subsections" "Schedules", "Exhibits" and other subdivisions are to the designated Articles, Sections, Subsections, Schedules, Exhibits and other subdivisions of this Agreement as originally executed; the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Schedule, Exhibit or other subdivision;

(i) "including" and words of similar import will be deemed to be followed by "without limitation"; and

(j) with respect to the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

1.02 References to the Financing Entity

For greater certainty, each reference to the Financing Entity shall be construed as a reference to the Financing Entity Trustee, as trustee of the Financing Entity.

1.03 Effect of Headings

The Article and Section headings herein and are for convenience only and will not affect the construction hereof.

1.04 Successors and Assigns

All covenants and agreements in this Agreement by the parties will bind their respective successors and permitted assigns, whether so expressed or not.

1.05 Severability

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by applicable law, the parties waive any provision of law which renders any provision of this Agreement invalid or unenforceable in any respect.

1.06 Governing Law

THIS AGREEMENT WILL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE FEDERAL LAWS OF CANADA APPLICABLE THEREIN, AND THE OBLIGATIONS, RIGHTS AND

REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

1.07 Proceedings Against the Crown Act

NOTHING IN THIS AGREEMENT OR THE PROGRAM AGREEMENTS AFFECTS THE RIGHTS, PROTECTIONS AND IMMUNITIES OF THE CROWN UNDER THE PROCEEDINGS AGAINST THE CROWN ACT (ONTARIO).

1.08 Attornment

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY ONTARIO COURTS SITTING IN TORONTO IN ANY ACTION, APPLICATION, REFERENCE OR OTHER PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO REQUIRE A TRIAL BY JURY OF ANY PROCEEDING COMMENCED IN CONNECTION WITH THIS AGREEMENT.

1.09 Counterparts; Electronic Delivery

This Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute one and the same instrument. Delivery of an executed signature page to this Agreement by a party by electronic transmission will be as effective as delivery of a manually executed copy of the Agreement by such party.

1.10 Non-Business Days

Whenever any period of time would begin or end or any other action to be taken hereunder shall be stated to be required to be taken, on a day other than a Business Day, then (notwithstanding any other provision of this Agreement) such period of time shall begin or end, and such other action shall be taken on the next succeeding Business Day.

1.11 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement will be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement will constitute a waiver of any other provision nor will any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided. A party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a party from any other or further exercise of that right or the exercise of any other right.

ARTICLE II
COVENANTS OF OPG

2.01 Deliveries to the Province

(a) OPG shall promptly deliver to the Province a copy of any proposed change to or replacement of the Financing Plan.

(b) Not less than 10 Business Days, or such lesser period as the Province may agree to in writing, prior to:

(i) any proposed change in the ~~material~~ terms or conditions applicable to a Primary Obligation in a previously provided Transaction Document becoming effective or otherwise being used~~, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation~~ that could reasonably be expected to have a Material Effect[1]; provided, however, that ~~the foregoing does not apply to any~~a proposed change in particular financial terms, rates and levels would not be such a material change other than a proposed change to any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the previously provided Transaction Document and that would have a Material Effect, and

(ii) any additional, supplemental[2] or replacement Transaction Document becoming effective or otherwise being used,

OPG shall deliver to the Province a copy of such proposed change to the Transaction Document and any such additional, supplemental or replacement Transaction Document.

(c) ~~Promptly~~Without limiting Subsection 2.01(b), promptly following (i) any change, modification, alteration, amendment, supplement, extension, renewal, compromise, novation, replacement, suspension or waiver of the terms of all or

[1] Explanatory Note: New term to encapsulate and consistently use the materiality language previously incorporated in the "Substantially in the Form" provision.

[2] Explanatory Note: Supplement (e.g., indenture supplement) needs to be captured. Supplement concept has been reinserted.

any part of the Approved Obligations or any Collateral therefor being made, (ii) any new, additional, supplemental or replacement instruments, documents, agreements or security being used or granted in connection with all or any part of the Approved Obligations, or (iii) any waiver, release, reconveyance, termination, abandonment, subordination, exchange, substitution, transfer, compound, compromise, liquidation or enforcement of all or any part of the Approved Obligations or any security or guarantee therefor being effected, OPG shall deliver to the Province a detailed description of such event and the reasons for it together with any related documents, agreements and instruments.

(d) Promptly following any incurrence of a Funding Obligation or any amendment of a Funding Obligation, OPG shall provide the Province with electronic copies of all related Governing Documents and all other closing documents executed by or on behalf of the Financing Entity in connection with such incurrence or amendment that would affect the Financing Entity's assets or obligations (including, for greater certainty, any related Disclosure Document) and which have not been previously provided to the Province.

(e) Promptly upon request, OPG shall provide the Province with such additional information and documentation as the Province reasonably requests in order to enable the Province to assess the nature and extent of its obligations under the Change of Law Protection Agreement.

2.02 Covenants

(a) OPG shall use commercially reasonable efforts to cause the Financing Entity to:

(i) punctually perform and observe all of the Financing Entity's obligations and agreements contained in the Program Agreements;

(ii) ensure that all Obligations Secured are incurred pursuant to and in accordance with the terms and conditions of the Trust Indenture;

(iii) ensure that no obligations other than the Obligations Secured are incurred by or on behalf of the Financing Entity;

(iv) not engage in any business other than as permitted under the Declaration of Trust or the other Program Agreements and activities ancillary thereto; and

(v) not (unless waived in writing by the Province):

(A) amend, supplement, modify, restate or replace or waive or consent to a postponement of compliance with the terms and conditions on the part of any other party to any of the Program Agreements, if any such supplementation, amendment, modification, restatement ~~or~~, replacement ~~or~~, waiver or consent could reasonably be

considered to ~~be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement~~have a Material Effect; provided, however, that the foregoing does not apply to any ~~change in~~supplementation, amendment, modification, restatement, replacement, waiver or consent of, to or in respect of particular financial terms, rates and levels~~;~~ other than a supplementation, amendment, modification, restatement, replacement, waiver or consent to or in respect of any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the applicable Program Agreement and that would have a Material Effect;

(B) extend, renew, compromise, novate, replace, suspend, reconvey, terminate, abandon, subordinate, exchange, substitute, transfer, compound, liquidate or enforce the terms of all or any part of the Approved Obligations or any Collateral, if any such action could reasonably be considered to ~~be materially prejudicial to the rights or interests of the Province under the Change of Law Protection Agreement~~have a Material Effect; provided, however, that the foregoing does not apply to ~~the extent that only~~any such action taken in respect of particular financial terms, rates and levels ~~are affected~~other than such an action taken in respect of any specific requirements, limitations or parameters with respect to such financial terms, rates and levels that were set forth in the applicable Program Agreement and that would have a Material Effect; or

(C) permit the validity or effectiveness of the Change of Law Protection Agreement to be impaired.

~~***[NTD: As discussed, para (D) was deleted as a consequence of the Province's assumption right being deleted.]***~~

(b) OPG shall:

(i) comply, and shall use commercially reasonable efforts to cause compliance by the Financing Entity, with the Act, the General Regulation and any other enactment related thereto;

(ii) punctually perform and observe all of its (including as the FSM and as Manager) obligations and agreements contained in the Program Agreements;

(iii) promptly notify the Province of the creation of any Funding Obligation that is not or would not be an Approved Obligation; and

(iv) notify the Province of (1) the occurrence of any Breach Event and any Program Breach, in each case within 2 Business Days of any such

occurrence, and (2) any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Breach Event or a Program Breach, in each case within 1 Business Day of OPG first becoming aware of such event or circumstance; and[3]

(v) ~~(iv)~~ after the occurrence of any Protection Event (or any event or circumstance known to OPG that with the passage of time or the giving of notice would be a Protection Event), not, without the Province's prior written consent, permit the Financing Entity to exercise any redemption, pre-payment, early termination or extension right in respect of any Approved Obligation or exercise any other election or privilege in respect of any Approved Obligation, in each case if as a result the obligations applicable to the Approved Obligation under the Change of Law Protection Agreement would be accelerated, delayed or otherwise affected.

(c) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement between the Province and OPG dated June 1, 2017 (as amended, the "**Indemnity Agreement**") are not amended by this Agreement and continue in full force and effect, notwithstanding that this Agreement is entered into subsequent to the Indemnity Agreement. ~~***[NTD: Torys and Blakes have mutually agreed to this language.]***~~

(d) The Province and OPG acknowledge that their obligations to each other under the Indemnity Agreement are not amended by the Change of Law Protection Agreement and continue in full force and effect, notwithstanding that the Change of Law Protection Agreement was entered into subsequent to the Indemnity Agreement. ~~***[NTD: Torys and Blakes have mutually agreed to this language.]***~~

ARTICLE III
PROCESS CERTIFICATE

3.01 Process Certificate

OPG shall deliver a certificate (the "**Process Certificate**"), signed by the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) and addressed to the Province, on or before the incurrence or any amendment of a Funding Obligation, other than any Funding Obligation under which not more than $5,000,000 in the aggregate may become payable by the Financing Entity (provided that delivery may not be more than 5 Business Days before the incurrence or amendment of the Funding Obligation), setting out the following with respect to such Funding Obligation:

(a) the material terms of the Funding Obligation pertaining to (i) in the case of notes, bonds or other securities, the principal amount, interest or discount rate, third party fees, term to maturity, amortization, redemption or extension features,

[3] Explanatory Note: This is especially needed in light of Province's passive role and reliance on OPG.

structure and coupon frequency, as applicable, and (ii) in the case of a Derivative Agreement, OPG's best estimate of the expected notional amount, financial terms and pricing, benchmarks, payment structures and early termination rights; ~~***[NTD: OPG can only provide an estimate of these matters and the actual pricing may be different than what is provided in the certificate since the price is based on the spot market and subject to change.]***~~

(b) if an existing Funding Obligation is proposed to be amended, material details respecting such amendment, including regarding the applicable details set forth in Subsection 3.01(a), as the context requires;

(c) a statement to the effect that: (i) the Funding Obligation to be incurred or amended (1) will arise under terms and conditions that are Substantially in the Form of the Reference Documentation applicable thereto; (2) in the opinion of the signatories to the Process Certificate, are reasonably incurred or effected in compliance with the Act, the General Regulation, any other enactments related thereto and the applicable Financing Plan; (3) are of a type and are on terms that a reasonably prudent financial services manager would incur in similar circumstances; and (4) reflect, in all material respects, arm's length terms and conditions; and (ii) any Disclosure Document used in connection with the offering and sale of notes, bonds or other securities is Substantially in the Form of the Reference Documentation;

(d) a statement confirming that any disclosure made in respect of the Funding Obligation (including any Disclosure Document, press release or other written communication prepared for dissemination to third parties in relation to the Funding Obligation) that refers to or describes the terms, effect or adherence of or to this Agreement or the Change of Law Protection Agreement has been made available to the Province prior to use or dissemination, other than where such disclosure was substantially the same as a disclosure previously made;

(e) a statement that no Breach Event has occurred on or prior to the date of the Process Certificate, unless such Breach Event has been waived by the Province in writing; and

(f) confirmation that, at the time the Funding Obligation is incurred or amended, the maximum aggregate payment amounts due or becoming due in the future in respect of Repayments under the Funding Obligation, together with all other outstanding amounts due or becoming due in the future in respect of Repayments under all Approved Obligations, do not and will not exceed the Protection Agreement Maximum applicable on the date that the Process Certificate is delivered; for clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be determined on the date the Process Certificate is delivered hereunder in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

3.02 Acknowledgement regarding delivery of certificate under Change of Law Protection Agreement

The Province acknowledges and agrees that, concurrent with the delivery of the Process Certificate pursuant to Section 3.01 of this Agreement, the Chief Financial Officer and the Treasurer of OPG or any two Executive Officers of OPG (for clarity, such certificate is to be provided by such officers in their capacity as officers of OPG acting in its capacity as FSM) are authorized to deliver the certificate referred to in Subsection [4.02(a)(ii)][4] of the Change of Law Protection Agreement to the Indenture Trustee confirming that OPG has complied with all of its obligations to the Province and internal requirements and processes in connection with adherence of the Limited Guarantee to the incurrence of the Certified Primary Obligations in respect of which the certificate in Subsection [4.02(a)(ii)] of the Change of Law Protection Agreement is being delivered; provided that, upon receipt of a Suspension Notice under the Change of Law Protection Agreement, OPG covenants not to deliver any further certificates to the Indenture Trustee under Subsection [4.02(a)(ii)] of the Change of Law Protection Agreement [but, for greater certainty, OPG, as FSM, may deliver a certificate referred to in Subsection [4.02(b)(ii)] of the Change of Law Protection Agreement to the Indenture Trustee and the Province in connection with ~~a~~an Approved Refinancing of a Primary Obligation in respect of which the Adherence Conditions in Subsection 4.02(a) of the Change of Law Protection Agreement had been satisfied at the time such Primary Obligation was incurred. ~~*[NTD: Conforming changes made to line up with Change of Law Protection Agreement.*~~][5]

3.03 Acknowledgement regarding delivery of Suspension Notice

The parties acknowledge and agree that the Province is entitled to deliver a Suspension Notice under Section 7.01 of the Change of Law Protection Agreement if a Program Breach or Breach Event has occurred. The Province agrees not to deliver a Suspension Notice pursuant to Section 7.01 of the Change of Law Protection Agreement unless a Program Breach or a Breach Event has occurred.

3.04 Meaning of "Reference Documentation"

For the purposes of Subsection 3.01(c), the term "Reference Documentation" shall mean each Transaction Document that, at the relevant time:

[4] Section change to be confirmed once Protection Agreement is recirculated.

[5] Explanatory Note: The changes proposed to be made to the Protection Agreement have not yet been circulated to the Province, so we are unable to understand the nature of the changes made to this provision.

(a) is a Transaction Document listed on Exhibit "A"; or

(b) is a Transaction Document (including any amended or amended and restated Transaction Document) provided to the Province in accordance with Subsection 2.01(b) that has not been objected to by the Province, by delivery of an objection notice in writing delivered to OPG, within 10 Business Days after it is provided to the Province.

3.05 Meaning of "Substantially in the Form"

For the purposes of Subsection 3.01(c), the term "Substantially in the Form" shall mean:

(a) with respect to the Reference Documentation referred to in clauses (i) to (xi) of the definition of "Transaction Documents", that there are no differences between the proposed documents and such Reference Documentation that could result in a change in the material terms or conditions applicable to the applicable Primary Obligation~~, including regarding the timing of or circumstances under which related payments are or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that would affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation~~ that could have a Material Effect; provided, however, that the foregoing does not apply to any~~ variable terms to be set forth in the proposed documents as are reasonably contemplated in the Reference Documentation, including the~~ particular financial terms, rates and levels set forth in the proposed documents other than to the extent that the forms of Reference Documentation themselves specify specific requirements, limitations or parameters with respect to such financial terms, rates, levels and parameters; and

(b) with respect to the Reference Documentation referred to in clause (xii) of the definition of "Transaction Documents", that there are no material differences between the form and substance of the proposed Disclosure Document and such form of Disclosure Document and that the proposed Disclosure Document complies in all material respects with all applicable securities disclosure requirements relating to the Primary Obligation subject to distribution thereunder.

ARTICLE IV
PROTECTION AGREEMENT MAXIMUM

4.01 Protection Agreement Maximum

(a) Between nine (9) and twelve (12) months prior to the end of the Initial Forecast Period, OPG shall, as the FSM, deliver to the Province an updated forecast setting out the sum of (1) the aggregate amount of Repayments that will arise in the future under Approved Obligations that are then outstanding and (2) OPG's

expectations regarding the aggregate maximum amount of Repayments that would arise in the future under Approved Obligations to be incurred during the period ending 24 months following the Initial Forecast Period, which expectation shall be consistent with the then applicable Financing Plan. Such updated forecast shall be further updated on a similar basis with respect to each successive 24 month period or more frequently if at any time OPG has knowledge that the most recent forecast is materially inaccurate (the Initial Forecast and each such updated forecast, each a "**Forecast**"). Together with each Forecast, OPG shall also provide a revised Protection Agreement Maximum, which may not exceed such Forecast.

(b) Not more than 10 Business Days, or such lesser period as the Province may agree to in writing, following receipt of any further Forecast and notice of the revised Protection Agreement Maximum from OPG pursuant to Section 4.01(a), the Province may disagree with such further Forecast or revised Protection Agreement Maximum on the basis that (i) there appears to be inaccuracies in ~~the Financing Plan or~~ such further Forecast, (ii) the further Forecast is inconsistent with the Financing Plan, or (iii) the revised Protection Agreement Maximum is more than the further Forecast. If the Province disagrees, OPG shall discuss any discrepancies with the Province, address any inaccuracies and inconsistencies to the reasonable satisfaction of the Province and OPG, and the revised Protection Agreement Maximum will be further revised accordingly and confirmed by an amended notice to the Province.

(c) For clarity, Repayments under Obligations Secured owing in currencies other than Canadian dollars will be valued at the time to be determined for the purposes of this Section 4.01 in accordance with the following:

(i) where a Derivative Agreement has been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the hedged value expressed in Canadian dollars; and

(ii) where a Derivative Agreement has not been entered into to hedge related currency exposures, Repayments under such obligations shall be valued on the basis of the noon spot rate for conversions of any currencies into Canadian dollars.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.01 Representations and Warranties of OPG

OPG represents and warrants that on the date hereof and on each day that a Primary Obligation is incurred or amended:

(a) The Financing Entity is a trust duly constituted and validly existing under the laws of the Province of Ontario, is duly qualified to carry on its business in each jurisdiction in which it carries on business, and has the power and authority to

perform the acts that OPG, as the FSM, may cause it to perform pursuant to this Agreement and to own its property and carry on its business in accordance with the Program Agreements.

(b) OPG is a corporation duly constituted and validly existing under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and all instruments and agreements delivered pursuant hereto.

(c) OPG has the power and authority to enter into and perform its obligations as the FSM under the Program Agreements and all instruments and agreements delivered pursuant thereto.

(d) The execution, delivery and performance of this Agreement and every instrument or agreement delivered pursuant hereto or in its capacity as the FSM has been or will be duly authorized by all requisite action by OPG and constitute a valid and binding obligation in accordance with its terms subject to (i) applicable bankruptcy, insolvency, moratorium and similar laws at the time in effect affecting the rights of creditors generally, and (ii) equitable principles which may limit the availability of certain remedies, including the remedy of specific performance.

(e) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting the Financing Entity at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of the Financing Entity or in the ability of the Financing Entity to perform its obligations under the Program Agreements.

(f) There are no actions, suits or proceedings pending or, to the knowledge of OPG, threatened against or affecting OPG at law or in equity or before or by any Governmental Authority, or before any arbitrator of any kind, which would result in any material adverse change in the business, operations, prospects, properties, assets or condition, financial or otherwise, of OPG or in the ability of the OPG to perform its obligations under this Agreement or any Program Agreements.

(g) The performance by the Financing Entity of the Program Agreements does not conflict with, will not conflict with, does not result in, and will not result in, any breach of, and does not constitute, a default under, the Declaration of Trust or any agreements or instruments to which the Financing Entity is a party or by which it or any of its property and assets are bound.

(h) Neither the execution nor delivery of this Agreement, the Program Agreements nor any agreements or instruments delivered pursuant hereto or thereto, the consummation of the transactions herein or therein, nor compliance with the terms, conditions and provisions hereof or thereof conflicts with or will conflict

with, or results or will result in any breach of, or constitutes a default under, any of the provisions of the constating documents of OPG or any agreements or instruments to which OPG is a party or by which it or any of its property and assets are bound.

(i) No consent, approval or authorization of, or declaration, registration, filing or qualification with, or giving of notice to, or taking of any other action in respect of, any Governmental Authority on the part of OPG is required in connection with the execution and delivery of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto or the consummation of any of the transactions contemplated hereby or thereby or in connection with the enforcement of this Agreement, the Program Agreements or any agreements or instruments delivered pursuant hereto or thereto, except those which have been obtained.

5.02 Representations and Warranties of the Province

The Province hereby represents and warrants that:

(a) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province have been authorized by all necessary action on the part of the Province;

(b) the execution and delivery of, and the performance of its obligations under, this Agreement by the Province do not result in the violation of any applicable law; and

(c) this Agreement has been duly executed and delivered by the Province.

ARTICLE VI
BREACH EVENTS

6.01 Breach Events

"**Breach Event**" shall mean the occurrence or existence of any one or more of the following:

(a) a default in the performance, or breach, by OPG of Section 2.01(b)(i), Section 2.02(b)(iv)[6] or Section 3.01[7];

[6] Explanatory Note: This recognizes that a failure to notify the Province of an event that would allow it to deliver a Suspension Notice cannot itself be cured since that would create a self-defeating loop from the Province's standpoint.

[7] Explanatory Note: This recognizes that a failure to deliver a Process Certificate when required cannot be cured, as this goes to the workability of the corresponding provisions in the Protection Agreement. It would defeat the structure to allow a Protection Agreement certificate to be delivered to satisfy the adherence conditions based on the idea that a default cure period had not yet lapsed in connection with a failure to deliver a Process Certificate.

(b) ~~(a)~~ a default in the performance, or breach, of any other covenants of OPG under this Agreement~~,~~ (excluding Section 2.01(b)(i), ~~which continues for thirty (30) days after written notice by the Province to OPG of such default or breach;~~

~~(b)~~ ~~a default in the performance, or breach, by OPG of Section 2.01(b)(i)~~Section 2.02(b)(iv) and Section 3.01), which, if curable in a way such that the default or breach would not have or have had a Material Effect[8], is not so cured within thirty (30) days;

(c) any representation or warranty made by OPG in this Agreement, any certification made in a Process Certificate, or any certification made in a certificate contemplated by Subsection 4.02 of the Change of Law Protection Agreement, proves to be incorrect on the date made and~~, if curable, is not~~ which, if curable in a way such that the incorrect representation or warranty may be remedied without any Material Effect[9] having occurred as a result of the Province's reliance thereon, is not so cured within thirty (30) days ~~after written notice by the Province to OPG of such misrepresentation~~; or

(d) OPG is no longer the Manager or actions have been taken by or on behalf of the Indenture Trustee to remove OPG as the Manager.

ARTICLE VII
MISCELLANEOUS

7.01 Term of Agreement

This Agreement will continue for the term of the Change of Law Protection Agreement.

7.02 Notices

Any notice or other communication required or permitted to be given hereunder will be in writing and will be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid first-class mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, will be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, will be deemed to have been received on the Business Day following the sending, or if delivered by hand will be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address will also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications will be delivered by hand or sent by facsimile or other means of electronic

[8] Explanatory Note: This recognizes that a cure period will only be reasonable if the consequence of a possible cure would be that no Material Effect would be/have been created.
[9] Explanatory Note: Same.

communication and will be deemed to have been received in accordance with this Section. Notices and other communications will be addressed as follows:

(a) if to OPG:

Ontario Power Generation Inc.
700 University Avenue
Toronto, Ontario M5G 1X6
Attention: General Counsel
Fax: (416) 592-4189

(b) if to the Province:

~~Ministry~~Deputy Minister of Finance
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

and

Deputy Ministry of Energy
[Address]
Attention: [■]
Fax: (416) [■]
Email: [■]

or to such other addresses as a party may from time to time notify the other parties in accordance with this Section 7.02.

7.03 Assignment

(a) None of the rights or obligations hereunder shall be assignable or transferable by any party without the prior written consent of the other parties.

(b) Any purported assignment of this Agreement in violation of this Section 7.03 shall be null and void.

7.04 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

7.05 FIPPA

The parties acknowledge that the Province will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province, or

any agent or representative of the Province in connection with this Agreement may be subject to disclosure in accordance with the act or as otherwise required by law.

7.06 Delivery of Executed Copies

Each party acknowledges delivery of a fully executed copy of this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF FINANCE

By: _____

Name:
Title:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, AS REPRESENTED BY THE MINISTER OF ENERGY

By: _____

Name:
Title:

ONTARIO POWER GENERATION INC.

By: _____

Name:
Title:

By: _____

Name:
Title:

Each of the undersigned hereby acknowledge the foregoing as of the day and year first above written.

COMPUTERSHARE TRUST COMPANY OF CANADA, in its capacity as trustee of **FAIR HYDRO TRUST**, as Issuer, by **ONTARIO POWER GENERATION INC.**, not in its individual capacity but solely as Manager

By: _____

Name:
Title:

By: _____

Name:
Title:

SCHEDULE A
DEFINED TERMS

"**Act**" has the meaning ascribed thereto in the first paragraph of the recitals in this Agreement.

"**Adherence Conditions**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Approved Obligation**" has the meaning ascribed thereto in the Change of Law Protection Agreement, and, for greater certainty, will include any Approved Refinancing.

"**Approved Refinancing**" means a Certified Primary Obligation proposed to be incurred on or after the occurrence of a Suspension Event, as a Refinancing of an existing Certified Primary Obligation in respect of which the Adherence Conditions had been satisfied on the date such existing Certified Primary Obligation was incurred, that, at the time of incurrence, satisfies each of each of the Adherence Conditions except that the certificate contemplated to be delivered under Section 4.02(b) shall instead confirm that OPG has delivered to the Province a certificate by its applicable officers confirming that OPG would be in compliance with all obligations to the Province and internal requirements and processes in connection with the adherence of the Limited Guarantee to the proposed Certified Primary Obligation that applied as between the Province and OPG on the date of issuance of such existing Certified Primary Obligation.

"**Beneficiaries**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Breach Event**" has the meaning ascribed thereto in Section 6.01.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which banking institutions in Toronto, Ontario are authorized or obligated by applicable law, regulation or executive order to be closed.

"**Certified Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Change of Law Protection Agreement**" means the Change of Law Protection Agreement dated [■], 2017 among the Province, ~~the FSM on behalf of~~ the Financing Entity, OPG (as the FSM and the Manager) and the Indenture Trustee.

"**Collateral**" has the meaning ascribed thereto in the Trust Indenture.

"**Co-Owner Agreement**" means any agreement between, *inter alia*, the Financing Entity and any other owner or owners of an Investment Interest as contemplated by Subsection 29(5) of the Act.

"**Declaration of Trust**" means the declaration of trust made as of [■], 2017 under which the Financing Entity was established.

"**Derivative Agreement**" means any rate swap transaction, basis swap, forward rate transaction, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, total return swap transaction, credit default swap transaction or any other similar transaction (including any option with respect to any of those transactions) or any combination of these transactions entered into from time to time by the Financing Entity in connection with or related to Funding Obligations.

"**Disclosure Document**" means a disclosure document (including any offering circular, prospectus or other investor disclosure statement) describing the material terms of the notes, bonds or securities to be issued pursuant to a supplemental indenture under the Trust Indenture, together with any related material information;

"**Executive Officer**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Financing Entity**" means Fair Hydro Trust, a trust settled by the FSM under the laws of the Province of Ontario and under which the Financing Entity Trustee is the trustee.

"**Financing Entity Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Financing Plan**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**Forecast**" has the meaning ascribed thereto in Section 4.01(a).

"**FSM**" has the meaning ascribed thereto in the second paragraph of the recitals of this Agreement.

"**Funding Obligation**" has the meaning ascribed to the term "funding obligation" in the Act as of the date of this Agreement.

"**General Regulation**" means O. Reg. 206/17 made under the Act.

"**Governing Document**" has the meaning ascribed to the term "governing document" in the General Regulation.

"**Governmental Authority**" means any nation or government, any federal, state, provincial, local or other political subdivision thereof and any court, administrative agency or other instrumentality or entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**IESO**" has the meaning ascribed thereto in the Act as of the date of this Agreement.

"**IESO Security Agreement**" has the meaning ascribed thereto in the Trust Indenture.

"**Indenture Trustee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Initial Forecast**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Forecast Period**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Initial Protection Agreement Maximum**" has the meaning ascribed thereto in the recitals of this Agreement.

"**Investment Interest**" has the meaning ascribed to the term "investment interest" in the Act as of the date of this Agreement.

"**Limited Guarantee**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Management Agreement**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Manager**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Master Transfer and Servicing Agreement**" means the master transfer and servicing agreement dated [■], 2017 between the Financing Entity and IESO.

"**Material Effect**" means a material effect on the obligations (including as a result of a change in the nature, scope or extent of the Primary Obligation and the effect on the Province's obligations therefor under the Limited Guarantee) or rights of the Province under the Limited Guarantee, the Change of Law Protection Agreement or this Agreement, including any proposed change that could affect the timing of or circumstances under which related payments would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization), or that could affect the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation.

"**Obligations Secured**" has the meaning ascribed thereto in the Trust Indenture.

"**OPG**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Person**" means any individual, corporation, limited liability company, estate, partnership, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization or Governmental Authority.

"**Primary Obligations**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Process Certificate**" has the meaning ascribed thereto in Section 3.01.

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"**Program Agreements**" has the meaning ascribed thereto in the Trust Indenture.

"**Program Breach**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Protection Agreement Maximum**" means the dollar amount referenced as the Program Agreement Maximum and determined in accordance with ~~Article IV.~~ Section 4.01.

"**Protection Event**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**Province**" has the meaning ascribed thereto in the first paragraph of this Agreement.

"**Rating Agency**" has the meaning ascribed thereto in the Trust Indenture.

"**Reference Documentation**" has the meaning ascribed thereto in Section 3.04.

"**Repayment**" has the meaning ascribed to the term "repayment" in the General Regulation as of the date of this Agreement.

"**Specified Creditors**" has the meaning ascribed thereto in the Trust Indenture.

"**Substantially in the Form**" has the meaning ascribed thereto in Section 3.05.

"**Suspension Notice**" has the meaning ascribed thereto in the Change of Law Protection Agreement.

"**this Agreement**" means this agreement, as amended, supplemented, restated or otherwise modified from time to time.

"**Transaction Document**" means (i) all constating and organizational documents of the Financing Entity, including the Declaration of Trust; (ii) any management, administration or servicing agreement to which the Financing Entity is a party, including any replacement or standby services agreement and the Management Agreement; (iii) the Master Transfer and Servicing Agreement; (iv) Trust Indenture; (v) the form of supplemental indenture (supplemental to the Trust Indenture) governing the terms and conditions of a sample series of notes, bonds or other securities to be issued by the Financing Entity, including the particular allocations, security and priority of the Obligations Secured being serviced by the related Investment Interest and any other related series property; (vi) the form of any note, bond or securities purchase agreement; (vii) the form of underwriting agreement, agency agreement, selling agreement and/or subscription agreement that may be used with respect to a sale of a related series of notes, bonds or securities to be issued under the supplemental indenture referred to in (v), above; (viii) the form of any loan or credit agreement governing the issuance of short term loan obligations by the Financing Entity; (ix) the form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; (x) the form of any other agreement or instrument under which a Funding Obligation may arise or be effected, including any other agreement under which the Financing Entity incurs a material financial

obligation or that ~~affects~~could affect the Province's rights of subrogation ~~rights and/or subrogee interests~~or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, including any standby liquidity arrangements or credit enhancement agreements; (xi) if applicable, a Co-Owner Agreement or any other agreement governing the respective interests of persons having rights or interests in the investment asset or other assets of the Financing Entity, including any other agreement of the sort contemplated in Subsection 29(5) of the Act; and (xii) the form of Disclosure Document.

"**Trust Indenture**" means the trust indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.

EXHIBIT "A"
INITIAL REFERENCE DOCUMENTATION[10]

- Declaration of Trust;
- Management Agreement;
- Master Transfer and Servicing Agreement;
- Acknowledgement and indemnity agreement dated as of [■], 2017 made by IESO in favour of the Indenture Trustee;
- IESO Security Agreement;
- Trust Indenture;
- Warehouse Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;
- Warehouse Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017; and
- [Warehouse Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017.][11]
- ~~Term Senior Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;~~
- ~~Term Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;~~
- ~~Term Junior Subordinated Series 2017-1 Supplemental Indenture between the Financing Entity and the Indenture Trustee dated as of [■], 2017;~~
- ~~[Confidential shelf offering memorandum of the Financing Entity dated as of [■], 2017, including the term sheet incorporated by reference therein; and~~
- ~~Agency agreement between the Financing Entity, CIBC World Markets Inc., RBC Dominion Securities Inc., Goldman Sachs Canada Inc. and the other agents named therein dated as of [■], 2017.] *[NTD: OM and Agency Agreement will be removed from Schedule A if not provided to the Province sufficiently in advance of execution of the Process Agreement.]*~~

[10] Explanatory Note: The Province is limiting this to the documents required to complete the warehouse financing. Term issuance related documents will be considered by the Province once received under 2.01(b)(ii) and become part of the Reviewed Documentation in accordance with 3.04(b).

[11] Explanatory Note: This should be deleted unless it will be used in the initial transaction.

Document comparison by Workshare Compare on Thursday, December 07, 2017 4:02:16 PM

Input:	
Document 1 ID	PowerDocs://TOR_2528/23239361/20
Description	TOR_2528-#23239361-v20-Change_of_Law_-_Process_Agreement
Document 2 ID	PowerDocs://TOR_2528/23239361/23
Description	TOR_2528-#23239361-v23-Change_of_Law_-_Process_Agreement
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	89
Deletions	61
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	154

Re_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: Ramchandani, Rima [rramchandani@torys.com]
To: Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]
CC: Mansoori, Nina [nmansoori@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; STEPHEN.ASHBOURNE@blakes.com [STEPHEN.ASHBOURNE@blakes.com]; LADAK Lubna -TREASURY [lubna.ladak@opg.com]; Emes, Aaron [aemes@torys.com]; Hill, Krista [khill@torys.com]
Subject: Re: Fair Hydro -- Change of Law Assumption Agreement
Date: Monday, October 23, 2017 19:31:43

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Hi Malle, we have asked Osler to accelerate circulation of the draft supplemental indenture for the long term debt — we hope to have that by mid-week and will send it you on receipt. As with the supp

Issue log - OPCD.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
Subject: Issue log - OPCD
Date: Monday, April 24, 2017 23:33:37
Attachment 1: image001.gif
Attachment 2: Issue tracker OPCD Fair Hydro Act - April 24.xlsx

---

Hi Nadine and Cindy:

We've taken a first stab at an issues log which is attached for discussion.

Speak to you tomorrow morning.

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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image001.pdf

Issue tracker OPCD Fair Hydro Act - April 24.pdf

OPCD - Fair Hydro Ac
Risk and Issue Log

ID#	Request
1	Provide comments on IESO memo re: RRA accounting
2	Document identified possible indicators of control from various legal documents
3	Read various legal documents
4	Consider structure of OPG Trust as SPE under OPG getting picked up by Province under modified equity and research other examples
5	Map out entries at consolidated level under scenario where IESO is not permitted to record an RRA
6	Understand the transition of asset from RRA in IESO to Intangible in OPG
7	Document flow of interest and existence of related RRA and subsequent transfer to intangible asset and related impact from interest perspective
8	Consider impact of clean energy charge being deemed an unconstitutional tax
9	Reach out to global network for examples of other PS entities following RRA (following standards other than US GAAP and IFRS)
10	Consider accounting if in, say 5 years, new legislation comes along that wipes out the structure

high priority
medium priority
low priority

Purpose	Date raised	Expected output	Timeline to complete
Strengthen position/identify risks wrt RRA accounting	Apr-19	Comments on IESO memo	Comments sent Thursday April 20
Identify indicators for and against control by OPG/other entity	Apr-19	List of identified control indicators and possible impact	
General comments or issues related to document	Apr-21	Comments on document	
Identify other examples of organizations consolidating through a GBE that would not be considered GBEs themselves	Apr-19	Discussion/notes	
Understand possible impact on public accounts	Apr-19	Journal entries and possible impact	
Identify possible risk with respect to the RRA accounting from these transactions (i.e. because OPG accounts as intangible asset - include in discussions with OPG team); also consider accounting at the provincial level for these transfers	Apr-19	Discussion/notes	
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Support posifor RRA in public sector financial statements	Apr-19	Discussion/notes	in progress
Impact to the public accounts	Apr-19	Discussion/notes	

Date of update	Date closed	Comments (Additional information)
		include discussion with OPG EY team; considerations include: guarantees including market disruption guarantee (i.e. commercial paper placed before bond deal - Province step in or immediately have it become due and payable), termination clause,kick out rights, other entities involved in transaction (OEB control); what happens if OPG can't buy the RRA asset? Comments on consultation v3 sent April 22
		for example, consider PS3070.08 and PS3420 - interorganizational gains on assets remaining in consol entity are eliminated (reduction in investment in GBE?) - current acctg is that it does not meet criteria of financial asset for OPG because buying from a ratepayer class and not an RRA because no costs incurred by Trust which leaves intangible but this then becomes an issue for the financing costs - also, how will they derecognize
sent email April 17	No examples identified to date	

Issue log - OPCD.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
Subject: Issue log - OPCD
Date: Monday, April 24, 2017 23:33:37
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Hi Nadine and Cindy:

We’ve taken a first stab at an issues log which is attached for discussion.

Speak to you tomorrow morning.

Suzie

Suzanne Gignac, Partner, CPA, CA

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Suzanne Gignac, Partner, CPA, CA

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Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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		for example, consider PS3070.08 and PS3420 - interorganizational gains on assets remaining in consol entity are eliminated (reduction in investment in GBE?) - current acctg is that it does not meet criteria of financial asset for OPG because buying from a ratepayer class and not an RRA because no costs incurred by Trust which leaves intangible but this then becomes an issue for the financing costs - also, how will they derecognize
sent email April 17	No examples identified to date	

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To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
Subject: Issue tracker
Date: Thursday, April 27, 2017 17:30:58
Attachment 1: @

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Hi Nadine:

Pls find attached an updated issue tracker which has been revised to include a list of possible white papers and related considerations. We spoke with the OPG team earlier this week so w

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---

Hi Nadine:

Pls find attached an updated issue tracker which has been revised to include a list of possible white papers and related considerations. We spoke with the OPG team earlier this week so we can provide an update on those discussions tomorrow morning as well as discuss comments on the updated version of the legislation.

I will do my best to be on the call tomorrow. If I can't though, both Blake and Lee Anne have indicated that they expect to be on the call.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

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Issue tracker OPCD Fair Hydro Act - updated April 27.pdf

OPCD - Fair Hydro Act
Risk and Issue Log

ID#		Request	Purpose
1		Support in preparing white papers	
	a	Substance of transaction - why it is being structured this way	support for document structure
	b	Document understanding of the transition of asset from RRA in IESO to Intangible in OPG and document flow of interest/admin charge component and any possible impact on Public Accts	Document support for assets
	c	Document impact of 3070 and 3420 on the transactions based on current structure and if there is no RRA	
	d	Document support for RRA accounting on Province's books if any left in IESO at a period end	
	e	What issues could take place that would result in OPG no longer controlling the structure and impact on Public Accounts	document possible impacts of changes to structure
	f	Document impact if clean energy charged deemed an unconstitutional tax	
2		Obtain logic model for legislation	Support understanding of flow of transactions and related rate setting activities
3		Obtain white paper from OPG re: acctg for structure and review from Public Accounts perspective - consider consolidation of OPG Trust, intangible asset including impact of interest component in	Additional support for structure/control/transiti on to intangible asset
4		Obtain white paper from IESO re: accounting for RRA	Additional support for structure/control/RRA
5		Read various legal documents	General comments or issues related to document
6		Reach out to global network for examples of other PS entities following RRA (following standards other than US GAAP and IFRS)	Support posifor RRA in public sector financial statements

7	Provide comments on IESO memo re: RRA accounting	Strengthen position/identify risks wrt RRA accounting

Timeline to complete	Date of update	Date closed
in progress	sent email April 17	No examples identified to-date

Comments sent
Thursday April 20

Comments (Additional information)
Individual white papers to be combined to form final document
consider market, dealers, OPG role, etc. Wait to see support from OPG paper on the substance of the transaction.

- current acctg is that it does not meet criteria of financial asset for OPG because buying from a ratepayer class and not an RRA in OPG because no costs incurred by Trust which leaves intangible but then need to explain impact of financing costs on the asset. Understand that OPG Trust will bill IESO for interest and admin costs - included in the RRA - trust will borrow to buy that RRA component. Also, consider how intangible will be derecognized. Waiting on OPG/IESO papers

including map out of entries

-waiting on IESO memo

guarantee, termination clause, kick out rights, other entities involved in transaction; consider accounting if in, say 5 years, new legislation comes along that wipes out the structure - waiting on OPG paper as base

understanding of how FAP/FP/rate setting will work together and achieve appropriate deferrals and financing along with changes to those throughout the period (year 1-5, year 6, etc.)

include discussion with OPG EY team

Comments on consultation v3 sent April 22; comments on April 26 v4 of legislation provided on April 27

Waiting for next version of IESO memo

Issue tracker.rtf

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To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
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https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1DF5C15A266170E45894733349661D6AD1110000ctsbigdcapmvs01&SavesetId=20170530615309 8~201704272131030000~Z~907445F644A21D2FB5BCEE20C91F8D01View the original item

Hi Nadine:

Pls find attached an updated issue tracker which has been revised to include a list of possible white papers and related considerations. We spoke with the OPG team earlier this week so w

Attachments:
image001.gif (8 KB)
https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1DF5C15A266170E45894733349661D6AD1110000ctsbigdcapmvs01&SavesetId=20170530615309 8~201704272131030000~Z~907445F644A21D2FB5BCEE20C91F8D01&AttachmentId=1image001.gif

Issue tracker OPCD Fair Hydro Act - updated April 27.xlsx (9 KB)
https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1DF5C15A266170E45894733349661D6AD1110000ctsbigdcapmvs01&SavesetId=20170530615309 8~201704272131030000~Z~907445F644A21D2FB5BCEE20C91F8D01&AttachmentId=2Issue tracker OPCD Fair Hydro Act - updated April 27.xlsx

Issue tracker.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
Subject: Issue tracker
Date: Thursday, April 27, 2017 17:30:58
Attachment 1: image001.gif
Attachment 2: Issue tracker OPCD Fair Hydro Act - updated April 27.xlsx

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Hi Nadine:

Pls find attached an updated issue tracker which has been revised to include a list of possible white papers and related considerations. We spoke with the OPG team earlier this week so we can provide an update on those discussions tomorrow morning as well as discuss comments on the updated version of the legislation.

I will do my best to be on the call tomorrow. If I can't though, both Blake and Lee Anne have indicated that they expect to be on the call.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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image001.pdf

Issue tracker OPCD Fair Hydro Act - updated April 27.pdf

OPCD - Fair Hydro Act
Risk and Issue Log

ID#		Request	Purpose
1		Support in preparing white papers	
	a	Substance of transaction - why it is being structured this way	support for document structure
	b	Document understanding of the transition of asset from RRA in IESO to Intangible in OPG and document flow of interest/admin charge component and any possible impact on Public Accts	Document support for assets
	c	Document impact of 3070 and 3420 on the transactions based on current structure and if there is no RRA	
	d	Document support for RRA accounting on Province's books if any left in IESO at a period end	
	e	What issues could take place that would result in OPG no longer controlling the structure and impact on Public Accounts	document possible impacts of changes to structure
	f	Document impact if clean energy charged deemed an unconstitutional tax	
2		Obtain logic model for legislation	Support understanding of flow of transactions and related rate setting activities
3		Obtain white paper from OPG re: acctg for structure and review from Public Accounts perspective - consider consolidation of OPG Trust, intangible asset including impact of interest component in	Additional support for structure/control/transiti on to intangible asset
4		Obtain white paper from IESO re: accounting for RRA	Additional support for structure/control/RRA
5		Read various legal documents	General comments or issues related to document
6		Reach out to global network for examples of other PS entities following RRA (following standards other than US GAAP and IFRS)	Support posifor RRA in public sector financial statements

7	Provide comments on IESO memo re: RRA accounting	Strengthen position/identify risks wrt RRA accounting

Timeline to complete	Date of update	Date closed
in progress	sent email April 17	No examples identified to-date

Comments sent
Thursday April 20

Comments (Additional information)
Individual white papers to be combined to form final document
consider market, dealers, OPG role, etc. Wait to see support from OPG paper on the substance of the transaction.

- current acctg is that it does not meet criteria of financial asset for OPG because buying from a ratepayer class and not an RRA in OPG because no costs incurred by Trust which leaves intangible but then need to explain impact of financing costs on the asset. Understand that OPG Trust will bill IESO for interest and admin costs - included in the RRA - trust will borrow to buy that RRA component. Also, consider how intangible will be derecognized. Waiting on OPG/IESO papers

including map out of entries

-waiting on IESO memo

guarantee, termination clause, kick out rights, other entities involved in transaction; consider accounting if in, say 5 years, new legislation comes along that wipes out the structure - waiting on OPG paper as base

understanding of how FAP/FP/rate setting will work together and achieve appropriate deferrals and financing along with changes to those throughout the period (year 1-5, year 6, etc.)

include discussion with OPG EY team

Comments on consultation v3 sent April 22; comments on April 26 v4 of legislation provided on April 27

Waiting for next version of IESO memo

KPMG - July 25 2017 Memorandum to File - August 29 2017.pdf

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Private & Confidential

Ms. Cindy Veinot
Treasury Board Secretariat, Office of the Provincial Controller
Frost Building South
7 Queen's Park Crescent East
Toronto, Ontario, M7A 1Y7
Canada

August 29, 2017

Dear Madam:

In connection with the preparation of a technical accounting paper by the Office of the Provincial Controller Division, Treasury Board Secretariat (the "OPCD") related to the Fair Hydro Plan, 2017, KPMG LLP ("KPMG") understands that the OPCD has requested that a copy of our Memorandum to File dated July 25, 2017 be provided to their accounting adviser, Ernst and Young LLP ("EY"). In regards to this request, the Independent Electricity System Operator ("the IESO") has asked that we allow EY access to our Memorandum to File prepared in connection with our audit of the 2016 financial statements of the IESO. We have received authorization from IESO management to allow EY such access to our Memorandum prepared in the course of the audit.

Our audit of the 2016 financial statements of the IESO was conducted in accordance with generally accepted auditing standards, the objective of which was to form an opinion on whether the financial statements, which are the responsibility and representations of management of the IESO, present fairly, in all material respects, the financial position and results of operations and cash flows of the IESO in conformity with generally accepted accounting principles. Under those standards, we have the responsibility, within the inherent limitations of the auditing process, to design our audit to provide reasonable assurance of detecting errors and irregularities that are material to the financial statements and to exercise due care in the conduct of our audit. The concept of selective testing of the data being audited, which involves judgment regarding both the number of transactions to be audited and the areas to be tested, has been generally accepted as a valid and sufficient basis for an auditor to express an opinion on financial statements. Thus, our audit, based on the concept of selective testing, is subject to the inherent risk that material errors or irregularities, if they exist, will not be detected. In addition, an audit does not address the possibility that material errors or irregularities may occur in the future. The conduct of an audit requires the application of professional judgment and the assessment of materiality in connection with financial statement assertions.

Our audit of the IESO's 2016 financial statements was not planned or conducted in contemplation of the preparation of a technical accounting paper related to the Fair Hydro Plan and may not be appropriate for your purposes. Items of possible interest to OPCD may not have been specifically addressed.

We have not reported on the IESO's financial statements for any period subsequent to December 31, 2016 and significant events may have occurred since that date. Our Memorandum prepared in connection therewith and our responses to EY's questions, should not be taken to supplant other inquiries

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KPMG

and procedures that OPCD should undertake for the preparation of the technical accounting paper described above or for any other purpose.

We accept no responsibility whatsoever for any reliance that OPCD, EY or any other person or body may place on the information provided by us.

In consideration of our permitting access to the Memorandum referred to above and for providing explanations relating to it if asked, and to the information contained therein, OPCD (on behalf of itself and all parties for which it is legally responsible - "the OPCD Parties") and EY agree that:

a) such access to our Memorandum and provision of information and explanations is not provided pursuant to any agreement or other arrangements of a contractually binding nature between our firm and any of the OPCD Parties or EY;

b) the OPCD Parties and EY do not acquire any rights against our firm or otherwise as a result of such access or as a result of what our Memorandum contain;

c) our firm, our partners and staff do not have any duties, responsibilities, liabilities, or obligations to the OPCD Parties or to EY as a result of permitting such access or providing such information and explanations;

d) the OPCD Parties and EY will not commence any action, suit or proceeding or make any demand, complaint or claim against us arising out of permitting such access or providing such information and explanation, or for any omission therein unless such action, suit or proceeding arises from our willful misconduct or failure to act in good faith in responding to specific questions raised by Ernst and Young.

OPCD also agrees that except as required by law, the information acquired as a result of the review of our Memorandum will be maintained in confidence and will not be disclosed to any third party (except as otherwise permitted herein) and will be used by it and EY in connection with the preparation of the technical accounting paper described above and that it will show this letter to, and secure the commitment to the provisions of this paragraph by EY.

Please confirm your agreement with the foregoing by signing and dating a copy of this letter and returning it to us.

Yours very truly

Michel Picard

Michel Picard
Partner
416) 777 -8414

KPMG

We are in agreement with the terms of this letter.

Office of the Provincial Controller Department of the Province of Ontario

by: Cynthia Veinot Oct 13, 2017

Signature: Date:

Name: Ms Cindy Veinot

Title: Treasury Board Secretariat, Office of the Provincial Controller

We acknowledge that we have read the foregoing and agree to be bound by the foregoing agreement in connection with our access to KPMG' Memorandum.

Ernst and Young LLP

by: October 10, 2017

Signature: Date:

Name:

Title:

KPMG Final report.rtf

From: Kim Marshall [Kim.Marshall@ieso.ca]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: KPMG Final report
Date: Tuesday, February 13, 2018 12:51:03
Attachment 1: IESO Final Report dated February 12 2018.pdf

---

fyi

Kimberly Marshall | VP, Corporate Services & CFO

Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202

120 Adelaide Street West, Suite 1600, Toronto, ON M5H 1T1

Web: www.ieso.ca | Twitter: IESO_Tweets | LinkedIn: IESO

Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

Conservation: www.saveONenergy.ca | Twitter: saveONenergyOnt | LinkedIn: saveONenergy

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February 13, 2018 11:05 AM
To: Kim Marshall
Subject: Final report

Hi Kim,

Please find enclosed our Accounting Opinion on the Application of PSAS to the Consolidation of a Trust, and to the Recognition and Derecognition of a Variance Account in Relation to the Ontario Fair Hydro Plan Act, 2017

Should you have any questions, please do not hesitate to contact me.

Regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
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IESO Final Report dated February 12 2018.pdf

KPMG Letter to the Independent Electricity System Operator

An Accounting Opinion on the Application of PSAS to the Consolidation of a Trust, and to the Recognition and Derecognition of a Variance Account in Relation to the *Ontario Fair Hydro Plan Act, 2017*

NOTICE OF NON RELIANCE

This Notice is regarding the accompanying Letter to provide an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust, and to the recognition and derecognition of a variance account in relation to the *Ontario Fair Hydro Plan Act, 2017* (the "**Letter**") prepared by KPMG LLP for the Independent Electricity System Operator ("Client").

The following terms apply to any review of the Letter and should you not agree to these terms, please do not review the Letter and delete copy of the same.

The Letter was prepared in connection with certain services we provided to the Client and should not be used for any other purpose or regarded as suitable for use by any person or persons other than the Client.

No one other than the Client is authorized by KPMG to rely upon any information or views expressed in the Letter. Furthermore, no one other than the Client may use or quote from this opinion without our express written consent. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as the Letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

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KPMG neither warrants nor represents that the Letter is accurate, complete, sufficient or appropriate for any purpose contemplated by you or any other person or body. You shall have no right to disclose the Letter to any other party.

Yours very truly,

KPMG LLP

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February 12, 2018

CONFIDENTIAL

Independent Electricity System Operator
120 Adelaide Street West Suite 1600
Toronto, ON M5H 1T1

The Board of Directors

Dear Sirs, Madams,

We have been engaged to provide you with an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust, and to the recognition and derecognition of a variance account in relation to Bill 132, which on June 1, 2017 created the *Ontario Fair Hydro Plan* Act, 2017 (the "FHP Act") and its subsequent regulations (the "Regulations") and amended the *Electricity Act, 1998 (the "Electricity Act")* and the *Ontario Energy Board Act, 1998 (the "OEB Act")*. This letter is being issued to the Independent Electricity System Operator ("IESO" or the "Company") in connection with its evaluation of the consolidation requirements and the accounting for the variance account under Canadian Public Sector Accounting Standards ("PSAS"). The accounting opinion is specific to the accounting by the IESO and does not relate to the accounting by another entity, including the Province of Ontario. Our engagement has been conducted in accordance with generally accepted standards in Canada for such engagements.

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific issues described below rests with management of the Company as preparers of the financial statements.

The following three issues are addressed in this letter:

Issue #1: Can the IESO apply the guidance in ASC 980 with respect to the FHP Act and the related variance account? Can the IESO recognize a regulatory asset related to the variance account created by the FHP Act?

Issue #2: Is the Fair Hydro Trust established by Ontario Power Generation Inc. (the "Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and therefore subject to consolidation by IESO?

Issue #3: What is the accounting treatment for the transfer of the regulatory asset by the IESO to the Trust? More specifically, does the transfer qualify as a derecognition event for accounting by the IESO?

KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. KPMG Canada provides services to KPMG LLP.

Issue #1: Can the IESO apply the guidance in ASC 980 with respect to the FHP Act and the related variance account? Can the IESO recognize a regulatory asset related to the variance account created by the FHP Act?

Background for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party) are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the Electricity Act. Management of the IESO has determined that the Company is an *Other Governmental Organization* and accordingly prepares its financial statements in accordance with PSAS.
2. IESO is rate regulated by the OEB in accordance with the Electricity Act and the OEB Act. The regulated operations include the recovery of the operating expenses, the smart meter activities and the commodity price of electricity.
3. *Extract from the 2016 IESO financial statements, note 3 New Accounting Policies.* "As of January 1, 2016, the IESO changed its accounting policy regarding the recognition of assets and liabilities subject to rate regulation. The change was made to better reflect the economic substance of certain types of current and future expenses that may not be directly recovered through the normal revenue requirement model. This change has been applied retroactively and has increased amounts previously unrecorded for regulatory assets and decreased amounts previously reported for accumulated deficit."
4. *Extract from the 2016 IESO financial statements, note 2(d) Summary of Significant Accounting Policies, Regulatory assets and liabilities.* "As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO applies guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations ("ASC 980")*, in this policy."
5. In its 2016 financial statements, IESO recognized two regulatory assets for unrecovered smart metering expenses and unrecovered PSAB transition items as permitted by rates approved by the OEB. In accordance with section 25.33 of the Electricity Act, IESO also recognized a regulatory asset (i.e. RPP variance account) to record all amounts receivable by it in connection with the amounts under collected from RPP consumers. Furthermore, in accordance with the OEB Act, IESO recognized a regulatory asset (i.e. RRRP variance account) and liability (i.e. OESP variance account) to record all amounts payable or receivable by it in connection with amounts under the OESP or RRRP program.
6. Relevant sections from the Electricity Act

   Section 25.33 Electricity pricing to reflect costs

   (1) *IESO to make adjustments*: The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

   (a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

   (b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017.

(3) *Exception*: Any adjustment that would otherwise be made under subsection (1) or (2) and that relates to electricity that is consumed by any of the following types of consumers shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO:

2. A consumer whose rates are determined by the Board under section 79.16 of the Ontario Energy Board Act, 1998.

3. A consumer who is a member of a class of consumers prescribed by the regulations.

(4) *Adjustments, payments, set-offs and credits*: The IESO, distributors and retailers shall,

(a) make such adjustments in their accounts as may be required or permitted by the regulations to record adjustments described in subsections (1), (2) and (3); and

(b) make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in subsection (3) or as may be required by a regulation made under this Act or the Ontario Fair Hydro Plan Act, 2017.

(5) *Variance account*: The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017.

(6) *Compliance*: The Board shall ensure that adjustments, payments, set-offs and credits required or permitted under this section are made in accordance with the regulations.

7. Relevant sections from the OEB Act

Section 78 Orders by Board, Electricity rates

(2.1) *Order re the Smart Metering Entity*: The Smart Metering Entity shall not charge for meeting its obligations under Part IV.2 of the Electricity Act, 1998 except in accordance with an order of the Board, which is not bound by the terms of any contract.

(3.3) *Rates to reflect cost of electricity*: In approving or fixing rates under subsection (3.1),

(a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 and shall ensure that the rates reflect these costs.

8. Relevant sections from the FHP Act

Section 1 Interpretation, Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.

2. The adjustment of the regulatory asset.

3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Section 7 Regulated rate consumers

(1) *First adjustments*: Despite clause 79.16 (1) (b) of the Ontario Energy Board Act, 1998, the electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates determined by the Board under this section and in accordance with the regulations.

Section 8 Other specified consumers

(1) *First adjustments*: For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made under section 25.33 of the Electricity Act, 1998 shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted by electricity vendors in accordance with the regulations and in accordance with the determinations made by the Board in accordance with the regulations.

Section 9 Determinations by Board

The Board shall make the determinations mentioned in sections 7 and 8 no later than 15 business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Section 11 Subsequent adjustments

(1) Despite clause 79.16 (1) (b) of the Ontario Energy Board Act, 1998 and subject to subsection (2), the Lieutenant Governor in Council may prescribe methodologies to be applied by the Board after April 30, 2018 for the purpose of determining,

   (a) electricity rates for regulated rate consumers; or

   (b) further adjustments to be applied by electricity vendors, in accordance with the regulations and in accordance with the Board's determinations, to the adjustments made under section 25.33 of the Electricity Act, 1998 in respect of specified consumers who are not regulated rate consumers.

Section 24 Variance account to be established, maintained

(1) IESO shall establish and maintain a variance account in which it records the following:

   1. The IESO deferral for each month.

   2. All payments received by IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

   3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

(3) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Section 25 Regulatory asset established

(1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

(3) IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Section 34 Board's Authority

(1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under the FHP Act, in the form and manner and within the time required by the Board.

(2) Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.

9. Relevant sections from the Ontario Regulations 206/17

Section 9.1 IESO to pay, remit amounts re carrying costs of financing entity

(1) During the period beginning on December 1, 2017 and ending on July 31, 2021, the IESO shall pay and remit to a financing entity any amounts charged to the IESO by the financing entity in respect of carrying costs of the financing entity during the period beginning on June 1, 2017 and ending on July 31, 2021.

(5) The IESO may grant security to a financing entity in order to secure its obligations to pay and remit present and future amounts due under this section.

Section 16 Adjustments that may be recorded by the IESO

For the purposes of paragraph 3 of subsection 24 (1) of the Fair Hydro Plan Act, the IESO shall record the following adjustments in a variance account each month:

1. All funding rebates and other amounts paid by the IESO to a financing entity during the month.
2. Any variance account balances in variance accounts established and maintained under subsection 25.33 (5) of the Electricity Act, 1998 and costs incurred in relation to the balances.
3. Any amounts paid or incurred by the IESO under section 9.1.

10. It is expected that the IESO deferral recorded by the IESO in the variance account (the regulatory asset) will be transferred to an investment interest owner (i.e. initially the Fair Hydro Trust, a trust established by OPG) on a regular basis and cash collected from the Trust at the same time. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $20 billion plus interest.

11. The IESO prepared an Ontario Planning Outlook (OPO) that informs the development of the 2017 Ontario Long-Term Energy Plan ("2017 LTEP"). Based on the 2017 LTEP issued by the Ministry of Energy, the demand for electricity is forecast to be relatively steady over the planning period (2017-2035). In the long-term, the IESO projects an increase in overall demand as electrification of the economy increases. During the planning period, the monthly residential bill for a typical customer (consumption of 750 kWh per month) will increase from $121 per month to $193 per month or an average annual increase by 2.6% before inflation.

Relevant Accounting Guidance for Issue #1

Relevant excerpts and application of ASC 980 *Regulated Operations* (the "Topic" or the "Regulated Operations Topic")

Topic 980-10-15: Scope guidance:

- Accounting requirements that are not directly related to the economic effects of rate actions may be imposed on regulated businesses by orders of regulatory authorities and occasionally by court decisions or statutes. This does not necessarily mean that those accounting requirements conform with generally accepted accounting principles (GAAP). For example, a regulatory authority may order an entity to capitalize and amortize a cost that would be charged to income currently by an unregulated entity. Unless capitalization of that cost is appropriate under this Topic, GAAP requires the regulated entity to charge the cost to current income. [980-10-05-7]
- Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP. [980-10-05-8]
- The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:
  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form.
  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. [980-10-15-2]
- The guidance in the Regulated Operations Topic does not apply to any of the following transactions:
  (a) Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.
  (b) The criterion in paragraph 980-10-15-2(a) is intended to exclude contractual arrangements in which the government, or another party that could be viewed as a regulator, is a party to a contract and is the entity's principal customer. [980-10-15-7]
- The first scope limitation of paragraph 980-10-15-7 (which is paragraph 8 in FAS 71)—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum[1]. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits

[1] The Discussion Memorandum was the document exposed by FASB prior to the finalization of FAS 71.

cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date. [Paragraph 70 of the Basis for Conclusions of FAS 71]

- Incurred Cost - A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for. [980-10-20]
- Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:
  (a) Deregulation.
  (b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.
  (c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).
  (d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [980-20-15-2]

Topic 980-340-25: Criteria for recognition of regulatory assets:

- Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
  (a) It is probable (as defined in [US GAAP Topic 450, *Contingencies*]) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.
- A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date. [980-340-25-1]

Topic 980: Other relevant provisions:

- Rate actions of a regulator can reduce or eliminate the value of an asset. If a regulator excludes all or part of a cost from allowable costs, the carrying amount of any asset recognized pursuant to paragraph 980-340-25-1 shall be reduced to the extent of the excluded cost. Whether other assets have been impaired shall be judged the same as for entities in general and the Impairment or Disposal of Long-Lived Assets Subsections of Subtopic 360-10 shall apply. [980-340-35-1]
- If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings. [980-340-40-1]
- In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period. [980-340-55-2]
- The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants. [980-340-55-3]

Analysis of Issue #1: Can the IESO apply the guidance in ASC 980 with respect to the FHP Act and the related variance account? Can the IESO recognize a regulatory asset related to the variance account created by the FHP Act?

As noted above, as of January 1, 2016, the IESO changed its accounting policy to recognize the economic impacts of rate regulation and now applies guidance from US GAAP Topic 980, *Regulated Operations*, through the GAAP hierarchy under PS 1150, as PSAS does not have any specific guidance for entities with rate-regulated activities.

IESO concluded that it met the requirements of PS 2120.02, as it is considered that the change of accounting policy in its 2016 financial statements to reflect the impacts of rate regulation resulted in a more appropriate presentation of transactions in its financial statements. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

Up until the implementation of the FHP Act, most of the commodity price of electricity was collected by IESO from the local distribution companies through the customer billing, with any over or under collection being recorded in a variance account and reflected in the next RPP rate established by the OEB. As mentioned above, the effect of the FHP Act is to defer the timing of collection from specified consumers of a total estimated amount of $20 billion (plus interest) of the commodity price of electricity over an estimated 30-year period (as opposed to being in the year the electricity was consumed). The FHP Act does not permit IESO to collect the IESO deferral before May 1, 2021 and the recovery process has been established through regulations. Such a long-term deferred recovery plan requires IESO to consider whether it continues to meet the criteria that allow IESO to use the guidance for regulated operations of Topic 980, as well as to consider whether the uncollected amounts recorded in the variance account qualify for deferral as a regulatory asset. These two accounting issues are analyzed below.

Scope of Topic 980

Topic 980-10-05 provides background as to the intent of the accounting requirements. The background indicates that while regulators may provide for a variety of mechanisms to charge rates that are intended to produce revenue to cover allowable costs, these mechanisms are not determinative of the appropriate accounting:

- Accounting requirements that are not directly related to the economic effects of rate actions may be imposed on regulated businesses by orders of regulatory authorities and occasionally by court decisions or statutes. This does not necessarily mean that those accounting requirements conform with generally accepted accounting principles (GAAP). For example, a regulatory authority may order an entity to capitalize and amortize a cost that would be charged to income currently by an unregulated entity. Unless capitalization of that cost is appropriate under this Topic, GAAP requires the regulated entity to charge the cost to current income. [980-10-05-7] (Emphasis added)

In accordance with the FHP Act, a portion of the commodity price of electricity for specified consumers is being deferred (i.e., not charged to the specified consumer as the electricity is consumed) and the recovery of those costs will be included in a period other than the period in which the costs would otherwise be charged to expense. In fact, the difference between the amounts that would have been owed by specified consumers had the FHP Act not been enacted and the amounts collected from the specified consumers as a result of the FHP Act through the market participants is being recorded by the IESO in a variance account established pursuant to section 24 of the FHP Act. In accordance with Section 25 of the FHP Act, the OEB will regulate the timing of the recovery and set the rates to ensure that the IESO can fully recover the balance recorded in the variance account established pursuant to the FHP Act. Since the OEB regulation provides an economic effect on IESO, providing IESO with certainty as to the recoverability of the FHP Act variance account, it is not subject to the scope limitation. This is consistent with 980-10-05-8 which states:

- 980-10-05-8: "Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP." (Emphasis added)

Whether a variance account is created by legislation, regulation, court, statute or rate order issued by the OEB, the accounting requirement for the recognition of a regulatory asset is that the rate charged to customers must be designed to recover the specific entity's costs (i.e. the commodity price of electricity) of providing the regulated service provided that the capitalization criteria are met under 980-340-25-1 (see analysis below). This is supported by 980-10-05-7 and -05-8 (noted above), and 980-10-15-2 (b). The latter states that this criterion is intended to be applied to the substance of the regulation, rather than its form.

- The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. [980-10-15-15-2 (b)].

Although the OEB has not yet approved the recovery of the balance recorded in the variance account, Section 25 of the FHP Act requires the OEB to set the rates payable by specified consumers to recover the balance recorded in the variance account and, therefore, it is probable that a specific recovery mechanism will be issued by the OEB. This legislation compels the OEB to set the rates and they have no discretion but to do so.

Before analyzing the criteria for the recognition of regulatory assets as prescribed by Topic 980-240-25, we need to address whether 980-10-15-7 (a) and (b) forbid the IESO from recognizing the economic effects of rate regulation.

- 980-10-15-7 (a) states "Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply."
- 980-10-15-7 (b) states "The criterion in paragraph 980-10-15-2 (a) is intended to exclude contractual arrangements in which the government, or another party that could be viewed as a regulator, is a party to a contract and is the entity's principal customer." (Emphasis added)
- Paragraph 70 of the Basis for Conclusions of FAS 71 states "The first scope limitation of paragraph 8 (which is paragraph 7 in ASC 980)—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date." (Emphasis added)

Therefore, there are two issues – first, are such economic events actually "price controls" or "contracts in general" and, second, if they are not, do such transactions meet the requirements of ASC 980 to be recognized in the regulated entity's general purpose financial statements.

With respect to the first issue, the OEB's rate setting process does not represent "price controls" as such term is intended to be applied in the standard. We note they have not been imposed in times of emergency, high inflation or other unusual conditions. Rather they have been applied in managing the timing of charging cost increases through to specified consumers for the commodity price of electricity. The FHP Act does not limit or control price increases, but rather defers the impact of specific costs for the stated period.

Said differently, this scope exemption in ASC 980 is intended to encompass situations where a regulator's response to unusual situations does not meet the hurdle of providing assurance of future benefits through probable future actions of that regulator and hence recovery of the specific entity's costs of providing the regulated services or products is uncertain. Such temporary measures are not done as part of a planned regulatory rate regime with a planned future recovery, but rather are done in the short-term without specific recovery expected. To conclude that the instant case is one of "price controls" would result in a conclusion that all rate setting processes are "price controls' which clearly is not the case.

With respect to the second part of the first issue, the fact that the energy contracts (defined as "procurement contracts" in the Electricity Act) have not been subject to prudence review by the OEB does not mean that the contracts are not subject to regulation. Determining whether the asset or group of costs (i.e. the energy contracts) is clearly specified in a rate order or other evidence that would support regulatory accounting, including the means and timing of cost recovery, is key to this analysis. Section 25.33 (1) states that the IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation, reflect amounts paid (a) to generators, the OEFC and distributors, (b) to entities with whom the IESO has a procurement contract, and (c) in connection with the FHP Act. Section 25 of the FHP Act requires the OEB to set the rates payable by specified consumers to recover the balance in the variance account. Accordingly, we believe that the energy contracts are subject to regulation.

In addition, 980-10-15-7 (b) does not apply to IESO, as neither the Province of Ontario nor the OEB is the IESO's principal customer. The customers are the specified consumers mentioned in the FHP Act.

Further one would consider the guidance in 980-10-15-2, which is the subtopic which determines whether entities with regulated operations may apply "rate-regulated accounting".

Criteria for the application (and continued use) of ASC 980 guidance

In some jurisdictions, deferred recovery plans have been adopted by regulators or legislations enacted in response to significant increases in costs (e.g. purchased power costs). These plans typically provide for rates to remain fixed or increase moderately with a variance account mechanism to capture costs in excess of the level allowed in current rates. A regulated utility subject to such plans is required to consider whether it continues to meet the criteria that allow it to use the guidance for regulated operations of Topic 980, especially criteria ASC 980-10-15-2 (b).

The IESO's regulated plan for the recovery of the balance recorded in the variance account over an estimated 30-year period is considered a deferred recovery plan as the rates for the first four years will remain effectively fixed (subject to the rate of inflation) and subsequently the rates will increase moderately with a variance account to capture commodity price of electricity that is in excess of the level allowed in current rates.

The following is an analysis of the ASC 980-10-15-2 criteria as it applies to this arrangement both at its inception and on an ongoing basis.

Criteria	Comment	Evaluation
(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO's rates for the regulated services provided to its customers are established by the OEB. IESO believes the OEB is an independent, third-party regulator to IESO. The IESO is subject to OEB's regular reviews and has no ability to influence the decisions issued by the OEB. Decisions issued by the OEB to the IESO have often denied the recovery of certain costs. The OEB states on their website the following, – *As Ontario's independent energy regulator, we make decisions and rules to ensure that consumers are treated fairly and that the energy sector is reliable and sustainable. We oversee how energy companies operate to ensure the public interest is served.* – *The Government of Ontario, through the Ministry of Energy, sets the overall policy for the energy sector. It does this mainly through laws and regulations.* – *The OEB regulates Ontario's energy sector. We ensure that natural gas and electricity companies follow the rules. As an independent government agency, our goal is to promote a sustainable, reliable energy sector that helps consumers get value from their natural gas and electricity services.* In the past decade, the independence of the OEB in relation to Hydro One and OPG has been accepted by the Auditor General of Ontario. – It is important to note that both Hydro One and OPG are classified as Government Business Enterprises and report under IFRS in their consolidated financial statements, are consolidated by the modified equity method into the province's books, are regulated by the OEB, and their respective regulatory assets and liabilities are reported in the province's books.	Met
(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Prior to the FHP Act, the rates approved by the OEB were designed to recover the IESO's operating costs and the commodity price of electricity. The effect of the FHP Act is to defer the collection of a total estimated amount of $20 billion (plus interest) of commodity price of electricity over an estimated period of 30 years. That is, it still provides for recovery of costs incurred just over a longer period of time. As mentioned above, a regulated utility subject to a deferred recovery plan is required to consider whether it continues to meet the criteria ASC 980-10-15-2 (b). This criterion requires a cause-and-effect relationship between a reporting entity's costs and its revenue. In addition, the timing of cost recovery and the related frequency of ratemaking is important. A reporting entity should consider its rate case experience, including the design of its rates and timing of	Met

Criteria	Comment	Evaluation
	recovery, when determining whether this criterion is met. These factors are analyzed below. *Frequency of rate case* – Currently, the IESO is subject to OEB's regular reviews to set the rates to recover its operating costs and the commodity price of electricity. – Although the recovery of commodity price of electricity has been frozen at the approved rate on May 1, 2017 plus inflation for the first four years, the IESO has been granted a right to recover after May 1, 2021, the IESO deferral recorded in the variance account during that four-year period. Based on Sections 24 and 25 of the FHP Act: - *A recording of the balance in the variance account is determinative of the balance, as of the time of the recording. (We note that this confirms that the costs will be considered to have been prudently incurred and there will be no additional prudence review by the OEB.)* - *Right to recover the balance recorded in the variance account.* - *Obligation on the part of the OEB to dispose the variance account in accordance with the regulation.* – Subsequent to May 1, 2021, the OEB will be required to determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account. This legislation compels the OEB and they have no discretion but to do so. - *The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* - *Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.* *Rates are designed to recover incurred costs* – There is a cause-and-effect relationship between the purchase energy costs and revenue, as IESO will be allowed to recover the costs incurred. - *A recording of the balance in the variance account is determinative of the balance, as of the time of the recording. (As mentioned above, there will be no additional prudence review by the OEB.)*	

Criteria	Comment	Evaluation
	- *Right to recover the balance recorded in the variance account.* - *Obligation on the part of the OEB to dispose the variance account in accordance with the regulation.* *Periods of alternative ratemaking (e.g., rate freezes)* Evaluation of the second criterion requires additional judgment if the regulated utility is subject to any form of ratemaking that introduces uncertainty about the cause-and-effect relationship between costs and rates. A rate freeze period is understood in the industry as a fixed rate that is charged to customers during a period of time (more than two years) and the utilities are exposed to increases in operating and energy costs with no ability to recover the variances. This is not the case as IESO has been granted the right to recover fully the IESO deferral recorded in the variance account, including that incurred in the first four-year period. – *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account. (Emphasis added)* *Costs uncertainty* As the IESO has been granted the right to fully recover the IESO deferral recorded in the variance account and the OEB is required to determine and set rates to allow for this recovery, there is no uncertainty about the recovery of the costs. *Disallowances of costs* As the IESO has been granted by legislation the right to fully recover the IESO deferral recorded in the variance account and section 24(2) of the FHP Act states that a recording of amounts in the variance account is determinative of the balance as of the time of recording, there is no risk of the potential disallowance of regulatory asset. Based on the analysis of the above factors, there is a direct cause-and-effect relationship between IESO's costs and their future collection.	
(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume	The remaining criterion is whether limitations, including considering demand levels at the approved rates, on the extent of recovery of the regulatory asset could prevent the IESO from recognizing a regulatory asset for the entire balance in the recovery right granted to the IESO.	Met

Criteria	Comment	Evaluation
that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.	The FHP Act notes that: – *Effective May 1, 2017, the IESO has a right to recover the balance in the variance account.* - *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified customers to allow for the IESO to recover the balance recorded in the variance account.* - *IESO shall not be entitled to collect the variance account from specified consumers before May 1, 2021.* Although the process, especially the timing of the recovery of the regulatory asset, has not been established yet by the OEB, the wording and intent of the legislation is clear that it is intended by law to be recoverable (over an estimated period of 30 years). Based on the 2017 LTEP issued by the Ministry of Energy, the demand of electricity is forecast to be relatively steady over the planning period (2017-2035). In the long-term, the IESO projects an increase in overall demand as electrification of the economy increases. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset from specified customers. As with the other criteria, this will need to be continuously evaluated throughout the recovery period to ensure the IESO may continue to apply the guidance in ASC 980. Furthermore, it is expected that the IESO deferral recorded in the variance account (the regulatory asset) will be transferred to the Trust on a regular basis and cash collected at the time of a transfer. As a result, the regulatory asset will be recovered over the period of time during which there are transfers to the Trust. As discussed in issue #3, the Trust does not have any recourse against IESO if amounts recovered by the Trust from specified consumers are insufficient for any reason, including for example due to insufficient demand for electricity. – *The IESO deferral recorded in the variance account for the first period to December 21, 2017 amounted to approximately $1,179,000,000 and was transferred to and paid for by the Trust on that date.*	

Thus, we are of the view that the arrangement is within the scope of Topic 980.

Criteria for the recognition of regulatory assets

Subtopic 980-340-25 provides that an entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

- It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
- Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Each of the criteria are discussed below:

Criteria	Comment	Evaluation
(a) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. *(Emphasis added)* If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.	The FHP Act and Regulations note that, – *A recording of the balance in the variance account is determinative of the balance as of the time of the recording.* – *The carrying costs paid to the financing entity for costs incurred during the period from June 1, 2017 to July 31, 2021 shall be recorded in the variance account.* – *Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.* – *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* – *The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.* The FHP Act provides that the Board shall, – *Determine the rates charged for the specified consumers (i.e. regulated rate consumers and other specified consumers).* – *Ensure that adjustments, payments, set-offs and credits required or permitted (in the variance account) are made in accordance with the regulations.* – *Determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account*.	Met

Criteria	Comment	Evaluation
	Based on the FHP Act, the IESO has the right to recover the balance recorded in the variance account, including the carrying costs, and the OEB is obligated by legislation to set rates that enable recovery of the specific costs recorded in the variance account. As a result, it is clear that the rate making by the OEB will enable IESO to recover the amount previously incurred rather than to provide for expected levels of similar future costs.	

Management conclusion

IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by the FHP Act based on the foregoing analysis.

The variance account created by the FHP Act is subject to rate regulation by the OEB and the variance account has been established with the right to collect funds against the variance amount in the future. Further, the FHP Act requires the OEB to set rates that will ensure recovery of the variance account. In these circumstances, the IESO is able to establish that a regulatory asset exists. The IESO financial statements are prepared in accordance with Canadian Public Sector Accounting Standards. Although PSAS does not provide specific guidance on rate regulated accounting, it does under PS 1150 *Generally Accepted Accounting Principles*, allow for guidance to be followed from other accounting frameworks. IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations* in its accounting policies.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur with management that the variance account created by the FHP Act meets the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1; as noted above, IESO has adopted the provisions of ASC 980 in accounting for assets and liabilities subject to regulated operations. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and concur with management that IESO should continue to use the guidance for regulated operations of Topic 980.

Issue #2: Is the Fair Hydro Trust established by Ontario Power Generation Inc. (the "Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and therefore subject to consolidation by IESO?

Background for Issue #2

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for Issue #1 are as follows:

1. Up until the implementation of the FHP Act, the IESO had the right to collect the commodity cost of electricity (including the global adjustment) monthly from ratepayers through provisions in the Electricity Act and the OEB Act. The FHP Act requires that collection of a certain portion of the monthly commodity cost of electricity be deferred and the reduced collection compared to what would have been collected without the FHP Act recorded in a variance account along with other amounts (for collection in the future from specified consumers). The FHP Act also establishes the basis for structured financing/securitization of the future right to recover the deferred commodity cost of electricity from specified consumers.
2. OPG has been appointed as Financial Services Manager under the FHP Act.
3. In connection with the FHP Act, the *Fair Hydro Trust* has been established as a financing vehicle by OPG (in its capacity as Financial Services Manager) for the purpose of financing the transfer by IESO of a specified portion of a regulatory asset to the Trust, which trust thereby acquires a corresponding investment interest in the investment asset. The Trust will acquire a specified portion of the regulatory asset from the IESO for the principal amount (i.e., the carrying value) of the specified portion of the regulatory asset being transferred in an amount equal to the amount of the specified portion (Section 26 (2) of FHP Act).
4. The Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets, and subordinated financing from OPG (which we understand will be funded mostly from equity injections from the Province of Ontario).
5. The Issuer Trustee of the Trust has appointed OPG as the Manager of the Trust, which gives OPG the responsibility of directing all of the activities of the Trust, through a services agreement as permitted by the Trust's constating documents, the FHP Act and the Electricity Act.
6. We understand that FHP 2017 Inc., a wholly-owned subsidiary of OPG, owns 99.9999% of the units of the Trust with the remaining units owned by the Issuer Trustee.
7. Relevant sections from the FHP Act

   Section 22 *Financing entities*

   (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

   (2) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

8. Relevant sections from the Management Agreement

Section 3.1 *Appointment and Authority of the Manager*

The Issuer hereby appoints Ontario Power Generation Inc. as the Manager to act as its agent to provide services and perform duties for and on behalf of and for the account of the Issuer, as hereinafter provided, in connection with the activities of the Issuer relating to:

(a) the acquisition, administration and possible transfer of the Issuer Investment Interest on behalf of the Issuer in accordance with the Act;

(b) acting as custodian of the Investment Interest Records;

(c) the entering into and execution and delivery on behalf of the Issuer of any Program Agreements;

(d) the incurrence of Issuer Funding Obligations, and repayment thereof, to fund the acquisition of the Issuer Investment Interest;

(e) the negotiation, execution and delivering or filing on behalf of the Issuer of any Offering Materials;

(f) the implementation and administration of the provisions of the Program Agreements to which the Issuer or the Manager on its behalf is a party;

(g) the acquisition, administration and sale of investments that may from time to time be made by the Issuer; and

(h) all activities as may be reasonably incidental to the foregoing or necessary in connection with the performance by the Issuer of its obligations under the Program Agreements, the Act and the Regulations.

The Manager accepts such appointment and agrees to act in such capacity and to provide or cause to be provided the services and to perform the duties set forth in this Agreement on and subject to the terms and conditions in this Agreement. The Issuer hereby grants to the Manager the power and authority to act in the name of and on behalf of the Issuer, and to execute and deliver all documents, agreements and instruments in the name and on behalf of the Issuer, for the sole purpose of providing the services and performing the duties to be provided and performed by the Manager pursuant to this Agreement. The Manager shall provide all the services and perform all the duties contemplated under this Agreement, including its duties as Financial Services Manager under the Act, in Ontario, Canada.

9. Relevant sections from the Fair Hydro Trust's Declaration of Trust

Section 1.1 Definitions

"Issuer Trustee" means Computershare Trust Company of Canada and any successor thereto appointed pursuant to Article 6.

Section 2.1 Purpose and Activities of the Trust

The purpose of the Trust is to establish and carry on activities for the exclusive benefit of the Unitholders and to distribute the Trust Property upon termination of those activities by the Trust in accordance with Article 11. The Trust is permitted to engage in any activity, undertaking, transaction or event authorized or permitted by the FHP Act (the "Trust Activities")

Section 2.2 Limitation on certain activities

Notwithstanding any other provision of this Declaration of Trust or the Management Agreement, at any time that any Funding Obligations remain outstanding, the consent of the Indenture Trustee shall be required for the Trust to:

(a) take any action to wind-up or dissolve the Trust; or

(b) institute any voluntary proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of any bankruptcy or insolvency proceedings against it, or file a petition seeking or consent to any assignment, petition, application or proceeding under any applicable bankruptcy or insolvency law, or consent to the appointment of a receiver, liquidator, assignee, trustee or other similar official of the Trust or a substantial part of its property, or make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take any similar action in respect of the Trust.

Section 2.4 Nature of the Trust

The beneficial interest and rights generally of the Unitholders in the Trust shall be limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Trust.

Section 2.5 Rights of Unitholders

No Unitholder shall be entitled to call for any partition or division of the Trust Property or for a distribution of any particular asset forming part of the Trust Property or of any particular monies or funds received by the Issuer Trustee. The legal ownership of the Trust Property and the right to conduct the activities of the Trust are vested exclusively in the Issuer Trustee, and no Unitholder has or is deemed to have any right of ownership in any of the Trust Property, except as specifically provided herein.

Section 3.7 Liability of Unitholders

No Unitholder of the Trust, in its capacity as such, will incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind, to any Person in connection with: … (ii) the obligations, liabilities, activities or affairs of the Trust …

Section 5.1 Rights and Powers of Issuer Trustee

Subject to the specific restrictions and limitations set forth in this Declaration of Trust and notwithstanding the provisions of the Trustee Act (Ontario) or any other similar legislation in any jurisdiction, the Issuer Trustee will have, without the necessity of authorization by, and free from any power or control on the part of, the Unitholders, <u>full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities</u> to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right including, without limitation, such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the Trust Activities in accordance with the Program Agreements with such powers of delegation as may be permitted by this Declaration of Trust, including the right, power and authority to amend this Declaration of Trust subject to and in accordance with the terms hereof and to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary, appropriate or desirable for the transaction of the Trust Activities, including for the administration of the Trust. (Emphasis added)

Section 5.6 Power to Borrow Money and Issue Funding Obligations

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) borrow or in any other manner raise money and to evidence the same by the issuance of Funding Obligations, by private placement, public offering or otherwise.

Section 5.15 Power to Contract

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary or desirable for the transaction of the Trust Activities and may transfer assets to such Person and, save and except for such matters as are listed in Section 2.2, delegate to such Person any or all of the discretionary powers given to the Issuer Trustee with respect to the management of the Trust Property.

Section 6.2 Removal of Issuer Trustee

The Issuer Trustee may be removed from its office under this Declaration of Trust by the Unitholders, at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date that such removal is to take effect.

Section 6.4 Appointment of New Issuer Trustee

If, pursuant to this Article 6, the Issuer Trustee resigns or a vacancy occurs in the office of the Issuer Trustee for any reason, the Unitholders may, subject to the satisfaction of the Rating Agency Condition, by instrument in writing appoint a Trust Company, which has risk-based capital of at least $50,000,000 or, in the case of an entity that is not subject to risk-based capital adequacy requirements, has a combined capital and surplus of at least $50,000,000, in order to replace the Issuer Trustee.

Section 9.3 Quorum and Voting

A quorum for any meeting of the Unitholders will be persons present being Unitholders or representing by proxy Unitholders who hold in the aggregate a majority of the total number of outstanding Units. Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Unit will be entitled to one vote at all meetings of the Unitholders. Any action to be taken by the Unitholders will, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The chairman of any such meeting will not have a second or casting vote.

Section 12.1 Termination of the Trust

(a) The Trust will continue in full force and effect for a period of twelve months from the date hereof and thereafter for so long as any Funding Obligations remain outstanding and until the Trust has satisfied all of its obligations under the Program Agreements or otherwise for the purposes of carrying on the Trust Activities. Notwithstanding the foregoing, the Issuer Trustee may, with the unanimous approval of Unitholders, wind-up the affairs of the Trust and terminate the Trust and distribute the Trust Property then remaining to the Unitholders in proportion to the number of Units held by each Unitholder no later than the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendent of Queen Elizabeth, II of England living at the date this declaration is made.

(b) Subject to Section 12.1(a), the Issuer Trustee may, with the unanimous approval of the Unitholders, wind up the affairs of the Trust and terminate the Trust.

8. Relevant section from the Trust Indenture

   Section 8.10 Termination by Indenture Trustee of Manager and Servicer

   Upon the occurrence and during the continuance of an Event of Default, the Indenture Trustee shall have the right to (and, upon receipt of an Extraordinary Resolution to that effect, shall) terminate the appointment of the then existing Manager under the Management Agreement and/or the Servicer under the Master Transfer and Servicing Agreement, and appoint new Persons under such agreements in accordance with such direction, provided that the Issuer shall have the right to reinstate any appointee under such agreements at such time as the Event of Default is no longer continuing. (Emphasis added)

Relevant Accounting Guidance for Issue #2

Relevant sections of PS 1300 *Government Reporting Entity*:

PSAS refers to government or government organizations. For the purpose of this analysis, the PSAS guidance below relating to *government* or *government organizations* should be read and understood as being the IESO. (Emphasis added below)

- The government reporting entity should comprise government components and those organizations that are controlled by the government. [PS 1300.07]
- Control is the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities. [PS 1300.08].
- Whether a government controls an organization is a question of fact that must be determined by reference to the definition of control established in paragraph PS 1300.08 and the particular circumstances of each case. The determination of the fact that control exists will require the application of professional judgment. Government achieves its objectives through a wide range of organizations which individually will fall somewhere along a continuum. At one end of the continuum, it will be clear that an organization does not have the power to act independently and is controlled by the government. At the other end, the organization will have the power to act independently and, while government will have a level of influence on the organization, it will be clear that it does not have control. Along the continuum, consideration needs to be given to the nature of the relationship between the government and the organization in order to determine whether control exists. This Section provides guidance intended to assist in this assessment. [PS 1300.10]
- In applying this guidance, it is necessary to determine the substance of the relationship between the government and the organization. The true nature of certain relationships may not be completely reflected by their legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. Where various aspects of the relationship are designed, in effect, to achieve an overall objective, they would be viewed as a whole. [PS 1300.11]
- Financial and operating policies are principles and practices that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control because it establishes the fundamental basis for the conduct of the organization's operations and the achievement of its mission and mandate. [PS 1300.13]
- There are a variety of ways to govern the financial and operating policies of an organization. For example:
  (a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;

(b) a government may direct the financial and operating policies of an organization on an ongoing basis; or

(c) a government may veto, overrule or modify the financial and operating policies established by an organization. [PS 1300.14]

– A government does not need to manage an organization's activities on a day-to-day basis to control the organization. It is the government's existing authority to determine the policies governing those activities that is important. [PS 1300.15]

– For the purposes of this Section, it is assumed that where the government has the power to govern the financial and operating policies of an organization, it expects to derive a financial or non-financial benefit. The government may also be exposed to the risk of loss. [PS 1300.16]

Analysis of Issue #2: Is the Fair Hydro Trust established by OPG (the "Trust") controlled by the IESO, according to the guidance issued under PSAS 1300 *Government Reporting Entity* and, therefore, subject to consolidation by IESO?

As part of the assessment of the accounting for the regulatory asset, an entity should consider whether the transfer of the regulatory asset discussed in issue #1 to the Trust represents a transfer to a consolidated subsidiary. Therefore, the first step in determining whether sale accounting has occurred is to determine if purchasing entity (the "transferee") is required to be consolidated by the transferor. This section address that issue.

Under PSAS, IESO is required to consolidate all entities that are considered to be part of its reporting entity, applying the guidance provided in *Section PS 1300 Government Reporting Entity.* Under PS 1300, IESO must consolidate all entities it "controls".

In order to determine whether or not the Trust should be consolidated by IESO, it must be determined whether or not the IESO exercises control as a consequence of its power to govern the financial and operating policies of the Trust, resulting in expected benefits to the IESO or the risk of loss from the activities of the Trust.

Under PS 1300.08, control is defined as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities". PS 1300.17 indicates that "whether a government controls an organization is a question of fact that requires the application of professional judgment based on the definition of control in this Section and the substance of the relationship in each case." Therefore, the determination of whether IESO is required to consolidate the Trust is based on an assessment of whether IESO is considered to control the Trust based on the indicators of control set out in PS 1300. The assessment of the IESO's control of the Trust is made based on the terms and conditions of the related arrangements in their entity, including the FHP Act and the MTSA Agreement, and the facts and nature of the relationship between the IESO and the Trust and is based on facts and assumptions provided by the IESO. PS 1300.18 and .19 set out 11 potential indicators of control. Several of these indicators have been categorized as more persuasive of a finding of control (see the first four indicators in the table below). For each indicator that applies, the degree of government influence would determine its importance as evidence of control. Finally, the indicators are considered both collectively and individually.

A detailed analysis of the 11 Indicators of control is provided in the following table.

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Primary (more persuasive) indicators (PS 1300.18):		
1. Does IESO have the power to unilaterally appoint or remove a majority of the members of the governing body of the organization?	At the request of OPG, the Issuer Trustee (Computershare) has established the *Fair Hydro Trust* to purchase the regulatory asset transferred from IESO, related financing and administrative activities, including recovery of amounts from specified consumers. The Issuer Trustee is the governing body of the Trust. However OPG, as the majority Unitholder, has the voting power to unilaterally appoint or remove the Issuer Trustee. Furthermore, the Issuer Trustee has the right to delegate all of the discretionary powers given to the Issuer Trustee with respect to the management of the Trust Property, except for the obligations listed in Section 2.2 of the MTSA Agreement related to the satisfaction of the conditions precedent for each transfer of the regulatory asset, which are considered administrative tasks or protective rights. In that respect, the Issuer Trustee has appointed OPG as the Manager, which gives OPG the responsibility of directing all of the activities of the Trust, through a services agreement as permitted by the FHP Act, the Electricity Act and the Declaration of Trust. The Management Agreement states: – *The Issuer appointed OPG as the Manager to act as its agent to provide services and perform duties for and on behalf of and for the account of the Issuer, as hereinafter provided, in connection with the activities of the Issuer…* The FHP Act states: – *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)* – *The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners. (Section 19 (1))* Section 53.1 Objects of OPG of the Electricity Act has been amended as follows: – *In addition to the objects mentioned in subsection (1), the objects of OPG include exercising the powers and rights and performing the duties and obligations assigned to it under the FHP Act, 2017 and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services. (Section 53.1 (1.1))*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	– *OPG may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects. (Section 53.1 (1.2))* The Declaration of Trust notes that: – *The Issuer Trustee will have, without the necessity of authorization by, and free from any power or control on the part of, the Unitholders, full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right… (Section 5.1)* – *The Issuer Trustee may be removed from its office under this Declaration of Trust by the Unitholders, at any time… (Section 6.2)* – *… the Unitholders may, subject to the satisfaction of the Rating Agency Condition, by instrument in writing appoint a Trust Company… in order to replace the Issuer Trustee… (Section 6.4)* – *Any action to be taken by the Unitholders will, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. (Section 9.3)* The IESO does not have any rights in respect to the appointment or replacement of the Issuer Trustee of the Trust.	
2. Does IESO have ongoing access to the assets of the organization, have the ability to direct the ongoing use of those assets, or have ongoing responsibility for losses?	IESO does not have ongoing access to the assets of the organization. Based on Section 27 of the FHP Act, once the regulatory asset is transferred to the Trust, the asset is considered "absolutely" assigned, conveyed and disposed of. That is, Section 27 of the FHP Act notes: – *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.* – *Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	– *At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* Based on the FHP Act, *upon transfer of a specified portion of the regulatory asset under section 26 to a financing entity, the investment asset resulting from the transfer is immediately vested in the Trust, free and clear of any adverse claim.* (Section 28 (2)). IESO does not have the ability to direct the ongoing use of the Trust's assets. The Issuer Trustee is the governing body of the Trust, however OPG has the power to unilaterally appoint or remove the Issuer Trustee. In accordance with the Management Agreement, OPG has been appointed the Manager of the Trust. Based on the Management Agreement of the Trust, OPG as the Manager, has been given the responsibility to direct all of the activities of the Trust. The main Unitholder (99.9999%) of the Trust is a wholly-owned subsidiary of OPG. IESO also does not have ongoing responsibility for losses incurred by the Trust. IESO does not bear the credit risk related to the collection of the investment asset; it is borne by the Unitholders of the Trust up to the amount of their investments in the Trust (total value of units, subordinated notes and junior subordinated notes) and then by the other lenders (i.e. the senior noteholders). IESO does not bear payment risk related to usage: that is, if the ratepayer base were to shrink, the exposure to a decline in collections is solely of that of the Unitholders of the Trust up to the amount of their investments in the Trust and then by the other lenders. IESO has no responsibility to compensate the Unitholders or the lenders for any loss it incurs resulting from the failure of specified customers to pay their obligations as due, whether that failure arises from credit risk or usage risk. In conclusion, upon transfer of the regulatory asset to the Trust, IESO will no longer have access/ability to direct the regulatory asset nor will it have ongoing responsibility for losses.	

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
3. Does IESO hold the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization?	In accordance with section 5.1 of the Declaration of Trust, the Issuer Trustee has without the necessity of authorization by, and free from any power or control on the part of, the Unitholders, full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right. We understand that FHP2017 Inc., a wholly-owned subsidiary of OPG, owns 99.9999% of the units of the Trust with the remaining units owned by the Issuer Trustee. IESO does not have any ownership in the Trust and does not have the power to govern the financial and operating policies of the Trust.	No
4. Does IESO have the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations?	The Declaration of Trust provides for: – *The consent of the Indenture Trustee shall be required for the Trust to take any action to wind-up or dissolve the Trust. (Section 12.1(a))* – *Subject to Section 12.1(a), the Issuer Trustee may, with the unanimous approval of the Unitholders, wind up the affairs of the Trust and terminate the Trust. (Section 12.1(b))* IESO does not have the power to dissolve the Trust.	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Other indicators that may provide evidence of control (PS 1300.18):		
5. Can IESO provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members?	As mentioned in indicator 1 above, OPG has the power to unilaterally appoint or remove the Issuer Trustee of the Trust. IESO does not provide any input in the appointment of the members of the governing body of the Trust.	No
6. Can IESO appoint or remove the CEO or other key personnel?	As mentioned under indicator 1 above, OPG has the power to unilaterally appoint or remove the Issuer Trustee of the Trust. As mentioned under indicator 2 above, OPG has been appointed as the Manager of the Trust and has been given the responsibility to direct all of the activities of the Trust. IESO does not have any rights to appoint or remove the Issuer Trustee or the Manager.	No
7. Can IESO establish or amend the mission or mandate of the organization?	The Trust has been established by the Issuer Trustee at the request of OPG (in its capacity as Financial Services Manager) and the mandate of the Trust is based on the FHP Act.	No
8. Does IESO have the right to approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis?	The FHP Act states: – *OPG is appointed as the Financial Services Manager for the purposes of this Act.* – *The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of refinancing.* OPG is the Financial Services Manager, not IESO. IESO has no ability to be involved in the preparation or approval of the business plans or budget of the Trust.	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
9. Can IESO establish borrowing or investment limits or restrict the organization's investments?	As the Financial Services Manager and the Manager of the Trust, OPG will establish the borrowing limits and the financing entities. Section 22 (1) and (2) of the FHP Act states: – *The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.* – *The Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.* Section 5.6 of the Declaration of Trust states: – *The Issuer Trustee will have the power to borrow or in any other manner raise money…* Section 3.1 of the Management Agreement states: – *The Issuer hereby appoints OPG as the Manager… to provide services… in connection with the activities of the Issuer relating to the incurrence of Issuer Funding Obligations, and repayment thereof, to fund the acquisition of the Issuer Investment Interest…* OPG, not IESO, is responsible for ensuring that the required borrowings and financing entities of the Trust meet the above conditions.	No
10. Can IESO restrict the revenue-generating capacity of the organization, notably the sources of revenue?	The Trust's source of revenue is the yield earned on its investment. That yield is influenced ultimately by the ratepayers who directly influence the payback period of the cash flows underlying the regulatory asset. IESO has no ability to restrict this source of revenue.	No
11. Can IESO establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources?	As mentioned above, the FHP Act and the Management Agreement related to the Trust granted OPG the power to establish or amend the policies of the Trust and the ability to appoint and remove the Issuer Trustee.	No

Management conclusion

IESO management concluded that the Trust is not controlled by the IESO and therefore is not subject to consolidation by the IESO.

Based on the foregoing analysis of the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity*, when considered both individually and collectively, there is no evidence of control by IESO in respect of the Trust. The IESO does not have the power to govern the Trust, nor does it have ongoing access to the Trust's assets. The IESO does not have any voting units or future rights to the Trust nor the power to dissolve the Trust. Without control, the Trust should not be subject to consolidation within the IESO financial statements.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that based on the FHP Act and the Declaration of Trust of the Fair Hydro Trust, none of the four primary (more persuasive) indicators of control are considered to be met, and none of the seven other indicators of control are considered to be met. Accordingly, we concur with IESO management that IESO does not control the Trust under the FHP Act and therefore should not consolidate the Trust.

Issue #3: What is the accounting treatment for the transfer of the regulatory asset by the IESO to the Trust? More specifically, does the transfer qualify as a derecognition event for accounting by the IESO?

Background for Issue #3

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issues #1 and 2 are as follows:

1. Fair Hydro Trust: Computershare Trust Company of Canada is the Issuer Trustee, OPG is the Financial Services Manager and Manager, and IESO is the Servicer.
2. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $20 billion plus interest and will be recorded by the IESO in a variance account recognized as a regulatory asset. The IESO deferral will include the carrying charges paid to the Trust pursuant to the Regulations for the period from June 1, 2017 to July 31, 2021.
3. The IESO does not currently have the financial capability to finance the regulatory asset and will transfer a specified portion of the regulatory asset to the Trust from time to time.
4. It is expected that the regulatory asset will be transferred to the Trust on a regular basis and the proceeds for each transfer will be received by IESO at the time of the transfer.
5. The IESO deferral recorded in the variance account for the first period to December 21, 2017 amounted to approx. $1,179,000,000 and was transferred to and paid for by the Trust on that date.
6. The IESO has obtained a written legal opinion from Stikeman Elliott LLP as to the validity and enforceability of the transfer of the investment interest in the regulatory asset.
7. Based on an assessment of control performed under the issue #2, IESO should not consolidate the Trust. We understand that an assessment of control under IFRS has been performed by OPG and they have concluded that the Trust will be consolidated by OPG; we note that the financial reporting framework used by OPG in preparing its financial statements for consolidation into the Province's books is IFRS.[2]
8. Relevant sections from the FHP Act

   Section 15 Determination of clean energy adjustment

   Financial Services Manager to determine

   (1) The Financial Services Manager shall determine the CEA payable by all specified consumers in respect of each month in a reference period by taking the following steps:

      1. Calculate the sum of the following:
         i. The estimated finance amount in respect of the reference period.
         ii. The true up amount in respect of the reference period.
      2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

[2] Our views that IESO does not control OPG Trust, and thus, should not consolidate OPG Trust are not dependent upon the conclusions reached by the OPG as to whether OPG should consolidate OPG Trust. It is a helpful fact, but not a necessary fact for our conclusion regarding IESO's accounting relationship to OPG Trust.

Regulations re true up amount

(2) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

i. differences between the estimated and actual finance amount for the applicable reference period,

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

iii. variations in billings due to variations in electricity consumption.

Section 16 IESO to receive amounts

(1) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations.

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners.

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

Section 26 Transfer of regulatory asset

(1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the investment interest.

Section 27 Validity of transfer

(1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

Section 29 Investment asset, irrevocable rights and interests

(1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.
2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.
3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.
4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.
5. The right to enforce the duties and obligations under this Act of each electricity vendor and the IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.
6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.
7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Section 30 Transfer of investment interest

(2) An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Section 31 Validity of transfer

(1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the transferee a valid property right and interest in, to and under the applicable investment interest acquired in accordance with the terms of the transfer.

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest subject to the transfer, including all rights to the investment interest arising after the transfer.

Section 32 Investment interest owner may grant security interest

(1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

(3) All provisions of the Personal Property Security Act shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

9. Relevant sections from Regulation 429/04

Section 10.2 Determination of rate re IESO security

The IESO shall, in respect of each month, determine the rate payable by specified consumers in respect of the costs incurred by the IESO to fulfil its obligations, if any, under an agreement with a financing entity to provide security by dividing the costs it incurred in respect of the month for the security by the monthly total net volume of electricity consumed by specified consumers calculated under section 10.1.

10. Relevant sections from the Ontario Regulation 206/17

Section 1 (1) Definitions

"Financing entity expense" includes,

(a) fees, including fees charged by the Financial Services Manager, charges, costs, indemnities, reimbursements, other amounts incurred or committed to, by or on behalf of a financing entity as a result of an activity authorized or permitted under the Act, and

(b) any taxes on amounts mentioned in clause (a);

"Funding cost" means interest, commitment fees or other similar costs payable by or on behalf of a financing entity in respect of funding obligations, including a derivative payment.

Section 6 Determining true up amount

(3) The true up amount in respect of a reference period or a portion of the reference period shall be determined, as follows: T = (A − B) + C

where,

T = the true up amount in respect of the period of time,

A = the aggregate of the finance amounts in respect of all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

B = the aggregate of all amounts of the clean energy adjustment remitted to or for the benefit of the investment interest owners during all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

C = the amount representing reasonably foreseeable differences between the amounts to be invoiced in respect of the clean energy adjustment and the amounts to be remitted by the IESO

to the investment interest owners in respect of the invoices due to various factors, including those mentioned in subparagraphs 2 ii and iii of subsection 15 (2) of the Act.

Section 9.1 IESO to pay, remit amounts re carrying costs of financing entity

During the period beginning on December 1, 2017 and ending on July 31, 2021, the IESO shall pay and remit to a financing entity any amounts charged to the IESO by the financing entity in respect of carrying costs of the financing entity during the period beginning on June 1, 2017 and ending on July 31, 2021. The IESO may grant security to a financing entity in order to secure its obligations to pay and remit present and future amounts due under this section.

11. Relevant sections from the Master Transfer and Servicing Agreement (the "MTSA Agreement") signed between IESO and the Trust

Section 1 (1) Definitions

"Collection Account" means an Eligible Deposit Account established by the Issuer for the purpose of receiving the Issuer Share of the Servicer CEA Receipts.

"Remittance Date" means, in respect of each Billing Period, the 18th Business Day following the last day of each Billing Period.

Section 3.4 Clean Energy Adjustments and Electricity Vendors

(a) The Servicer shall prior to receiving Servicer CEA Receipts, establish an Eligible Deposit Account (the "IESO Segregated Account") bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer…

(e) As agent of the Issuer … receive Electricity Vendor CEA Collections from Electricity Vendors.

(f) As agent of the Issuer ... receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.4(e), the "Servicer CEA Receipts");

(g) Deposit the Servicer CEA Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within two Business Days of receipt by the Servicer and the Issuer Share of such Servicer CEA Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section 3.6;

(l) Hold the Issuer Share of Servicer CEA Receipts and the Issuer Share of any other proceeds in respect of the Clean Energy Adjustment received by it in trust for the benefit of the Issuer and remit such amounts in accordance with Section 3.6 without any surcharge, fee, offset, charge or other deduction.

Section 3.6 Remittance

(b) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer and any interest earned thereon received on or subsequent to a Remittance Date shall be remitted by the Servicer to the Collection Account no later than the immediately following Remittance Date.

(c) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on the second following Business Day.

Section 3.7 Reimbursement of Servicer

The Issuer shall reimburse the Servicer for its direct costs relating to the performance by the Servicer of its duties and obligations hereunder and that are not otherwise recovered by the Servicer pursuant to sections 25.1(1) and 25.1(2) of the Electricity Act, 1998, which direct costs the IESO shall have no obligation to seek recovery for under sections 25.1(1) and 25.1(2) of the Electricity Act, 1998; provided, however, that this Section 3.7 shall not apply to any costs relating to the performance by the Servicer of its duties and obligations under the Act or the Regulations, including, for greater certainty the Servicer's obligations to pay monthly Carrying Costs.

Section 3.8 Limits to Obligations

Notwithstanding anything to the contrary in this Agreement, the parties hereto agree that the duties, liabilities and obligations of IESO under this Agreement are limited as provided in this Section 3.8.

(a) IESO is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.

(b) IESO is not responsible to confirm, verify or audit the amount of the Clean Energy Adjustment invoiced by Electricity Vendors or the Electricity Vendor CEA Collections collected by Electricity Vendors and reported to the IESO.

(c) IESO is not responsible for enforcing the obligations of Specified Consumers to pay, or the obligations of Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts, or to establish a segregated account into which Electricity Vendor CEA Collections are to be deposited, and IESO is under no obligation to initiate or prosecute any legal action relating to the collection of the Clean Energy Adjustments or the Issuer Investment Interest.

(d) IESO is not responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the FHP Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.

(e) IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Issuer Investment Interest, the collectability of the Issuer Share of Servicer CEA Receipts or that the Issuer Share of Servicer CEA Receipts will be sufficient to satisfy the Issuer's Funding Obligations.

(f) IESO may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.

(g) IESO shall have no liability or responsibility to any Person in respect of any forecasts or other information provided pursuant to Section 3.2, provided only that such forecasts or other information has been prepared and provided in good faith.

(h) None of the directors, officers, employees or agents of IESO shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment.

Section 3.15 IESO Security for CEA Remittances

The IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, security for any failure of Non-Investment Grade Rated Electricity Vendors to remit their Electricity Vendor CEA Collections in the form of (x) a letter of credit from a provider that satisfies the Rating Agency Condition and with a term extending to the first day of the immediately following calendar year, or (y) a performance guarantee or such other form of security as may be acceptable to the Issuer and that satisfies the Rating Agency Condition.

Section 8.7 Limitations on Rights of Third Parties

The provisions of this Agreement are solely for the benefit of the IESO and the Issuer, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

12. Relevant sections of the Security Agreement signed between IESO and the Fair Hydro Trust

Under Regulation 206/17 made under the FHP Act, the Grantor (ie. IESO) is required to pay to the Secured Party during the period beginning on December 1, 2017 and ending on July 31, 2021 the Carrying Costs of the Secured Party incurred during the period beginning on June 1, 2017 and ending on July 31, 2021 (the “Statutory Obligation”).

Section 2.1 Grant of Security Interest

As general and continuing security for the payment of the Statutory Obligation, the Grantor hereby grants a security interest to the Secured Party…

Relevant Accounting Guidance for Issue #3

ASC 980 *Regulated Operations*

- The Derecognition Section of ASC 980-20-40 provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation. [ASC 980-20-40]
- Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:
  (a) Deregulation.
  (b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.
  (c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).
  (d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [ASC 980-20-15-2]

PS 1000 *Financial statement concepts*

- This Section is to be used by preparers and auditors of financial statements in exercising their professional judgment as to the application of generally accepted accounting principles and in establishing accounting policies in areas in which accounting principles are developing. [PS 1000.03]
- Financial statements should communicate information that is relevant to the needs of those for whom the statements are prepared, reliable, comparable, understandable and clearly presented in a manner that maximizes its usefulness. [PS 1000.24]
- An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [PS 3210.04]. Thus, for example, an item does not qualify as an asset of a government if the item involves:
  (a) no future economic benefit;
  (b) future economic benefit, but the government cannot obtain it; or
  (c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred. [PS 1000.37]

PS 3050 *Loans receivable*

- A loan receivable should be removed from a government's statement of financial position when it has been repaid, the risks and rewards associated with the loan have been transferred, the right to repayment has expired or been waived, or it is written off. [PS 3050.28]

PS 3210 *Assets*

- Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. [PS3210.03]
- Assets have three essential characteristics:
  (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.
  (b) The public sector entity can control the economic resource and access to the future economic benefits.
  (c) The transaction or event giving rise to the public sector entity's control has already occurred. [PS 3210.04]
- Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not. [PS 3210.22]

PS 3430 *Restructuring transactions*[3]

- Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date. [PS 3430.21]
- When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether: [PS 3430.24]

  (a) derecognition of the asset and liability transferred would be appropriate; and

  (b) its continued involvement gives rise to a new asset or new liability that needs to be recognized.
- A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients. [PS 3430.25]

KPMG Insights into IFRS, 14th Edition 2017-2018, Section 7.5.220.10 *Structural and other liquidity risks*

- Structural liquidity risk arises primarily in securitisations when there is a mismatch between the cash inflows from financial assets and cash outflows on financial liabilities. It is important to differentiate structural liquidity risk from late-payment and default risk. For example, in a securitisation structural liquidity risk may arise because of variability in the timing of defaults on the assets whereby the structured entity that has issued securities to investors does not have enough cash to meet its obligations. This variability can arise without altering the cumulative expectation of defaults on the portfolio. In our view, this risk is not inherent in the financial asset transferred, but arises as a result of the structure of the transaction. Consequently, we believe that this risk should not be included in the risks and rewards analysis.

Deloitte, Securitization Accounting, 10th Edition January 2017, Chapter 4 *How do securitizations fare under IFRS? Page 41*

- The overall securitization has liquidity risk associated with the fact that there is a mismatch in the timing of cash inflows and outflows. It is important to recognize that liquidity risk arising in the structured entity from differences in the contractual timing of cash flows of the assets and the notes issued to acquire the assets is not part of the transferred assets. This compares to late payment risk and credit default risk which is inherent in the assets. However, if the asset pays late, the transferee may not be able to meet its obligations under the notes. This liquidity risk only arises when the assets are placed inside the securitization structure. The liquidity risk associated with late payment risk is therefore not included in the transferor's risk and rewards assessment in determining derecognition for the transferor.

[3] This Section applies to fiscal years beginning on or after April 1, 2018. […] Earlier adoption is permitted."

Analysis of Issue #3: What is the accounting treatment for the transfer of the regulatory asset by the IESO to the Trust? More specifically, does the transfer qualify as a derecognition event for accounting by the IESO?

Before discussing whether the transfer qualifies for derecognition of the regulatory asset, we must determine the nature of the item being transferred. The IESO has recorded on its balance sheet a regulatory asset under PSAS representing the right to recover various cash costs incurred through the inclusion of those costs in the rate charged to specified consumers. Legally, the transfer is of a regulatory asset pursuant to which the financing entity will acquire a corresponding investment interest in the investment asset (Sections 26 and 27 of the FHP Act). The question is whether the regulatory asset and the investment interest in the investment asset are the same or substantially the same for purposes of the derecognition analysis. In considering this question, it is necessary to look to the FHP Act which establishes what constitutes the investment interest. Section 29 (1) thereof provides that the investment interest comprises a current and irrevocable property right and interest consisting collectively of the following, among other rights: the right to receive, collect and recover the clean energy adjustment ("CEA") from specified consumers; the right to enforce duties and obligations of the electricity vendors to charge and invoice the CEA; and all revenue, collections, claims, payments, money and proceeds derived from these rights regardless of whether they are commingled. Given that the rights of the investment interest owners comprise the entirety of the economic substance and risks of the regulatory asset as recognized by the IESO, we are of the view that they are the same. Accordingly, although legally the transfer is of the regulatory asset pursuant to which the financing entity acquires a corresponding investment interest, we view the substance as being the same as a transfer of the regulatory asset, which leads us to the analysis below as to whether the transfer qualifies as a derecognition event from an accounting perspective.

For clarity, in the discussion below we will use the term 'regulatory asset' to refer to the investment interest.

ASC 980 does not provide clear detailed guidance for the derecognition of a regulatory asset other than in connection with the discontinuation of rate-regulated accounting. However, ASC 980-20-40 provides general principles for the derecognition of assets:

- *Derecognition Section provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation.*

In the context of this limited guidance alone, we could conclude that IESO should derecognize the regulatory asset when it transfers the regulatory asset and the corresponding investment interest is acquired by the Trust, given the following provisions of the arrangement and related legislation:

FHP Act, Section 27 (1) (2) (Emphasis added below):

- *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.*
- *Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.*

Further, pursuant to Sections 30 and 32 of the FHP Act, the investment interest owner (i.e. the transferee) has the right to either sell its investment to another investment interest owner or to grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation. The ability to do so provides additional evidence that the transferee may realize its asset without any involvement by IESO.

It should also be noted that PSAS provides limited guidance on derecognition of financial assets. PS 3050 *Loans receivable*:

- *A loan receivable should be removed from a government's statement of financial position when it has been repaid, the risks and rewards associated with the loan have been transferred, the right to repayment has expired or been waived, or it is written off.*

As noted in Section 27(1) and (2) of the FHP Act, the asset has been absolutely assigned, conveyed and disposed of; the transfer is not merely to effect a security interest.

In addition, PS 1000 *Financial statement concepts* and PS 3210 *Assets* provide general guidance on the recognition and derecognition of an asset:

- *An item does not qualify as an asset of a government if the item involves:*
  - *(a) no future economic benefit;*
  - *(b) future economic benefit, but the government cannot obtain it; or*
  - *(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred.*

These considerations are discussed further below, as relevant.

Furthermore, it should also be noted that PSAS provide limited guidance on derecognition of non-financial assets. Section 3430 *Restructuring transactions,* which is applicable for fiscal years on or after April 1, 2018 with early application permitted, has guidance for the derecognition of assets.

- *Individual assets… transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets… and applicable recognition criteria at the restructuring date.*
- *When a transferor continues to be involved in the individual assets … it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the [definition] of assets … and applicable recognition criteria to evaluate whether derecognition of the asset transferred would be appropriate and whether its continued involvement gives rise to a new asset or new liability that needs to be recognized.*

Recognizing the proposed transaction is not a restructuring transaction, Section 3430, which has recently been issued by PSAB, provides current evidence of thinking in the application of the general PSAS principles in respect to the recognition and derecognition of assets.

Accordingly, the analysis as to whether the regulatory asset transferred to the Trust can be derecognized is based on the foregoing guidance.

Criteria for the recognition of an asset

PS 3210.03 states that assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. More generally, PS 1000.37 suggests that an asset would no longer be recognized if it fails to meet the definition of an asset:

Criteria	Comment	Evaluation
Assets (PS 3210.04/ PS 1000.36) (Emphasis added)*:* Assets have three essential characteristics: (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (b) The public sector entity can control the economic resource and access to the future economic benefits. (c) The transaction or event giving rise to the public sector entity's control has already occurred. *Financial statement concepts (PS 1000.37):* An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [see above]. Thus, for example, an item does not qualify as an asset of a government if the item involves: (a) no future economic benefit (b) future economic benefit, but the	Based on the accounting guidance, the regulatory asset transferred to the Trust does not qualify as an asset of IESO if they cannot obtain the future economic benefits. PS 1000 *Financial statement concepts* and PS 3210 *Assets* state that: – *… an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.* – *Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not.* Upon transfer of the regulatory asset, the IESO has no further rights or obligations in connection to the asset transferred, other than the contractual obligation to act as the Servicer of the asset transferred and the security granted to the Trust discussed below. Interest earned on the cash collected by IESO as the Servicer is required to be transferred to the Trust. The Trust has provided to the Indenture Trustee a security over the regulatory asset acquired from the IESO. The Trust has the right to sell the acquired regulatory asset to other parties. These conclusions are supported by the FHP Act, the MTSA Agreement and Stikeman Elliott LLP. The FHP Act notes that: – *IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.* – *Upon receipt by IESO of the payment by the financing entity, IESO shall retain no further right, title or interest in the corresponding investment interest.* – *A transfer of a specified portion of the regulatory asset under Section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.* – *Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.*	Not an asset of the IESO

Criteria	Comment	Evaluation
government cannot obtain it.	– *At the time a transfer of the regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* – *An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.* The MTSA Agreement notes that: – *IESO shall establish an Eligible Deposit Account bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer.* – *IESO shall remit the CEA Receipts received and any interest earned thereon to the Trust.* – *The duties, liabilities and obligations of IESO under the MTSA Agreement are limited, especially that the IESO is not responsible for any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.* There is no contractual restriction preventing the Trust from selling or pledging the regulatory asset acquired from IESO. In fact, the Trust has granted a security interest over all its right, title and interest in, to and under the investment interest to the Indenture Trustee to secure future funding obligations. Furthermore, the Trust has the right to sell the asset to another party in accordance with the Financing Plan (which is to be established by OPG as the Financial Services Manager). The FHP Act notes that: – *Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.* – *An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner.* – *An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.* Although not specifically a requirement in PSAS, in determining whether a transfer has been substantively effected in a securitization transaction, other accounting frameworks consider whether a transfer would survive the possibility of bankruptcy of the transferor, regardless of how	

Criteria	Comment	Evaluation
	remote insolvency may appear given the transferor's credit standing at the time of securitization, and irrespective of an entity's credit rating. That is, whether creditors of the transferor would have rights to the transferred assets in a bankruptcy claim. Put differently, would the transfer be undone if the transferor were to become a bankrupt. In that respect, IESO has obtained a legal opinion from Stikeman Elliott LLP. Paragraphs 12 and 13 of the legal opinion state that: – *The transfer by the IESO of the specified portion of the regulatory asset provided for in the Initial Transfer Notice would not be declared void or be set aside by a court as a preference or a fraudulent conveyance upon the application of a Creditor pursuant to the applicable preferences and fraudulent conveyances provisions of any of the Insolvency Statutes and would not be held by a court to constitute a transfer at undervalue under the Insolvency Statutes.* – *The Trust is a separate entity from the IESO, and absent an agreement to the contrary or a further transfer of the investment interest, (i) in a bankruptcy or insolvency proceeding under the Insolvency Statutes in relation to the IESO, the corresponding investment interest would not constitute property of the IESO within the meaning of the applicable Insolvency Statutes (ii) the Trust would not be legally responsible for the general obligations of the I ESO and (iii) creditors of the IESO could not look successfully to the corresponding investment interest to satisfy a claim which they may have against the IESO.* Based on the above facts, and on the FHP Act, MTSA Agreement and the legal opinion, it is clear that IESO will have no rights to the economic benefits associated with the future cash inflows related to the regulatory asset transferred to the Trust - it will have transferred its right to recover the IESO deferral to the Trust. Further, it is also clear that IESO will lose control over the regulatory asset once it is transferred to the Trust.	

As mentioned above, and recognizing the proposed transaction is not a restructuring transaction, Section 3430 provides guidance by analogy, on how to account for and report restructuring transactions by transferors of assets. PS 3430.24 requires an entity to assess whether it should continue to recognize an asset (legally) transferred when a transferor continues to be involved in the individual assets it transferred to a recipient subsequent to the restructuring date. However, PS 3430.24 provides no guidance to help a preparer assess whether the continuing involvement is of the type to prohibit derecognition. However, both US GAAP and IFRS have guidance to which we have looked to assist in the application of PS 3430 for both the continuing involvement condition (US GAAP and IFRS) and the risk/rewards analysis (IFRS).

Criteria	Comment	Evaluation
Restructuring transactions (PS 3430.24): When a transferor continues to be involved in the individual assets…it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets…and applicable recognition criteria to evaluate whether: (a) derecognition of the asset…transferred would be appropriate; and (b) its continued involvement gives rise to a new asset or new liability that needs to be recognized. [PS 3430.24] *(PS 3430.24):* A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred	By analogy to PS 3430, one assesses whether the regulatory asset transferred to the Trust should be derecognized and whether a new asset or liability arises due to the IESO's continued involvement in the collection of the regulatory asset transferred to the Trust. Based on the analysis above, the derecognition of the asset is appropriate subject to further assessment of the three issues mentioned below. Based on an analysis of the MTSA Agreement and the Regulations, we have identified three additional items of continued involvement that need to be assessed: the security granted by the IESO to the Trust, the carrying costs to be paid by the IESO during the period to July 31, 2021, and the IESO's costs incurred as the Servicer. *Security granted to Trust* The issue is whether the security granted to the Trust would not allow the IESO to derecognize the regulatory asset transferred to the Trust. Before addressing the security granted to the Trust, it should be noted that the FHP Act allows the Trust to recover from the specified consumers, through the true up mechanism, any CEA amount uncollected, including the CEA amount collected by the Electricity Vendors but not remitted to IESO. Section 15 of FHP Act and the Regulation 206/17 note that: – *The Financial Services Manager shall determine the CEA payable by all specified consumers in respect of each month in a reference period by taking the following steps:* *1. Calculate the sum of the following:* *i. The estimated finance amount in respect of the reference period.* *ii. The true up amount in respect of the reference period.* *2. Divide the sum calculated under par. 1 by the number of months in the reference period.*	Derecognition criteria met; No new asset or liability to recognize

Criteria	Comment	Evaluation
(for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients. [PS 3430.25]	– *The determination of the true up amount should take into account historical and reasonably foreseeable,* i. *differences between the estimated and actual finance amount for the applicable reference period,* ii. *differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and* iii. *variations in billings due to variations in electricity consumption. (Emphasis added)* Furthermore, the MTSA Agreement states that: – *The duties, liabilities and obligations of IESO under the MTSA Agreement are limited, especially that the IESO is not responsible for any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.* In fact, the purpose of the security is to address the liquidity risk related to the failure of *Non-Investment Grade Rated Electricity Vendors to remit their Electricity Vendor CEA Collections*. As a result, IESO is required to provide security to the Trust pursuant to Section 3.15 of the MTSA Agreement as follows: – *The IESO shall provide to the Trust, security for any failure of Non-Investment Grade Rated Electricity Vendors to remit their Electricity Vendor CEA Collections in the form of (x) a letter of credit from a provider that satisfies the Rating Agency Condition and with a term extending to the first day of the immediately following calendar year, or (y) a performance guarantee or such other form of security as may be acceptable to the Issuer and that satisfies the Rating Agency Condition.* The amount of the security is estimated at around $100 million based on the formula described in Section 3.15. As discussed above, recognition and derecognition of assets under PSAS is based on a risks and rewards model. When performing an assessment for the derecognition of an asset in a securitization arrangement, we look at the risks and rewards associated with ownership of the asset. Those are risks that are inherent in the asset that is being transferred prior to its transfer. For example, 'late-payment risk' (i.e., the risk that the asset's obligor does not pay its obligation as due) is considered in the risks and rewards analysis. However, late payment by the transferor of cash collected, is not thought as	

Criteria	Comment	Evaluation
	a risk or reward associated with the transferred asset as it is not a risk or reward that was inherent in the asset prior to its transfer. The default risk contemplated in the security relates to the Electricity Vendors not remitting received CEA Receipts to IESO. It is not a security against the failure of the specified consumers to remit amounts due to the Electricity Vendors. There is no guidance on this issue under PSAS and limited guidance under other accounting frameworks on this issue. In our view, the risk of the Electricity Vendors not paying the cash it has collected is not inherent in the asset transferred, but arises as a result of the structure of the transaction. We believe that this risk is more analogous to structural liquidity risk. As noted earlier, PSAS has no guidance on the assessment of the risk and reward analysis, particularly as it relates to the security. IFRS, given its risk/rewards criterion (as the first step in determining whether derecognition has been achieved) has guidance to which one may analogized. KPMG and Deloitte[4] provide guidance on the accounting implications structural liquidity risk of securitization transactions. KPMG Insights into IFRS, 14th Edition 2017-2018, Section 7.5.220.10 states: – *It is important to differentiate structural liquidity risk from late-payment and default risk.* – *For example, in a securitization structural liquidity risk may arise because of variability in the timing of defaults on the assets whereby the structured entity that has issued securities to investors does not have enough cash to meet its obligations. This variability can arise without altering the cumulative expectation of defaults on the portfolio. In our view, this risk is not inherent in the financial asset transferred, but arises as a result of the structure of the transaction. Consequently, we believe that this risk should not be included in the risks and rewards analysis.* Furthermore, it should be noted that the IESO has been granted a right to recover any cost incurred related to the security from the specified consumers. A provision has been added to Section 10.2 of Regulation 429/04, which will come into force in 2021, which is when the IESO's security will be put in place: – *The IESO shall, in respect of each month, determine the rate payable by specified consumers in respect of the costs incurred by the IESO to fulfil its obligations, if any, under an agreement with a financing entity to provide security…*	

[4] In our survey of PWC's and EY's publicly available guidance, we found no guidance on structural liquidity risk.

Criteria	Comment	Evaluation
	Consequently, we believe that the structural liquidity risk should not be included in the risks and rewards analysis. *Carrying costs incurred by the Trust* The issue is whether a financial liability should be recognized on Day 1 for the carrying costs to be paid by the IESO during the period to July 31, 2021. The carrying costs include the funding cost (interest) and the financial entity expenses (operating costs incurred by the Trust). Section 9.1 of Ontario Regulation 206/17 notes that: – The IESO shall pay and remit to the Trust any amounts charged to the IESO by the Trust in respect of carrying costs of the Trust during the period from June 1, 2017 to July 31, 2021. – The IESO may grant security to the Trust in order to secure its obligations to pay and remit present and future amounts due under this section. – The carrying costs include the funding cost (interest, commitment fees or other similar costs payable by the Trust in respect of funding obligations), as well as the financial entity expenses (operating costs incurred by the Trust). *Financial entity expenses.* In our opinion, the operating costs incurred by the Trust are period costs, and no accrual should be made in advance of payment for these expenses as the operating costs incurred by the Trust which give rise to the payment requirement have not occurred yet. *Funding cost*. In our opinion, a financial liability should be recognized to cover the funding cost for the period from June 1, 2017 to July 31, 2021 only if there is a contractual obligation between the IESO and the Trust. The obligation to pay for the funding cost has been established by the Ontario Regulation 206/17 instead of a contractual obligation between the IESO and the Trust. As a result, there is no requirement to set up a financial liability on the derecognition of the regulatory asset transferred to cover the funding cost. A financial liability will be recognized when the carrying costs are invoiced by the Trust to the IESO.	

Criteria	Comment	Evaluation
	Costs of the IESO as the Servicer PS 3430.24 notes that "a new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred." Other accounting frameworks (US GAAP and IFRS) have identified a requirement to consider whether as a result of a requirement to service transferred financial asset there exists a servicing asset or liability. In this instance, IESO is required to service the transferred investment interest. Thus, there is an issue as to whether a servicing liability should be recognized on Day 1 given that the IESO is not receiving any additional compensation for servicing. Under these other accounting frameworks, when there is no servicing fee specified, or the fee to be received is not expected to compensate the entity adequately for performing the servicing, a liability for the servicing obligation is recognized at fair value. The MTSA Agreement notes that: – *The Issuer shall reimburse the Servicer for its direct costs relating to the performance by the Servicer of its duties and obligations hereunder…* As a result, since the IESO will be adequately compensated for performing the servicing, there is no requirement to recognize a liability for the servicing obligation. That is, as the IESO will be adequately compensated for the servicing activities it performs in the future, and as both sides of this future transaction are equally unfulfilled (i.e., servicing by IESO and obligation of the Trust to compensate IESO for that servicing), no liability would be recognized on Day 1.	

Management conclusion

IESO management has concluded that the regulatory asset should be derecognized upon transfer of the investment interest in the regulatory asset to the Trust.

The transfer of a specified portion of a regulatory asset transfers the control and the benefits associated with the right to collect cash flows in the future arising in investment asset acquired by the Trust. This will eliminate the IESO regulatory asset in the amount of the transfer to the Trust as the IESO will no longer control an economic resource or have access to future economic benefits of that asset. The funds collected from the transfer will in turn reduce the associated debt held by the IESO, maintaining the IESO's net $ nil balance in the market accounts.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur with management's conclusion that the regulatory asset should be derecognized on transfer to the Trust as IESO no longer has rights or future economic benefits associated with the asset.

Other Matters

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific transactions rests with management as preparers of the financial statements. Our judgment on the appropriate application of PSAS for the specific transaction is based solely on the facts, circumstances and assumptions provided to us as described above. Should these facts and circumstances differ, our conclusion may change.

The opinions expressed herein are as of the date of this letter only and as such we assume no obligation to update or supplement such opinion to reflect any facts or circumstances that may come to our attention after that date or any changes in generally accepted accounting principles, including but not limited to US GAAP, PSAS or IFRS that occur or become effective after that date.

This letter is intended solely for the information and use of the Board of Directors and management of the Company, and is not intended to be and should not be used, quoted, relied upon by, or otherwise referred to by anyone other than these specified parties or for any other purpose without our express written consent.

No one other than the Board of Directors and management of the Company is authorized by KPMG to rely upon any information or views expressed herein. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as this letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

Yours very truly,

Michel Picard
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mpicard@kpmg.ca

KPMG Final report.pdf

From:	Kim Marshall
To:	Veinot, Cindy (TBS)
Subject:	KPMG Final report
Date:	February 13, 2018 11:51:14 AM
Attachments:	IESO Final Report dated February 12 2018.pdf

fyi

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From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: February 13, 2018 11:05 AM
To: Kim Marshall
Subject: Final report

Hi Kim,

Please find enclosed our Accounting Opinion on the Application of PSAS to the Consolidation of a Trust, and to the Recognition and Derecognition of a Variance Account in Relation to the Ontario Fair Hydro Plan Act, 2017

Should you have any questions, please do not hesitate to contact me.

Regards,

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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Our lawyers have recommended that we provide certain disclaimer language with our messages. Rather than including them here, we're drawing your attention to the following links where the full legal wording appears.

- **Disclaimer concerning confidential and privileged information/unintended recipient** (http://disclaimer.kpmg.ca).
- **Disclaimer concerning tax advice** (http://taxdisclaimer.kpmg.ca).

If you are unable to access the links above, please cut and paste the URL that follows the link into your browser.

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IESO Final Report dated February 12 2018.pdf

KPMG Letter to the Independent Electricity System Operator

An Accounting Opinion on the Application of PSAS to the Consolidation of a Trust, and to the Recognition and Derecognition of a Variance Account in Relation to the *Ontario Fair Hydro Plan Act, 2017*

NOTICE OF NON RELIANCE

This Notice is regarding the accompanying Letter to provide an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust, and to the recognition and derecognition of a variance account in relation to the *Ontario Fair Hydro Plan Act, 2017* (the "**Letter**") prepared by KPMG LLP for the Independent Electricity System Operator ("Client").

The following terms apply to any review of the Letter and should you not agree to these terms, please do not review the Letter and delete copy of the same.

The Letter was prepared in connection with certain services we provided to the Client and should not be used for any other purpose or regarded as suitable for use by any person or persons other than the Client.

No one other than the Client is authorized by KPMG to rely upon any information or views expressed in the Letter. Furthermore, no one other than the Client may use or quote from this opinion without our express written consent. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as the Letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

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Yours very truly,

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February 12, 2018

CONFIDENTIAL

Independent Electricity System Operator
120 Adelaide Street West Suite 1600
Toronto, ON M5H 1T1

The Board of Directors

Dear Sirs, Madams,

We have been engaged to provide you with an accounting opinion on the application of Public Sector Accounting Standards to the consolidation of a trust, and to the recognition and derecognition of a variance account in relation to Bill 132, which on June 1, 2017 created the *Ontario Fair Hydro Plan* Act, 2017 (the "FHP Act") and its subsequent regulations (the "Regulations") and amended the *Electricity Act, 1998 (the "Electricity Act")* and the *Ontario Energy Board Act, 1998 (the "OEB Act")*. This letter is being issued to the Independent Electricity System Operator ("IESO" or the "Company") in connection with its evaluation of the consolidation requirements and the accounting for the variance account under Canadian Public Sector Accounting Standards ("PSAS"). The accounting opinion is specific to the accounting by the IESO and does not relate to the accounting by another entity, including the Province of Ontario. Our engagement has been conducted in accordance with generally accepted standards in Canada for such engagements.

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific issues described below rests with management of the Company as preparers of the financial statements.

The following three issues are addressed in this letter:

Issue #1: Can the IESO apply the guidance in ASC 980 with respect to the FHP Act and the related variance account? Can the IESO recognize a regulatory asset related to the variance account created by the FHP Act?

Issue #2: Is the Fair Hydro Trust established by Ontario Power Generation Inc. (the "Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and therefore subject to consolidation by IESO?

Issue #3: What is the accounting treatment for the transfer of the regulatory asset by the IESO to the Trust? More specifically, does the transfer qualify as a derecognition event for accounting by the IESO?

KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. KPMG Canada provides services to KPMG LLP.

Issue #1: Can the IESO apply the guidance in ASC 980 with respect to the FHP Act and the related variance account? Can the IESO recognize a regulatory asset related to the variance account created by the FHP Act?

Background for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party) are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the Electricity Act. Management of the IESO has determined that the Company is an *Other Governmental Organization* and accordingly prepares its financial statements in accordance with PSAS.
2. IESO is rate regulated by the OEB in accordance with the Electricity Act and the OEB Act. The regulated operations include the recovery of the operating expenses, the smart meter activities and the commodity price of electricity.
3. *Extract from the 2016 IESO financial statements, note 3 New Accounting Policies.* "As of January 1, 2016, the IESO changed its accounting policy regarding the recognition of assets and liabilities subject to rate regulation. The change was made to better reflect the economic substance of certain types of current and future expenses that may not be directly recovered through the normal revenue requirement model. This change has been applied retroactively and has increased amounts previously unrecorded for regulatory assets and decreased amounts previously reported for accumulated deficit."
4. *Extract from the 2016 IESO financial statements, note 2(d) Summary of Significant Accounting Policies, Regulatory assets and liabilities.* "As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO applies guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations ("ASC 980")*, in this policy."
5. In its 2016 financial statements, IESO recognized two regulatory assets for unrecovered smart metering expenses and unrecovered PSAB transition items as permitted by rates approved by the OEB. In accordance with section 25.33 of the Electricity Act, IESO also recognized a regulatory asset (i.e. RPP variance account) to record all amounts receivable by it in connection with the amounts under collected from RPP consumers. Furthermore, in accordance with the OEB Act, IESO recognized a regulatory asset (i.e. RRRP variance account) and liability (i.e. OESP variance account) to record all amounts payable or receivable by it in connection with amounts under the OESP or RRRP program.
6. Relevant sections from the Electricity Act

   Section 25.33 Electricity pricing to reflect costs

   (1) *IESO to make adjustments*: The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

   (a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

   (b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

(c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017.

(3) *Exception*: Any adjustment that would otherwise be made under subsection (1) or (2) and that relates to electricity that is consumed by any of the following types of consumers shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO:

2. A consumer whose rates are determined by the Board under section 79.16 of the Ontario Energy Board Act, 1998.

3. A consumer who is a member of a class of consumers prescribed by the regulations.

(4) *Adjustments, payments, set-offs and credits*: The IESO, distributors and retailers shall,

(a) make such adjustments in their accounts as may be required or permitted by the regulations to record adjustments described in subsections (1), (2) and (3); and

(b) make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in subsection (3) or as may be required by a regulation made under this Act or the Ontario Fair Hydro Plan Act, 2017.

(5) *Variance account*: The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017.

(6) *Compliance*: The Board shall ensure that adjustments, payments, set-offs and credits required or permitted under this section are made in accordance with the regulations.

7. Relevant sections from the OEB Act

Section 78 Orders by Board, Electricity rates

(2.1) *Order re the Smart Metering Entity*: The Smart Metering Entity shall not charge for meeting its obligations under Part IV.2 of the Electricity Act, 1998 except in accordance with an order of the Board, which is not bound by the terms of any contract.

(3.3) *Rates to reflect cost of electricity*: In approving or fixing rates under subsection (3.1),

(a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 and shall ensure that the rates reflect these costs.

8. Relevant sections from the FHP Act

Section 1 Interpretation, Transfer of regulatory asset

(3) In this Act, a reference to the transfer of a specified portion of the regulatory asset is a reference to the following, as provided for in subsection 26 (3):

1. A reduction in the balance in the variance account.

2. The adjustment of the regulatory asset.

3. The acquisition by a financing entity of the investment interest corresponding to the specified portion of the regulatory asset.

Section 7 Regulated rate consumers

(1) *First adjustments*: Despite clause 79.16 (1) (b) of the Ontario Energy Board Act, 1998, the electricity rates payable by regulated rate consumers for the period beginning on July 1, 2017 and ending on April 30, 2018 are the rates determined by the Board under this section and in accordance with the regulations.

Section 8 Other specified consumers

(1) *First adjustments*: For the period beginning on July 1, 2017 and ending on April 30, 2018, the adjustments made under section 25.33 of the Electricity Act, 1998 shall, with respect to specified consumers who are not regulated rate consumers, be further adjusted by electricity vendors in accordance with the regulations and in accordance with the determinations made by the Board in accordance with the regulations.

Section 9 Determinations by Board

The Board shall make the determinations mentioned in sections 7 and 8 no later than 15 business days after the day this section receives Royal Assent and, regardless of whether the Board makes the determinations before or after July 1, 2017, the determinations shall be effective as of July 1, 2017.

Section 11 Subsequent adjustments

(1) Despite clause 79.16 (1) (b) of the Ontario Energy Board Act, 1998 and subject to subsection (2), the Lieutenant Governor in Council may prescribe methodologies to be applied by the Board after April 30, 2018 for the purpose of determining,

   (a) electricity rates for regulated rate consumers; or

   (b) further adjustments to be applied by electricity vendors, in accordance with the regulations and in accordance with the Board's determinations, to the adjustments made under section 25.33 of the Electricity Act, 1998 in respect of specified consumers who are not regulated rate consumers.

Section 24 Variance account to be established, maintained

(1) IESO shall establish and maintain a variance account in which it records the following:

   1. The IESO deferral for each month.

   2. All payments received by IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

   3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

(3) No change made by IESO to the balance in the variance account shall, if the previous balance was relied upon by an investment interest owner in the context of a transfer under section 26, affect the rights acquired by the investment interest owner under the transfer.

Section 25 Regulatory asset established

(1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

(3) IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Section 34 Board's Authority

(1) Each electricity vendor, the IESO and the Financial Services Manager shall maintain such accounts and provide such information to the Board as the Board may require for the purposes of carrying out its responsibilities under the FHP Act, in the form and manner and within the time required by the Board.

(2) Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.

9. Relevant sections from the Ontario Regulations 206/17

Section 9.1 IESO to pay, remit amounts re carrying costs of financing entity

(1) During the period beginning on December 1, 2017 and ending on July 31, 2021, the IESO shall pay and remit to a financing entity any amounts charged to the IESO by the financing entity in respect of carrying costs of the financing entity during the period beginning on June 1, 2017 and ending on July 31, 2021.

(5) The IESO may grant security to a financing entity in order to secure its obligations to pay and remit present and future amounts due under this section.

Section 16 Adjustments that may be recorded by the IESO

For the purposes of paragraph 3 of subsection 24 (1) of the Fair Hydro Plan Act, the IESO shall record the following adjustments in a variance account each month:

1. All funding rebates and other amounts paid by the IESO to a financing entity during the month.
2. Any variance account balances in variance accounts established and maintained under subsection 25.33 (5) of the Electricity Act, 1998 and costs incurred in relation to the balances.
3. Any amounts paid or incurred by the IESO under section 9.1.

10. It is expected that the IESO deferral recorded by the IESO in the variance account (the regulatory asset) will be transferred to an investment interest owner (i.e. initially the Fair Hydro Trust, a trust established by OPG) on a regular basis and cash collected from the Trust at the same time. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $20 billion plus interest.

11. The IESO prepared an Ontario Planning Outlook (OPO) that informs the development of the 2017 Ontario Long-Term Energy Plan ("2017 LTEP"). Based on the 2017 LTEP issued by the Ministry of Energy, the demand for electricity is forecast to be relatively steady over the planning period (2017-2035). In the long-term, the IESO projects an increase in overall demand as electrification of the economy increases. During the planning period, the monthly residential bill for a typical customer (consumption of 750 kWh per month) will increase from $121 per month to $193 per month or an average annual increase by 2.6% before inflation.

Relevant Accounting Guidance for Issue #1

Relevant excerpts and application of ASC 980 *Regulated Operations* (the "Topic" or the "Regulated Operations Topic")

Topic 980-10-15: Scope guidance:

- Accounting requirements that are not directly related to the economic effects of rate actions may be imposed on regulated businesses by orders of regulatory authorities and occasionally by court decisions or statutes. This does not necessarily mean that those accounting requirements conform with generally accepted accounting principles (GAAP). For example, a regulatory authority may order an entity to capitalize and amortize a cost that would be charged to income currently by an unregulated entity. Unless capitalization of that cost is appropriate under this Topic, GAAP requires the regulated entity to charge the cost to current income. [980-10-05-7]
- Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP. [980-10-05-8]
- The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:
  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form.
  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs. [980-10-15-2]
- The guidance in the Regulated Operations Topic does not apply to any of the following transactions:
  (a) Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.
  (b) The criterion in paragraph 980-10-15-2(a) is intended to exclude contractual arrangements in which the government, or another party that could be viewed as a regulator, is a party to a contract and is the entity's principal customer. [980-10-15-7]
- The first scope limitation of paragraph 980-10-15-7 (which is paragraph 8 in FAS 71)—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum[1]. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits

[1] The Discussion Memorandum was the document exposed by FASB prior to the finalization of FAS 71.

cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date. [Paragraph 70 of the Basis for Conclusions of FAS 71]

- Incurred Cost - A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for. [980-10-20]
- Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:
  (a) Deregulation.
  (b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.
  (c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).
  (d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [980-20-15-2]

Topic 980-340-25: Criteria for recognition of regulatory assets:

- Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
  (a) It is probable (as defined in [US GAAP Topic 450, *Contingencies*]) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.
- A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date. [980-340-25-1]

Topic 980: Other relevant provisions:

- Rate actions of a regulator can reduce or eliminate the value of an asset. If a regulator excludes all or part of a cost from allowable costs, the carrying amount of any asset recognized pursuant to paragraph 980-340-25-1 shall be reduced to the extent of the excluded cost. Whether other assets have been impaired shall be judged the same as for entities in general and the Impairment or Disposal of Long-Lived Assets Subsections of Subtopic 360-10 shall apply. [980-340-35-1]
- If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings. [980-340-40-1]
- In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period. [980-340-55-2]
- The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants. [980-340-55-3]

Analysis of Issue #1: Can the IESO apply the guidance in ASC 980 with respect to the FHP Act and the related variance account? Can the IESO recognize a regulatory asset related to the variance account created by the FHP Act?

As noted above, as of January 1, 2016, the IESO changed its accounting policy to recognize the economic impacts of rate regulation and now applies guidance from US GAAP Topic 980, *Regulated Operations*, through the GAAP hierarchy under PS 1150, as PSAS does not have any specific guidance for entities with rate-regulated activities.

IESO concluded that it met the requirements of PS 2120.02, as it is considered that the change of accounting policy in its 2016 financial statements to reflect the impacts of rate regulation resulted in a more appropriate presentation of transactions in its financial statements. The change was made to better reflect the economic substance of certain types of expenses that may not be directly recovered through the normal revenue requirement model.

Up until the implementation of the FHP Act, most of the commodity price of electricity was collected by IESO from the local distribution companies through the customer billing, with any over or under collection being recorded in a variance account and reflected in the next RPP rate established by the OEB. As mentioned above, the effect of the FHP Act is to defer the timing of collection from specified consumers of a total estimated amount of $20 billion (plus interest) of the commodity price of electricity over an estimated 30-year period (as opposed to being in the year the electricity was consumed). The FHP Act does not permit IESO to collect the IESO deferral before May 1, 2021 and the recovery process has been established through regulations. Such a long-term deferred recovery plan requires IESO to consider whether it continues to meet the criteria that allow IESO to use the guidance for regulated operations of Topic 980, as well as to consider whether the uncollected amounts recorded in the variance account qualify for deferral as a regulatory asset. These two accounting issues are analyzed below.

Scope of Topic 980

Topic 980-10-05 provides background as to the intent of the accounting requirements. The background indicates that while regulators may provide for a variety of mechanisms to charge rates that are intended to produce revenue to cover allowable costs, these mechanisms are not determinative of the appropriate accounting:

- Accounting requirements that are not directly related to the economic effects of rate actions may be imposed on regulated businesses by orders of regulatory authorities and occasionally by court decisions or statutes. This does not necessarily mean that those accounting requirements conform with generally accepted accounting principles (GAAP). For example, a regulatory authority may order an entity to capitalize and amortize a cost that would be charged to income currently by an unregulated entity. Unless capitalization of that cost is appropriate under this Topic, GAAP requires the regulated entity to charge the cost to current income. [980-10-05-7] (Emphasis added)

In accordance with the FHP Act, a portion of the commodity price of electricity for specified consumers is being deferred (i.e., not charged to the specified consumer as the electricity is consumed) and the recovery of those costs will be included in a period other than the period in which the costs would otherwise be charged to expense. In fact, the difference between the amounts that would have been owed by specified consumers had the FHP Act not been enacted and the amounts collected from the specified consumers as a result of the FHP Act through the market participants is being recorded by the IESO in a variance account established pursuant to section 24 of the FHP Act. In accordance with Section 25 of the FHP Act, the OEB will regulate the timing of the recovery and set the rates to ensure that the IESO can fully recover the balance recorded in the variance account established pursuant to the FHP Act. Since the OEB regulation provides an economic effect on IESO, providing IESO with certainty as to the recoverability of the FHP Act variance account, it is not subject to the scope limitation. This is consistent with 980-10-05-8 which states:

- 980-10-05-8: "Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP." (Emphasis added)

Whether a variance account is created by legislation, regulation, court, statute or rate order issued by the OEB, the accounting requirement for the recognition of a regulatory asset is that the rate charged to customers must be designed to recover the specific entity's costs (i.e. the commodity price of electricity) of providing the regulated service provided that the capitalization criteria are met under 980-340-25-1 (see analysis below). This is supported by 980-10-05-7 and -05-8 (noted above), and 980-10-15-2 (b). The latter states that this criterion is intended to be applied to the substance of the regulation, rather than its form.

- The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. [980-10-15-15-2 (b)].

Although the OEB has not yet approved the recovery of the balance recorded in the variance account, Section 25 of the FHP Act requires the OEB to set the rates payable by specified consumers to recover the balance recorded in the variance account and, therefore, it is probable that a specific recovery mechanism will be issued by the OEB. This legislation compels the OEB to set the rates and they have no discretion but to do so.

Before analyzing the criteria for the recognition of regulatory assets as prescribed by Topic 980-240-25, we need to address whether 980-10-15-7 (a) and (b) forbid the IESO from recognizing the economic effects of rate regulation.

- 980-10-15-7 (a) states "Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply."
- 980-10-15-7 (b) states "The criterion in paragraph 980-10-15-2 (a) is intended to exclude contractual arrangements in which the government, or another party that could be viewed as a regulator, is a party to a contract and is the entity's principal customer." (Emphasis added)
- Paragraph 70 of the Basis for Conclusions of FAS 71 states "The first scope limitation of paragraph 8 (which is paragraph 7 in ASC 980)—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date." (Emphasis added)

Therefore, there are two issues – first, are such economic events actually "price controls" or "contracts in general" and, second, if they are not, do such transactions meet the requirements of ASC 980 to be recognized in the regulated entity's general purpose financial statements.

With respect to the first issue, the OEB's rate setting process does not represent "price controls" as such term is intended to be applied in the standard. We note they have not been imposed in times of emergency, high inflation or other unusual conditions. Rather they have been applied in managing the timing of charging cost increases through to specified consumers for the commodity price of electricity. The FHP Act does not limit or control price increases, but rather defers the impact of specific costs for the stated period.

Said differently, this scope exemption in ASC 980 is intended to encompass situations where a regulator's response to unusual situations does not meet the hurdle of providing assurance of future benefits through probable future actions of that regulator and hence recovery of the specific entity's costs of providing the regulated services or products is uncertain. Such temporary measures are not done as part of a planned regulatory rate regime with a planned future recovery, but rather are done in the short-term without specific recovery expected. To conclude that the instant case is one of "price controls" would result in a conclusion that all rate setting processes are "price controls' which clearly is not the case.

With respect to the second part of the first issue, the fact that the energy contracts (defined as "procurement contracts" in the Electricity Act) have not been subject to prudence review by the OEB does not mean that the contracts are not subject to regulation. Determining whether the asset or group of costs (i.e. the energy contracts) is clearly specified in a rate order or other evidence that would support regulatory accounting, including the means and timing of cost recovery, is key to this analysis. Section 25.33 (1) states that the IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation, reflect amounts paid (a) to generators, the OEFC and distributors, (b) to entities with whom the IESO has a procurement contract, and (c) in connection with the FHP Act. Section 25 of the FHP Act requires the OEB to set the rates payable by specified consumers to recover the balance in the variance account. Accordingly, we believe that the energy contracts are subject to regulation.

In addition, 980-10-15-7 (b) does not apply to IESO, as neither the Province of Ontario nor the OEB is the IESO's principal customer. The customers are the specified consumers mentioned in the FHP Act.

Further one would consider the guidance in 980-10-15-2, which is the subtopic which determines whether entities with regulated operations may apply "rate-regulated accounting".

Criteria for the application (and continued use) of ASC 980 guidance

In some jurisdictions, deferred recovery plans have been adopted by regulators or legislations enacted in response to significant increases in costs (e.g. purchased power costs). These plans typically provide for rates to remain fixed or increase moderately with a variance account mechanism to capture costs in excess of the level allowed in current rates. A regulated utility subject to such plans is required to consider whether it continues to meet the criteria that allow it to use the guidance for regulated operations of Topic 980, especially criteria ASC 980-10-15-2 (b).

The IESO's regulated plan for the recovery of the balance recorded in the variance account over an estimated 30-year period is considered a deferred recovery plan as the rates for the first four years will remain effectively fixed (subject to the rate of inflation) and subsequently the rates will increase moderately with a variance account to capture commodity price of electricity that is in excess of the level allowed in current rates.

The following is an analysis of the ASC 980-10-15-2 criteria as it applies to this arrangement both at its inception and on an ongoing basis.

Criteria	Comment	Evaluation
(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO's rates for the regulated services provided to its customers are established by the OEB. IESO believes the OEB is an independent, third-party regulator to IESO. The IESO is subject to OEB's regular reviews and has no ability to influence the decisions issued by the OEB. Decisions issued by the OEB to the IESO have often denied the recovery of certain costs. The OEB states on their website the following, – *As Ontario's independent energy regulator, we make decisions and rules to ensure that consumers are treated fairly and that the energy sector is reliable and sustainable. We oversee how energy companies operate to ensure the public interest is served.* – *The Government of Ontario, through the Ministry of Energy, sets the overall policy for the energy sector. It does this mainly through laws and regulations.* – *The OEB regulates Ontario's energy sector. We ensure that natural gas and electricity companies follow the rules. As an independent government agency, our goal is to promote a sustainable, reliable energy sector that helps consumers get value from their natural gas and electricity services.* In the past decade, the independence of the OEB in relation to Hydro One and OPG has been accepted by the Auditor General of Ontario. – It is important to note that both Hydro One and OPG are classified as Government Business Enterprises and report under IFRS in their consolidated financial statements, are consolidated by the modified equity method into the province's books, are regulated by the OEB, and their respective regulatory assets and liabilities are reported in the province's books.	Met
(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Prior to the FHP Act, the rates approved by the OEB were designed to recover the IESO's operating costs and the commodity price of electricity. The effect of the FHP Act is to defer the collection of a total estimated amount of $20 billion (plus interest) of commodity price of electricity over an estimated period of 30 years. That is, it still provides for recovery of costs incurred just over a longer period of time. As mentioned above, a regulated utility subject to a deferred recovery plan is required to consider whether it continues to meet the criteria ASC 980-10-15-2 (b). This criterion requires a cause-and-effect relationship between a reporting entity's costs and its revenue. In addition, the timing of cost recovery and the related frequency of ratemaking is important. A reporting entity should consider its rate case experience, including the design of its rates and timing of	Met

Criteria	Comment	Evaluation
	recovery, when determining whether this criterion is met. These factors are analyzed below. *Frequency of rate case* – Currently, the IESO is subject to OEB's regular reviews to set the rates to recover its operating costs and the commodity price of electricity. – Although the recovery of commodity price of electricity has been frozen at the approved rate on May 1, 2017 plus inflation for the first four years, the IESO has been granted a right to recover after May 1, 2021, the IESO deferral recorded in the variance account during that four-year period. Based on Sections 24 and 25 of the FHP Act: - *A recording of the balance in the variance account is determinative of the balance, as of the time of the recording. (We note that this confirms that the costs will be considered to have been prudently incurred and there will be no additional prudence review by the OEB.)* - *Right to recover the balance recorded in the variance account.* - *Obligation on the part of the OEB to dispose the variance account in accordance with the regulation.* – Subsequent to May 1, 2021, the OEB will be required to determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account. This legislation compels the OEB and they have no discretion but to do so. - *The Board shall, from time to time, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* - *Despite anything to the contrary in the OEB Act, the Board may exercise any of its responsibilities under this Act without a hearing.* *Rates are designed to recover incurred costs* – There is a cause-and-effect relationship between the purchase energy costs and revenue, as IESO will be allowed to recover the costs incurred. - *A recording of the balance in the variance account is determinative of the balance, as of the time of the recording. (As mentioned above, there will be no additional prudence review by the OEB.)*	

Criteria	Comment	Evaluation
	- *Right to recover the balance recorded in the variance account.* - *Obligation on the part of the OEB to dispose the variance account in accordance with the regulation.* *Periods of alternative ratemaking (e.g., rate freezes)* Evaluation of the second criterion requires additional judgment if the regulated utility is subject to any form of ratemaking that introduces uncertainty about the cause-and-effect relationship between costs and rates. A rate freeze period is understood in the industry as a fixed rate that is charged to customers during a period of time (more than two years) and the utilities are exposed to increases in operating and energy costs with no ability to recover the variances. This is not the case as IESO has been granted the right to recover fully the IESO deferral recorded in the variance account, including that incurred in the first four-year period. – *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account. (Emphasis added)* *Costs uncertainty* As the IESO has been granted the right to fully recover the IESO deferral recorded in the variance account and the OEB is required to determine and set rates to allow for this recovery, there is no uncertainty about the recovery of the costs. *Disallowances of costs* As the IESO has been granted by legislation the right to fully recover the IESO deferral recorded in the variance account and section 24(2) of the FHP Act states that a recording of amounts in the variance account is determinative of the balance as of the time of recording, there is no risk of the potential disallowance of regulatory asset. Based on the analysis of the above factors, there is a direct cause-and-effect relationship between IESO's costs and their future collection.	
(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume	The remaining criterion is whether limitations, including considering demand levels at the approved rates, on the extent of recovery of the regulatory asset could prevent the IESO from recognizing a regulatory asset for the entire balance in the recovery right granted to the IESO.	Met

Criteria	Comment	Evaluation
that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.	The FHP Act notes that: – *Effective May 1, 2017, the IESO has a right to recover the balance in the variance account.* - *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified customers to allow for the IESO to recover the balance recorded in the variance account.* - *IESO shall not be entitled to collect the variance account from specified consumers before May 1, 2021.* Although the process, especially the timing of the recovery of the regulatory asset, has not been established yet by the OEB, the wording and intent of the legislation is clear that it is intended by law to be recoverable (over an estimated period of 30 years). Based on the 2017 LTEP issued by the Ministry of Energy, the demand of electricity is forecast to be relatively steady over the planning period (2017-2035). In the long-term, the IESO projects an increase in overall demand as electrification of the economy increases. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset from specified customers. As with the other criteria, this will need to be continuously evaluated throughout the recovery period to ensure the IESO may continue to apply the guidance in ASC 980. Furthermore, it is expected that the IESO deferral recorded in the variance account (the regulatory asset) will be transferred to the Trust on a regular basis and cash collected at the time of a transfer. As a result, the regulatory asset will be recovered over the period of time during which there are transfers to the Trust. As discussed in issue #3, the Trust does not have any recourse against IESO if amounts recovered by the Trust from specified consumers are insufficient for any reason, including for example due to insufficient demand for electricity. – *The IESO deferral recorded in the variance account for the first period to December 21, 2017 amounted to approximately $1,179,000,000 and was transferred to and paid for by the Trust on that date.*	

Thus, we are of the view that the arrangement is within the scope of Topic 980.

Criteria for the recognition of regulatory assets

Subtopic 980-340-25 provides that an entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

- It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
- Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Each of the criteria are discussed below:

Criteria	Comment	Evaluation
(a) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. *(Emphasis added)* If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.	The FHP Act and Regulations note that, – *A recording of the balance in the variance account is determinative of the balance as of the time of the recording.* – *The carrying costs paid to the financing entity for costs incurred during the period from June 1, 2017 to July 31, 2021 shall be recorded in the variance account.* – *Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.* – *The Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for IESO to recover the balance recorded in the variance account.* – *The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.* The FHP Act provides that the Board shall, – *Determine the rates charged for the specified consumers (i.e. regulated rate consumers and other specified consumers).* – *Ensure that adjustments, payments, set-offs and credits required or permitted (in the variance account) are made in accordance with the regulations.* – *Determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account*.	Met

Criteria	Comment	Evaluation
	Based on the FHP Act, the IESO has the right to recover the balance recorded in the variance account, including the carrying costs, and the OEB is obligated by legislation to set rates that enable recovery of the specific costs recorded in the variance account. As a result, it is clear that the rate making by the OEB will enable IESO to recover the amount previously incurred rather than to provide for expected levels of similar future costs.	

Management conclusion

IESO management has concluded that the IESO can recognize a regulatory asset related to the variance account created by the FHP Act based on the foregoing analysis.

The variance account created by the FHP Act is subject to rate regulation by the OEB and the variance account has been established with the right to collect funds against the variance amount in the future. Further, the FHP Act requires the OEB to set rates that will ensure recovery of the variance account. In these circumstances, the IESO is able to establish that a regulatory asset exists. The IESO financial statements are prepared in accordance with Canadian Public Sector Accounting Standards. Although PSAS does not provide specific guidance on rate regulated accounting, it does under PS 1150 *Generally Accepted Accounting Principles*, allow for guidance to be followed from other accounting frameworks. IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, *Regulated Operations* in its accounting policies.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur with management that the variance account created by the FHP Act meets the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1; as noted above, IESO has adopted the provisions of ASC 980 in accounting for assets and liabilities subject to regulated operations. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and concur with management that IESO should continue to use the guidance for regulated operations of Topic 980.

Issue #2: Is the Fair Hydro Trust established by Ontario Power Generation Inc. (the "Trust") controlled by the IESO according to the guidance issued under PSAS 1300 *Government Reporting Entity* and therefore subject to consolidation by IESO?

Background for Issue #2

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for Issue #1 are as follows:

1. Up until the implementation of the FHP Act, the IESO had the right to collect the commodity cost of electricity (including the global adjustment) monthly from ratepayers through provisions in the Electricity Act and the OEB Act. The FHP Act requires that collection of a certain portion of the monthly commodity cost of electricity be deferred and the reduced collection compared to what would have been collected without the FHP Act recorded in a variance account along with other amounts (for collection in the future from specified consumers). The FHP Act also establishes the basis for structured financing/securitization of the future right to recover the deferred commodity cost of electricity from specified consumers.
2. OPG has been appointed as Financial Services Manager under the FHP Act.
3. In connection with the FHP Act, the *Fair Hydro Trust* has been established as a financing vehicle by OPG (in its capacity as Financial Services Manager) for the purpose of financing the transfer by IESO of a specified portion of a regulatory asset to the Trust, which trust thereby acquires a corresponding investment interest in the investment asset. The Trust will acquire a specified portion of the regulatory asset from the IESO for the principal amount (i.e., the carrying value) of the specified portion of the regulatory asset being transferred in an amount equal to the amount of the specified portion (Section 26 (2) of FHP Act).
4. The Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets, and subordinated financing from OPG (which we understand will be funded mostly from equity injections from the Province of Ontario).
5. The Issuer Trustee of the Trust has appointed OPG as the Manager of the Trust, which gives OPG the responsibility of directing all of the activities of the Trust, through a services agreement as permitted by the Trust's constating documents, the FHP Act and the Electricity Act.
6. We understand that FHP 2017 Inc., a wholly-owned subsidiary of OPG, owns 99.9999% of the units of the Trust with the remaining units owned by the Issuer Trustee.
7. Relevant sections from the FHP Act

   Section 22 *Financing entities*

   (1) The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.

   (2) In accordance with the Financing Plan, the Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.

8. Relevant sections from the Management Agreement

Section 3.1 *Appointment and Authority of the Manager*

The Issuer hereby appoints Ontario Power Generation Inc. as the Manager to act as its agent to provide services and perform duties for and on behalf of and for the account of the Issuer, as hereinafter provided, in connection with the activities of the Issuer relating to:

(a) the acquisition, administration and possible transfer of the Issuer Investment Interest on behalf of the Issuer in accordance with the Act;

(b) acting as custodian of the Investment Interest Records;

(c) the entering into and execution and delivery on behalf of the Issuer of any Program Agreements;

(d) the incurrence of Issuer Funding Obligations, and repayment thereof, to fund the acquisition of the Issuer Investment Interest;

(e) the negotiation, execution and delivering or filing on behalf of the Issuer of any Offering Materials;

(f) the implementation and administration of the provisions of the Program Agreements to which the Issuer or the Manager on its behalf is a party;

(g) the acquisition, administration and sale of investments that may from time to time be made by the Issuer; and

(h) all activities as may be reasonably incidental to the foregoing or necessary in connection with the performance by the Issuer of its obligations under the Program Agreements, the Act and the Regulations.

The Manager accepts such appointment and agrees to act in such capacity and to provide or cause to be provided the services and to perform the duties set forth in this Agreement on and subject to the terms and conditions in this Agreement. The Issuer hereby grants to the Manager the power and authority to act in the name of and on behalf of the Issuer, and to execute and deliver all documents, agreements and instruments in the name and on behalf of the Issuer, for the sole purpose of providing the services and performing the duties to be provided and performed by the Manager pursuant to this Agreement. The Manager shall provide all the services and perform all the duties contemplated under this Agreement, including its duties as Financial Services Manager under the Act, in Ontario, Canada.

9. Relevant sections from the Fair Hydro Trust's Declaration of Trust

Section 1.1 Definitions

"Issuer Trustee" means Computershare Trust Company of Canada and any successor thereto appointed pursuant to Article 6.

Section 2.1 Purpose and Activities of the Trust

The purpose of the Trust is to establish and carry on activities for the exclusive benefit of the Unitholders and to distribute the Trust Property upon termination of those activities by the Trust in accordance with Article 11. The Trust is permitted to engage in any activity, undertaking, transaction or event authorized or permitted by the FHP Act (the "Trust Activities")

Section 2.2 Limitation on certain activities

Notwithstanding any other provision of this Declaration of Trust or the Management Agreement, at any time that any Funding Obligations remain outstanding, the consent of the Indenture Trustee shall be required for the Trust to:

(a) take any action to wind-up or dissolve the Trust; or

(b) institute any voluntary proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of any bankruptcy or insolvency proceedings against it, or file a petition seeking or consent to any assignment, petition, application or proceeding under any applicable bankruptcy or insolvency law, or consent to the appointment of a receiver, liquidator, assignee, trustee or other similar official of the Trust or a substantial part of its property, or make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take any similar action in respect of the Trust.

Section 2.4 Nature of the Trust

The beneficial interest and rights generally of the Unitholders in the Trust shall be limited to the right to participate in distributions when and as declared by the Issuer Trustee and distributions upon the termination of the Trust.

Section 2.5 Rights of Unitholders

No Unitholder shall be entitled to call for any partition or division of the Trust Property or for a distribution of any particular asset forming part of the Trust Property or of any particular monies or funds received by the Issuer Trustee. The legal ownership of the Trust Property and the right to conduct the activities of the Trust are vested exclusively in the Issuer Trustee, and no Unitholder has or is deemed to have any right of ownership in any of the Trust Property, except as specifically provided herein.

Section 3.7 Liability of Unitholders

No Unitholder of the Trust, in its capacity as such, will incur or be subject to any liability, direct or indirect, absolute or contingent, in contract or in tort or of any other kind, to any Person in connection with: … (ii) the obligations, liabilities, activities or affairs of the Trust …

Section 5.1 Rights and Powers of Issuer Trustee

Subject to the specific restrictions and limitations set forth in this Declaration of Trust and notwithstanding the provisions of the Trustee Act (Ontario) or any other similar legislation in any jurisdiction, the Issuer Trustee will have, without the necessity of authorization by, and free from any power or control on the part of, the Unitholders, <u>full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities</u> to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right including, without limitation, such power, control and authority to do all such acts and things as in its sole judgment and discretion are necessary, incidental or desirable for carrying on the Trust Activities in accordance with the Program Agreements with such powers of delegation as may be permitted by this Declaration of Trust, including the right, power and authority to amend this Declaration of Trust subject to and in accordance with the terms hereof and to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary, appropriate or desirable for the transaction of the Trust Activities, including for the administration of the Trust. (Emphasis added)

Section 5.6 Power to Borrow Money and Issue Funding Obligations

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to:

(a) borrow or in any other manner raise money and to evidence the same by the issuance of Funding Obligations, by private placement, public offering or otherwise.

Section 5.15 Power to Contract

In accordance with and subject to the terms of the Program Agreements, the Issuer Trustee will have the power to appoint, employ or contract with any Person as the Issuer Trustee may deem necessary or desirable for the transaction of the Trust Activities and may transfer assets to such Person and, save and except for such matters as are listed in Section 2.2, delegate to such Person any or all of the discretionary powers given to the Issuer Trustee with respect to the management of the Trust Property.

Section 6.2 Removal of Issuer Trustee

The Issuer Trustee may be removed from its office under this Declaration of Trust by the Unitholders, at any time by notice in writing delivered to the Issuer Trustee not less than 90 days prior to the date that such removal is to take effect.

Section 6.4 Appointment of New Issuer Trustee

If, pursuant to this Article 6, the Issuer Trustee resigns or a vacancy occurs in the office of the Issuer Trustee for any reason, the Unitholders may, subject to the satisfaction of the Rating Agency Condition, by instrument in writing appoint a Trust Company, which has risk-based capital of at least $50,000,000 or, in the case of an entity that is not subject to risk-based capital adequacy requirements, has a combined capital and surplus of at least $50,000,000, in order to replace the Issuer Trustee.

Section 9.3 Quorum and Voting

A quorum for any meeting of the Unitholders will be persons present being Unitholders or representing by proxy Unitholders who hold in the aggregate a majority of the total number of outstanding Units. Unitholders may attend and vote at all meetings of the Unitholders either in person or by proxy. Each Unit will be entitled to one vote at all meetings of the Unitholders. Any action to be taken by the Unitholders will, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. The chairman of any such meeting will not have a second or casting vote.

Section 12.1 Termination of the Trust

(a) The Trust will continue in full force and effect for a period of twelve months from the date hereof and thereafter for so long as any Funding Obligations remain outstanding and until the Trust has satisfied all of its obligations under the Program Agreements or otherwise for the purposes of carrying on the Trust Activities. Notwithstanding the foregoing, the Issuer Trustee may, with the unanimous approval of Unitholders, wind-up the affairs of the Trust and terminate the Trust and distribute the Trust Property then remaining to the Unitholders in proportion to the number of Units held by each Unitholder no later than the date that is one day prior to the 21st anniversary of the death of the last surviving lineal descendent of Queen Elizabeth, II of England living at the date this declaration is made.

(b) Subject to Section 12.1(a), the Issuer Trustee may, with the unanimous approval of the Unitholders, wind up the affairs of the Trust and terminate the Trust.

8. Relevant section from the Trust Indenture

   Section 8.10 Termination by Indenture Trustee of Manager and Servicer

   Upon the occurrence and during the continuance of an Event of Default, the Indenture Trustee shall have the right to (and, upon receipt of an Extraordinary Resolution to that effect, shall) terminate the appointment of the then existing Manager under the Management Agreement and/or the Servicer under the Master Transfer and Servicing Agreement, and appoint new Persons under such agreements in accordance with such direction, provided that the Issuer shall have the right to reinstate any appointee under such agreements at such time as the Event of Default is no longer continuing. (Emphasis added)

Relevant Accounting Guidance for Issue #2

Relevant sections of PS 1300 *Government Reporting Entity*:

PSAS refers to government or government organizations. For the purpose of this analysis, the PSAS guidance below relating to *government* or *government organizations* should be read and understood as being the IESO. (Emphasis added below)

- The government reporting entity should comprise government components and those organizations that are controlled by the government. [PS 1300.07]
- Control is the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities. [PS 1300.08].
- Whether a government controls an organization is a question of fact that must be determined by reference to the definition of control established in paragraph PS 1300.08 and the particular circumstances of each case. The determination of the fact that control exists will require the application of professional judgment. Government achieves its objectives through a wide range of organizations which individually will fall somewhere along a continuum. At one end of the continuum, it will be clear that an organization does not have the power to act independently and is controlled by the government. At the other end, the organization will have the power to act independently and, while government will have a level of influence on the organization, it will be clear that it does not have control. Along the continuum, consideration needs to be given to the nature of the relationship between the government and the organization in order to determine whether control exists. This Section provides guidance intended to assist in this assessment. [PS 1300.10]
- In applying this guidance, it is necessary to determine the substance of the relationship between the government and the organization. The true nature of certain relationships may not be completely reflected by their legal form. All relevant aspects and implications of the relationship would be considered in determining whether or not the government controls the organization. Where various aspects of the relationship are designed, in effect, to achieve an overall objective, they would be viewed as a whole. [PS 1300.11]
- Financial and operating policies are principles and practices that determine how an organization conducts its activities. The ability to govern these policies is an important element of government control because it establishes the fundamental basis for the conduct of the organization's operations and the achievement of its mission and mandate. [PS 1300.13]
- There are a variety of ways to govern the financial and operating policies of an organization. For example:
  (a) a government may establish an organization's fundamental purpose and eliminate or significantly limit the ability of the organization to make future decisions by predetermining the financial and operating policies of the organization;

(b) a government may direct the financial and operating policies of an organization on an ongoing basis; or

(c) a government may veto, overrule or modify the financial and operating policies established by an organization. [PS 1300.14]

– A government does not need to manage an organization's activities on a day-to-day basis to control the organization. It is the government's existing authority to determine the policies governing those activities that is important. [PS 1300.15]

– For the purposes of this Section, it is assumed that where the government has the power to govern the financial and operating policies of an organization, it expects to derive a financial or non-financial benefit. The government may also be exposed to the risk of loss. [PS 1300.16]

Analysis of Issue #2: Is the Fair Hydro Trust established by OPG (the "Trust") controlled by the IESO, according to the guidance issued under PSAS 1300 *Government Reporting Entity* and, therefore, subject to consolidation by IESO?

As part of the assessment of the accounting for the regulatory asset, an entity should consider whether the transfer of the regulatory asset discussed in issue #1 to the Trust represents a transfer to a consolidated subsidiary. Therefore, the first step in determining whether sale accounting has occurred is to determine if purchasing entity (the "transferee") is required to be consolidated by the transferor. This section address that issue.

Under PSAS, IESO is required to consolidate all entities that are considered to be part of its reporting entity, applying the guidance provided in *Section PS 1300 Government Reporting Entity.* Under PS 1300, IESO must consolidate all entities it "controls".

In order to determine whether or not the Trust should be consolidated by IESO, it must be determined whether or not the IESO exercises control as a consequence of its power to govern the financial and operating policies of the Trust, resulting in expected benefits to the IESO or the risk of loss from the activities of the Trust.

Under PS 1300.08, control is defined as "the power to govern the financial and operating policies of another organization with expected benefits or the risk of loss to the government from the other organization's activities". PS 1300.17 indicates that "whether a government controls an organization is a question of fact that requires the application of professional judgment based on the definition of control in this Section and the substance of the relationship in each case." Therefore, the determination of whether IESO is required to consolidate the Trust is based on an assessment of whether IESO is considered to control the Trust based on the indicators of control set out in PS 1300. The assessment of the IESO's control of the Trust is made based on the terms and conditions of the related arrangements in their entity, including the FHP Act and the MTSA Agreement, and the facts and nature of the relationship between the IESO and the Trust and is based on facts and assumptions provided by the IESO. PS 1300.18 and .19 set out 11 potential indicators of control. Several of these indicators have been categorized as more persuasive of a finding of control (see the first four indicators in the table below). For each indicator that applies, the degree of government influence would determine its importance as evidence of control. Finally, the indicators are considered both collectively and individually.

A detailed analysis of the 11 Indicators of control is provided in the following table.

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Primary (more persuasive) indicators (PS 1300.18):		
1. Does IESO have the power to unilaterally appoint or remove a majority of the members of the governing body of the organization?	At the request of OPG, the Issuer Trustee (Computershare) has established the *Fair Hydro Trust* to purchase the regulatory asset transferred from IESO, related financing and administrative activities, including recovery of amounts from specified consumers. The Issuer Trustee is the governing body of the Trust. However OPG, as the majority Unitholder, has the voting power to unilaterally appoint or remove the Issuer Trustee. Furthermore, the Issuer Trustee has the right to delegate all of the discretionary powers given to the Issuer Trustee with respect to the management of the Trust Property, except for the obligations listed in Section 2.2 of the MTSA Agreement related to the satisfaction of the conditions precedent for each transfer of the regulatory asset, which are considered administrative tasks or protective rights. In that respect, the Issuer Trustee has appointed OPG as the Manager, which gives OPG the responsibility of directing all of the activities of the Trust, through a services agreement as permitted by the FHP Act, the Electricity Act and the Declaration of Trust. The Management Agreement states: – *The Issuer appointed OPG as the Manager to act as its agent to provide services and perform duties for and on behalf of and for the account of the Issuer, as hereinafter provided, in connection with the activities of the Issuer…* The FHP Act states: – *OPG is appointed as the Financial Services Manager for the purposes of this Act. (Section 18)* – *The Financial Services Manager shall perform the duties assigned to it under this Act and may administer the investment asset on behalf of the investment interest owners. (Section 19 (1))* Section 53.1 Objects of OPG of the Electricity Act has been amended as follows: – *In addition to the objects mentioned in subsection (1), the objects of OPG include exercising the powers and rights and performing the duties and obligations assigned to it under the FHP Act, 2017 and engaging in activities to facilitate the implementation of that Act, including entering into contracts and undertakings on behalf of financing entities and performing other services on behalf of financing entities, subject to the right to be paid by the financing entities for those services. (Section 53.1 (1.1))*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	– *OPG may create or invest in one or more subsidiaries, trusts, partnerships or special purpose entities in order to more efficiently conduct its activities or achieve its objects. (Section 53.1 (1.2))* The Declaration of Trust notes that: – *The Issuer Trustee will have, without the necessity of authorization by, and free from any power or control on the part of, the Unitholders, full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right… (Section 5.1)* – *The Issuer Trustee may be removed from its office under this Declaration of Trust by the Unitholders, at any time… (Section 6.2)* – *… the Unitholders may, subject to the satisfaction of the Rating Agency Condition, by instrument in writing appoint a Trust Company… in order to replace the Issuer Trustee… (Section 6.4)* – *Any action to be taken by the Unitholders will, except as otherwise required by this Declaration of Trust, or by law, be authorized when approved by a majority of the votes cast at a meeting of the Unitholders. (Section 9.3)* The IESO does not have any rights in respect to the appointment or replacement of the Issuer Trustee of the Trust.	
2. Does IESO have ongoing access to the assets of the organization, have the ability to direct the ongoing use of those assets, or have ongoing responsibility for losses?	IESO does not have ongoing access to the assets of the organization. Based on Section 27 of the FHP Act, once the regulatory asset is transferred to the Trust, the asset is considered "absolutely" assigned, conveyed and disposed of. That is, Section 27 of the FHP Act notes: – *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.* – *Without limiting subsection (1), any transfer agreement that states an intention of the parties for the IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of the IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.*	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
	– *At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* Based on the FHP Act, *upon transfer of a specified portion of the regulatory asset under section 26 to a financing entity, the investment asset resulting from the transfer is immediately vested in the Trust, free and clear of any adverse claim.* (Section 28 (2)). IESO does not have the ability to direct the ongoing use of the Trust's assets. The Issuer Trustee is the governing body of the Trust, however OPG has the power to unilaterally appoint or remove the Issuer Trustee. In accordance with the Management Agreement, OPG has been appointed the Manager of the Trust. Based on the Management Agreement of the Trust, OPG as the Manager, has been given the responsibility to direct all of the activities of the Trust. The main Unitholder (99.9999%) of the Trust is a wholly-owned subsidiary of OPG. IESO also does not have ongoing responsibility for losses incurred by the Trust. IESO does not bear the credit risk related to the collection of the investment asset; it is borne by the Unitholders of the Trust up to the amount of their investments in the Trust (total value of units, subordinated notes and junior subordinated notes) and then by the other lenders (i.e. the senior noteholders). IESO does not bear payment risk related to usage: that is, if the ratepayer base were to shrink, the exposure to a decline in collections is solely of that of the Unitholders of the Trust up to the amount of their investments in the Trust and then by the other lenders. IESO has no responsibility to compensate the Unitholders or the lenders for any loss it incurs resulting from the failure of specified customers to pay their obligations as due, whether that failure arises from credit risk or usage risk. In conclusion, upon transfer of the regulatory asset to the Trust, IESO will no longer have access/ability to direct the regulatory asset nor will it have ongoing responsibility for losses.	

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
3. Does IESO hold the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization?	In accordance with section 5.1 of the Declaration of Trust, the Issuer Trustee has without the necessity of authorization by, and free from any power or control on the part of, the Unitholders, full, exclusive and absolute power, control and authority over the Trust Property and the Trust Activities to the same extent as if the Issuer Trustee were the sole and absolute owner thereof in its own right. We understand that FHP2017 Inc., a wholly-owned subsidiary of OPG, owns 99.9999% of the units of the Trust with the remaining units owned by the Issuer Trustee. IESO does not have any ownership in the Trust and does not have the power to govern the financial and operating policies of the Trust.	No
4. Does IESO have the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations?	The Declaration of Trust provides for: – *The consent of the Indenture Trustee shall be required for the Trust to take any action to wind-up or dissolve the Trust. (Section 12.1(a))* – *Subject to Section 12.1(a), the Issuer Trustee may, with the unanimous approval of the Unitholders, wind up the affairs of the Trust and terminate the Trust. (Section 12.1(b))* IESO does not have the power to dissolve the Trust.	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
Other indicators that may provide evidence of control (PS 1300.18):		
5. Can IESO provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members?	As mentioned in indicator 1 above, OPG has the power to unilaterally appoint or remove the Issuer Trustee of the Trust. IESO does not provide any input in the appointment of the members of the governing body of the Trust.	No
6. Can IESO appoint or remove the CEO or other key personnel?	As mentioned under indicator 1 above, OPG has the power to unilaterally appoint or remove the Issuer Trustee of the Trust. As mentioned under indicator 2 above, OPG has been appointed as the Manager of the Trust and has been given the responsibility to direct all of the activities of the Trust. IESO does not have any rights to appoint or remove the Issuer Trustee or the Manager.	No
7. Can IESO establish or amend the mission or mandate of the organization?	The Trust has been established by the Issuer Trustee at the request of OPG (in its capacity as Financial Services Manager) and the mandate of the Trust is based on the FHP Act.	No
8. Does IESO have the right to approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis?	The FHP Act states: – *OPG is appointed as the Financial Services Manager for the purposes of this Act.* – *The Financial Services Manager shall prepare a written plan entitled the Financing Plan to be used by the Financial Services Manager to evaluate whether potential funding obligations should be incurred for the purposes of acquiring and financing an investment asset in accordance with this Act or for the purposes of refinancing.* OPG is the Financial Services Manager, not IESO. IESO has no ability to be involved in the preparation or approval of the business plans or budget of the Trust.	No

INDICATOR OF CONTROLS	EVIDENCE OF CONTROL	CONTROL EXIST?
9. Can IESO establish borrowing or investment limits or restrict the organization's investments?	As the Financial Services Manager and the Manager of the Trust, OPG will establish the borrowing limits and the financing entities. Section 22 (1) and (2) of the FHP Act states: – *The Financial Services Manager shall ensure that funding obligations incurred for the purposes of this Act are incurred in a manner that is consistent with the applicable Financing Plan.* – *The Financial Services Manager may establish or cause to be established one or more financing entities that may incur funding obligations.* Section 5.6 of the Declaration of Trust states: – *The Issuer Trustee will have the power to borrow or in any other manner raise money…* Section 3.1 of the Management Agreement states: – *The Issuer hereby appoints OPG as the Manager… to provide services… in connection with the activities of the Issuer relating to the incurrence of Issuer Funding Obligations, and repayment thereof, to fund the acquisition of the Issuer Investment Interest…* OPG, not IESO, is responsible for ensuring that the required borrowings and financing entities of the Trust meet the above conditions.	No
10. Can IESO restrict the revenue-generating capacity of the organization, notably the sources of revenue?	The Trust's source of revenue is the yield earned on its investment. That yield is influenced ultimately by the ratepayers who directly influence the payback period of the cash flows underlying the regulatory asset. IESO has no ability to restrict this source of revenue.	No
11. Can IESO establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources?	As mentioned above, the FHP Act and the Management Agreement related to the Trust granted OPG the power to establish or amend the policies of the Trust and the ability to appoint and remove the Issuer Trustee.	No

Management conclusion

IESO management concluded that the Trust is not controlled by the IESO and therefore is not subject to consolidation by the IESO.

Based on the foregoing analysis of the 11 indicators of control as defined in Section PS 1300 *Government Reporting Entity*, when considered both individually and collectively, there is no evidence of control by IESO in respect of the Trust. The IESO does not have the power to govern the Trust, nor does it have ongoing access to the Trust's assets. The IESO does not have any voting units or future rights to the Trust nor the power to dissolve the Trust. Without control, the Trust should not be subject to consolidation within the IESO financial statements.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur that based on the FHP Act and the Declaration of Trust of the Fair Hydro Trust, none of the four primary (more persuasive) indicators of control are considered to be met, and none of the seven other indicators of control are considered to be met. Accordingly, we concur with IESO management that IESO does not control the Trust under the FHP Act and therefore should not consolidate the Trust.

Issue #3: What is the accounting treatment for the transfer of the regulatory asset by the IESO to the Trust? More specifically, does the transfer qualify as a derecognition event for accounting by the IESO?

Background for Issue #3

The facts, circumstances, and assumptions relevant to the specific transactions as provided to us by the management of the Company (responsible party), in addition to those described in the background for issues #1 and 2 are as follows:

1. Fair Hydro Trust: Computershare Trust Company of Canada is the Issuer Trustee, OPG is the Financial Services Manager and Manager, and IESO is the Servicer.
2. The total IESO deferral for the period from May 1, 2017 to April 30, 2047 is estimated at $20 billion plus interest and will be recorded by the IESO in a variance account recognized as a regulatory asset. The IESO deferral will include the carrying charges paid to the Trust pursuant to the Regulations for the period from June 1, 2017 to July 31, 2021.
3. The IESO does not currently have the financial capability to finance the regulatory asset and will transfer a specified portion of the regulatory asset to the Trust from time to time.
4. It is expected that the regulatory asset will be transferred to the Trust on a regular basis and the proceeds for each transfer will be received by IESO at the time of the transfer.
5. The IESO deferral recorded in the variance account for the first period to December 21, 2017 amounted to approx. $1,179,000,000 and was transferred to and paid for by the Trust on that date.
6. The IESO has obtained a written legal opinion from Stikeman Elliott LLP as to the validity and enforceability of the transfer of the investment interest in the regulatory asset.
7. Based on an assessment of control performed under the issue #2, IESO should not consolidate the Trust. We understand that an assessment of control under IFRS has been performed by OPG and they have concluded that the Trust will be consolidated by OPG; we note that the financial reporting framework used by OPG in preparing its financial statements for consolidation into the Province's books is IFRS.[2]
8. Relevant sections from the FHP Act

   Section 15 Determination of clean energy adjustment

   Financial Services Manager to determine

   (1) The Financial Services Manager shall determine the CEA payable by all specified consumers in respect of each month in a reference period by taking the following steps:

      1. Calculate the sum of the following:
         i. The estimated finance amount in respect of the reference period.
         ii. The true up amount in respect of the reference period.
      2. Divide the sum calculated under paragraph 1 by the number of months in the reference period.

[2] Our views that IESO does not control OPG Trust, and thus, should not consolidate OPG Trust are not dependent upon the conclusions reached by the OPG as to whether OPG should consolidate OPG Trust. It is a helpful fact, but not a necessary fact for our conclusion regarding IESO's accounting relationship to OPG Trust.

Regulations re true up amount

(2) The Lieutenant Governor in Council shall, in making regulations with respect to the determination of the true up amount, have regard to the following principles:

2. The method for determining the true up amount should take into account historical and reasonably foreseeable,

i. differences between the estimated and actual finance amount for the applicable reference period,

ii. differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and

iii. variations in billings due to variations in electricity consumption.

Section 16 IESO to receive amounts

(1) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations.

(3) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners.

(4) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.

Section 26 Transfer of regulatory asset

(1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

(3) Upon receipt by the IESO of the payment by the financing entity,

(a) the balance in the variance account shall be reduced by the amount of the payment;

(b) the regulatory asset shall be adjusted accordingly;

(c) the financing entity shall acquire a corresponding investment interest; and

(d) the IESO shall retain no further right, title or interest in the investment interest.

Section 27 Validity of transfer

(1) A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.

(2) Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.

(3) At the time a transfer of the regulatory asset is made under section 26, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the transferee shall have priority over any liens in favour of those persons.

Section 29 Investment asset, irrevocable rights and interests

(1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:

1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.
2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.
3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.
4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge and invoice for the clean energy adjustment.
5. The right to enforce the duties and obligations under this Act of each electricity vendor and the IESO to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by any electricity vendor to recover payment of the clean energy adjustment.
6. All rights of any kind related to any of the other property rights or interests that comprise the investment interest, including any rights to receive funding rebates.
7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether it is invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Section 30 Transfer of investment interest

(2) An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

Section 31 Validity of transfer

(1) A transfer of an investment interest under this Act is a valid and enforceable sale and absolute transfer of the investment interest and confers upon the transferee a valid property right and interest in, to and under the applicable investment interest acquired in accordance with the terms of the transfer.

(2) Without limiting subsection (1), a transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of an investment interest owner's right, title and interest in, to and under an investment interest, and not merely as a security interest, and upon such absolute transfer the transferor shall retain no right, title or interest in the investment interest subject to the transfer, including all rights to the investment interest arising after the transfer.

Section 32 Investment interest owner may grant security interest

(1) An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.

(3) All provisions of the Personal Property Security Act shall apply to the investment asset and each investment interest on the basis that the investment asset and each investment interest is intangible personal property, except as otherwise provided for in this section, and any granting of a security interest by an investment interest owner to secure a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by registering a financing statement under that Act on that basis.

9. Relevant sections from Regulation 429/04

Section 10.2 Determination of rate re IESO security

The IESO shall, in respect of each month, determine the rate payable by specified consumers in respect of the costs incurred by the IESO to fulfil its obligations, if any, under an agreement with a financing entity to provide security by dividing the costs it incurred in respect of the month for the security by the monthly total net volume of electricity consumed by specified consumers calculated under section 10.1.

10. Relevant sections from the Ontario Regulation 206/17

Section 1 (1) Definitions

"Financing entity expense" includes,

(a) fees, including fees charged by the Financial Services Manager, charges, costs, indemnities, reimbursements, other amounts incurred or committed to, by or on behalf of a financing entity as a result of an activity authorized or permitted under the Act, and

(b) any taxes on amounts mentioned in clause (a);

"Funding cost" means interest, commitment fees or other similar costs payable by or on behalf of a financing entity in respect of funding obligations, including a derivative payment.

Section 6 Determining true up amount

(3) The true up amount in respect of a reference period or a portion of the reference period shall be determined, as follows: T = (A − B) + C

where,

T = the true up amount in respect of the period of time,

A = the aggregate of the finance amounts in respect of all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

B = the aggregate of all amounts of the clean energy adjustment remitted to or for the benefit of the investment interest owners during all reference periods preceding the current reference period and, if the determination is being made at a point in time during the current reference period, in respect of the portion of the current reference period that precedes the point in time,

C = the amount representing reasonably foreseeable differences between the amounts to be invoiced in respect of the clean energy adjustment and the amounts to be remitted by the IESO

to the investment interest owners in respect of the invoices due to various factors, including those mentioned in subparagraphs 2 ii and iii of subsection 15 (2) of the Act.

Section 9.1 IESO to pay, remit amounts re carrying costs of financing entity

During the period beginning on December 1, 2017 and ending on July 31, 2021, the IESO shall pay and remit to a financing entity any amounts charged to the IESO by the financing entity in respect of carrying costs of the financing entity during the period beginning on June 1, 2017 and ending on July 31, 2021. The IESO may grant security to a financing entity in order to secure its obligations to pay and remit present and future amounts due under this section.

11. Relevant sections from the Master Transfer and Servicing Agreement (the "MTSA Agreement") signed between IESO and the Trust

Section 1 (1) Definitions

"Collection Account" means an Eligible Deposit Account established by the Issuer for the purpose of receiving the Issuer Share of the Servicer CEA Receipts.

"Remittance Date" means, in respect of each Billing Period, the 18th Business Day following the last day of each Billing Period.

Section 3.4 Clean Energy Adjustments and Electricity Vendors

(a) The Servicer shall prior to receiving Servicer CEA Receipts, establish an Eligible Deposit Account (the "IESO Segregated Account") bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer…

(e) As agent of the Issuer … receive Electricity Vendor CEA Collections from Electricity Vendors.

(f) As agent of the Issuer ... receive any amounts in respect of Clean Energy Adjustments payable directly by Specified Consumers to the Servicer (such amounts, together with the amounts referred to in Section 3.4(e), the "Servicer CEA Receipts");

(g) Deposit the Servicer CEA Receipts into the IESO Segregated Account promptly following receipt by the Servicer and, in any event, within two Business Days of receipt by the Servicer and the Issuer Share of such Servicer CEA Receipts shall remain in the IESO Segregated Account until remitted in accordance with Section 3.6;

(l) Hold the Issuer Share of Servicer CEA Receipts and the Issuer Share of any other proceeds in respect of the Clean Energy Adjustment received by it in trust for the benefit of the Issuer and remit such amounts in accordance with Section 3.6 without any surcharge, fee, offset, charge or other deduction.

Section 3.6 Remittance

(b) Absent the occurrence of a Daily Remittance Event, the Issuer Share of Servicer CEA Receipts received by the Servicer and any interest earned thereon received on or subsequent to a Remittance Date shall be remitted by the Servicer to the Collection Account no later than the immediately following Remittance Date.

(c) Following the occurrence of a Daily Remittance Event, the Issuer Share of all Servicer CEA Receipts on deposit in the IESO Segregated Account and any interest earned thereon shall be remitted by the Servicer to the Collection Account on the second following Business Day.

Section 3.7 Reimbursement of Servicer

The Issuer shall reimburse the Servicer for its direct costs relating to the performance by the Servicer of its duties and obligations hereunder and that are not otherwise recovered by the Servicer pursuant to sections 25.1(1) and 25.1(2) of the Electricity Act, 1998, which direct costs the IESO shall have no obligation to seek recovery for under sections 25.1(1) and 25.1(2) of the Electricity Act, 1998; provided, however, that this Section 3.7 shall not apply to any costs relating to the performance by the Servicer of its duties and obligations under the Act or the Regulations, including, for greater certainty the Servicer's obligations to pay monthly Carrying Costs.

Section 3.8 Limits to Obligations

Notwithstanding anything to the contrary in this Agreement, the parties hereto agree that the duties, liabilities and obligations of IESO under this Agreement are limited as provided in this Section 3.8.

(a) IESO is not responsible for, or in respect of, any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.

(b) IESO is not responsible to confirm, verify or audit the amount of the Clean Energy Adjustment invoiced by Electricity Vendors or the Electricity Vendor CEA Collections collected by Electricity Vendors and reported to the IESO.

(c) IESO is not responsible for enforcing the obligations of Specified Consumers to pay, or the obligations of Electricity Vendors to invoice, collect or remit Clean Energy Adjustments or any other amounts, or to establish a segregated account into which Electricity Vendor CEA Collections are to be deposited, and IESO is under no obligation to initiate or prosecute any legal action relating to the collection of the Clean Energy Adjustments or the Issuer Investment Interest.

(d) IESO is not responsible or liable for the performance by Electricity Vendors of their duties and responsibilities under the FHP Act or the Regulations including (i) the invoicing of Specified Consumers in respect of the Clean Energy Adjustment and ancillary matters related thereto; (ii) the collection from Specified Consumers of amounts due in respect of such invoices and the remittance of such payments to the Servicer; (iii) the accuracy of any information provided by the Electricity Vendors; and (iv) any reporting by the Electricity Vendors, including the reporting to the Servicer of the total CEA Consumer Invoice Amounts invoiced by such Electricity Vendor to its Specified Consumers in respect of the Clean Energy Adjustment, the total Electricity Vendor CEA Collections received by such Electricity Vendor and the Issuer Share of Electricity Vendor CEA execution, delivery and performance of all obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the IESO under all applicable laws.

(e) IESO is under no responsibility or obligation to the Issuer with respect to the nature or extent of the Issuer Investment Interest, the collectability of the Issuer Share of Servicer CEA Receipts or that the Issuer Share of Servicer CEA Receipts will be sufficient to satisfy the Issuer's Funding Obligations.

(f) IESO may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person, respecting any matters arising under this Agreement.

(g) IESO shall have no liability or responsibility to any Person in respect of any forecasts or other information provided pursuant to Section 3.2, provided only that such forecasts or other information has been prepared and provided in good faith.

(h) None of the directors, officers, employees or agents of IESO shall be liable to the Issuer or any other Person for any action taken or for refraining from the taking of any action pursuant to this Agreement or for good faith errors in judgment.

Section 3.15 IESO Security for CEA Remittances

The IESO shall provide to the Issuer, on or prior to the first day of the first Billing Period when amounts are invoiced to Specified Consumers in respect of Clean Energy Adjustments, security for any failure of Non-Investment Grade Rated Electricity Vendors to remit their Electricity Vendor CEA Collections in the form of (x) a letter of credit from a provider that satisfies the Rating Agency Condition and with a term extending to the first day of the immediately following calendar year, or (y) a performance guarantee or such other form of security as may be acceptable to the Issuer and that satisfies the Rating Agency Condition.

Section 8.7 Limitations on Rights of Third Parties

The provisions of this Agreement are solely for the benefit of the IESO and the Issuer, and such Persons shall have the right to enforce the relevant provisions of this Agreement. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim in the Issuer Investment Interest or under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

12. Relevant sections of the Security Agreement signed between IESO and the Fair Hydro Trust

Under Regulation 206/17 made under the FHP Act, the Grantor (ie. IESO) is required to pay to the Secured Party during the period beginning on December 1, 2017 and ending on July 31, 2021 the Carrying Costs of the Secured Party incurred during the period beginning on June 1, 2017 and ending on July 31, 2021 (the “Statutory Obligation”).

Section 2.1 Grant of Security Interest

As general and continuing security for the payment of the Statutory Obligation, the Grantor hereby grants a security interest to the Secured Party…

Relevant Accounting Guidance for Issue #3

ASC 980 *Regulated Operations*

- The Derecognition Section of ASC 980-20-40 provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation. [ASC 980-20-40]
- Failure of an entity's operations to continue to meet the criteria in paragraph 980-10-15-2 can result from different causes. Examples include the following:
  (a) Deregulation.
  (b) A change in the regulator's approach to setting rates from cost-based rate-making to another form of regulation.
  (c) Increasing competition that limits the entity's ability to sell utility services or products at rates that will recover costs (as used in paragraph 980-10-15-2).
  (d) Regulatory actions resulting from resistance to rate increases that limit the entity's ability to sell utility services or products at rates that will recover costs if the entity is unable to obtain (or chooses not to seek) relief from prior regulatory actions through appeals to the regulator or the courts. [ASC 980-20-15-2]

PS 1000 *Financial statement concepts*

- This Section is to be used by preparers and auditors of financial statements in exercising their professional judgment as to the application of generally accepted accounting principles and in establishing accounting policies in areas in which accounting principles are developing. [PS 1000.03]
- Financial statements should communicate information that is relevant to the needs of those for whom the statements are prepared, reliable, comparable, understandable and clearly presented in a manner that maximizes its usefulness. [PS 1000.24]
- An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [PS 3210.04]. Thus, for example, an item does not qualify as an asset of a government if the item involves:
  (a) no future economic benefit;
  (b) future economic benefit, but the government cannot obtain it; or
  (c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred. [PS 1000.37]

PS 3050 *Loans receivable*

- A loan receivable should be removed from a government's statement of financial position when it has been repaid, the risks and rewards associated with the loan have been transferred, the right to repayment has expired or been waived, or it is written off. [PS 3050.28]

PS 3210 *Assets*

- Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. [PS3210.03]
- Assets have three essential characteristics:
  (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.
  (b) The public sector entity can control the economic resource and access to the future economic benefits.
  (c) The transaction or event giving rise to the public sector entity's control has already occurred. [PS 3210.04]
- Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not. [PS 3210.22]

PS 3430 *Restructuring transactions*[3]

- Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date. [PS 3430.21]
- When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether: [PS 3430.24]

  (a) derecognition of the asset and liability transferred would be appropriate; and

  (b) its continued involvement gives rise to a new asset or new liability that needs to be recognized.
- A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients. [PS 3430.25]

KPMG Insights into IFRS, 14th Edition 2017-2018, Section 7.5.220.10 *Structural and other liquidity risks*

- Structural liquidity risk arises primarily in securitisations when there is a mismatch between the cash inflows from financial assets and cash outflows on financial liabilities. It is important to differentiate structural liquidity risk from late-payment and default risk. For example, in a securitisation structural liquidity risk may arise because of variability in the timing of defaults on the assets whereby the structured entity that has issued securities to investors does not have enough cash to meet its obligations. This variability can arise without altering the cumulative expectation of defaults on the portfolio. In our view, this risk is not inherent in the financial asset transferred, but arises as a result of the structure of the transaction. Consequently, we believe that this risk should not be included in the risks and rewards analysis.

Deloitte, Securitization Accounting, 10th Edition January 2017, Chapter 4 *How do securitizations fare under IFRS? Page 41*

- The overall securitization has liquidity risk associated with the fact that there is a mismatch in the timing of cash inflows and outflows. It is important to recognize that liquidity risk arising in the structured entity from differences in the contractual timing of cash flows of the assets and the notes issued to acquire the assets is not part of the transferred assets. This compares to late payment risk and credit default risk which is inherent in the assets. However, if the asset pays late, the transferee may not be able to meet its obligations under the notes. This liquidity risk only arises when the assets are placed inside the securitization structure. The liquidity risk associated with late payment risk is therefore not included in the transferor's risk and rewards assessment in determining derecognition for the transferor.

[3] This Section applies to fiscal years beginning on or after April 1, 2018. […] Earlier adoption is permitted."

Analysis of Issue #3: What is the accounting treatment for the transfer of the regulatory asset by the IESO to the Trust? More specifically, does the transfer qualify as a derecognition event for accounting by the IESO?

Before discussing whether the transfer qualifies for derecognition of the regulatory asset, we must determine the nature of the item being transferred. The IESO has recorded on its balance sheet a regulatory asset under PSAS representing the right to recover various cash costs incurred through the inclusion of those costs in the rate charged to specified consumers. Legally, the transfer is of a regulatory asset pursuant to which the financing entity will acquire a corresponding investment interest in the investment asset (Sections 26 and 27 of the FHP Act). The question is whether the regulatory asset and the investment interest in the investment asset are the same or substantially the same for purposes of the derecognition analysis. In considering this question, it is necessary to look to the FHP Act which establishes what constitutes the investment interest. Section 29 (1) thereof provides that the investment interest comprises a current and irrevocable property right and interest consisting collectively of the following, among other rights: the right to receive, collect and recover the clean energy adjustment ("CEA") from specified consumers; the right to enforce duties and obligations of the electricity vendors to charge and invoice the CEA; and all revenue, collections, claims, payments, money and proceeds derived from these rights regardless of whether they are commingled. Given that the rights of the investment interest owners comprise the entirety of the economic substance and risks of the regulatory asset as recognized by the IESO, we are of the view that they are the same. Accordingly, although legally the transfer is of the regulatory asset pursuant to which the financing entity acquires a corresponding investment interest, we view the substance as being the same as a transfer of the regulatory asset, which leads us to the analysis below as to whether the transfer qualifies as a derecognition event from an accounting perspective.

For clarity, in the discussion below we will use the term 'regulatory asset' to refer to the investment interest.

ASC 980 does not provide clear detailed guidance for the derecognition of a regulatory asset other than in connection with the discontinuation of rate-regulated accounting. However, ASC 980-20-40 provides general principles for the derecognition of assets:

- *Derecognition Section provides guidance on determining whether and when an entity should remove an item from the financial statements. For example, the entity would derecognize an asset because it no longer has rights to the asset or it would derecognize a liability because it no longer has any obligation.*

In the context of this limited guidance alone, we could conclude that IESO should derecognize the regulatory asset when it transfers the regulatory asset and the corresponding investment interest is acquired by the Trust, given the following provisions of the arrangement and related legislation:

FHP Act, Section 27 (1) (2) (Emphasis added below):

- *A transfer of a specified portion of the regulatory asset under section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.*
- *Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.*

Further, pursuant to Sections 30 and 32 of the FHP Act, the investment interest owner (i.e. the transferee) has the right to either sell its investment to another investment interest owner or to grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation. The ability to do so provides additional evidence that the transferee may realize its asset without any involvement by IESO.

It should also be noted that PSAS provides limited guidance on derecognition of financial assets. PS 3050 *Loans receivable*:

- *A loan receivable should be removed from a government's statement of financial position when it has been repaid, the risks and rewards associated with the loan have been transferred, the right to repayment has expired or been waived, or it is written off.*

As noted in Section 27(1) and (2) of the FHP Act, the asset has been absolutely assigned, conveyed and disposed of; the transfer is not merely to effect a security interest.

In addition, PS 1000 *Financial statement concepts* and PS 3210 *Assets* provide general guidance on the recognition and derecognition of an asset:

- *An item does not qualify as an asset of a government if the item involves:*
  - *(a) no future economic benefit;*
  - *(b) future economic benefit, but the government cannot obtain it; or*
  - *(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred.*

These considerations are discussed further below, as relevant.

Furthermore, it should also be noted that PSAS provide limited guidance on derecognition of non-financial assets. Section 3430 *Restructuring transactions,* which is applicable for fiscal years on or after April 1, 2018 with early application permitted, has guidance for the derecognition of assets.

- *Individual assets… transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets… and applicable recognition criteria at the restructuring date.*
- *When a transferor continues to be involved in the individual assets … it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the [definition] of assets … and applicable recognition criteria to evaluate whether derecognition of the asset transferred would be appropriate and whether its continued involvement gives rise to a new asset or new liability that needs to be recognized.*

Recognizing the proposed transaction is not a restructuring transaction, Section 3430, which has recently been issued by PSAB, provides current evidence of thinking in the application of the general PSAS principles in respect to the recognition and derecognition of assets.

Accordingly, the analysis as to whether the regulatory asset transferred to the Trust can be derecognized is based on the foregoing guidance.

Criteria for the recognition of an asset

PS 3210.03 states that assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained. More generally, PS 1000.37 suggests that an asset would no longer be recognized if it fails to meet the definition of an asset:

Criteria	Comment	Evaluation
Assets (PS 3210.04/ PS 1000.36) (Emphasis added)*:* Assets have three essential characteristics: (a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (b) The public sector entity can control the economic resource and access to the future economic benefits. (c) The transaction or event giving rise to the public sector entity's control has already occurred. *Financial statement concepts (PS 1000.37):* An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph [see above]. Thus, for example, an item does not qualify as an asset of a government if the item involves: (a) no future economic benefit (b) future economic benefit, but the	Based on the accounting guidance, the regulatory asset transferred to the Trust does not qualify as an asset of IESO if they cannot obtain the future economic benefits. PS 1000 *Financial statement concepts* and PS 3210 *Assets* state that: – *… an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.* – *Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not.* Upon transfer of the regulatory asset, the IESO has no further rights or obligations in connection to the asset transferred, other than the contractual obligation to act as the Servicer of the asset transferred and the security granted to the Trust discussed below. Interest earned on the cash collected by IESO as the Servicer is required to be transferred to the Trust. The Trust has provided to the Indenture Trustee a security over the regulatory asset acquired from the IESO. The Trust has the right to sell the acquired regulatory asset to other parties. These conclusions are supported by the FHP Act, the MTSA Agreement and Stikeman Elliott LLP. The FHP Act notes that: – *IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.* – *Upon receipt by IESO of the payment by the financing entity, IESO shall retain no further right, title or interest in the corresponding investment interest.* – *A transfer of a specified portion of the regulatory asset under Section 26 constitutes a valid and enforceable absolute assignment, conveyance and sale of the corresponding investment interest to the transferee.* – *Without limiting subsection (1), any transfer agreement that states an intention of the parties for IESO to dispose of a specified portion of the regulatory asset and to assign, convey or sell a corresponding investment interest shall be treated for all purposes as an absolute assignment, conveyance, disposition and sale of IESO's right to recover the corresponding amount in the variance account and not merely as a security interest.*	Not an asset of the IESO

Criteria	Comment	Evaluation
government cannot obtain it.	– *At the time a transfer of the regulatory asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.* – *An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.* The MTSA Agreement notes that: – *IESO shall establish an Eligible Deposit Account bearing a designation indicating that the funds deposited therein are held in trust for the benefit of the Issuer.* – *IESO shall remit the CEA Receipts received and any interest earned thereon to the Trust.* – *The duties, liabilities and obligations of IESO under the MTSA Agreement are limited, especially that the IESO is not responsible for any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.* There is no contractual restriction preventing the Trust from selling or pledging the regulatory asset acquired from IESO. In fact, the Trust has granted a security interest over all its right, title and interest in, to and under the investment interest to the Indenture Trustee to secure future funding obligations. Furthermore, the Trust has the right to sell the asset to another party in accordance with the Financing Plan (which is to be established by OPG as the Financial Services Manager). The FHP Act notes that: – *Upon transfer, the financing entity becomes an investment asset owner and acquires an investment interest.* – *An investment interest owner may transfer all or a portion of an investment interest to any other investment interest owner.* – *An investment interest owner may grant a security interest over all or a specified portion of its right, title and interest in, to and under the investment interest to or in favour of any person to secure a funding obligation.* Although not specifically a requirement in PSAS, in determining whether a transfer has been substantively effected in a securitization transaction, other accounting frameworks consider whether a transfer would survive the possibility of bankruptcy of the transferor, regardless of how	

Criteria	Comment	Evaluation
	remote insolvency may appear given the transferor's credit standing at the time of securitization, and irrespective of an entity's credit rating. That is, whether creditors of the transferor would have rights to the transferred assets in a bankruptcy claim. Put differently, would the transfer be undone if the transferor were to become a bankrupt. In that respect, IESO has obtained a legal opinion from Stikeman Elliott LLP. Paragraphs 12 and 13 of the legal opinion state that: – *The transfer by the IESO of the specified portion of the regulatory asset provided for in the Initial Transfer Notice would not be declared void or be set aside by a court as a preference or a fraudulent conveyance upon the application of a Creditor pursuant to the applicable preferences and fraudulent conveyances provisions of any of the Insolvency Statutes and would not be held by a court to constitute a transfer at undervalue under the Insolvency Statutes.* – *The Trust is a separate entity from the IESO, and absent an agreement to the contrary or a further transfer of the investment interest, (i) in a bankruptcy or insolvency proceeding under the Insolvency Statutes in relation to the IESO, the corresponding investment interest would not constitute property of the IESO within the meaning of the applicable Insolvency Statutes (ii) the Trust would not be legally responsible for the general obligations of the I ESO and (iii) creditors of the IESO could not look successfully to the corresponding investment interest to satisfy a claim which they may have against the IESO.* Based on the above facts, and on the FHP Act, MTSA Agreement and the legal opinion, it is clear that IESO will have no rights to the economic benefits associated with the future cash inflows related to the regulatory asset transferred to the Trust - it will have transferred its right to recover the IESO deferral to the Trust. Further, it is also clear that IESO will lose control over the regulatory asset once it is transferred to the Trust.	

As mentioned above, and recognizing the proposed transaction is not a restructuring transaction, Section 3430 provides guidance by analogy, on how to account for and report restructuring transactions by transferors of assets. PS 3430.24 requires an entity to assess whether it should continue to recognize an asset (legally) transferred when a transferor continues to be involved in the individual assets it transferred to a recipient subsequent to the restructuring date. However, PS 3430.24 provides no guidance to help a preparer assess whether the continuing involvement is of the type to prohibit derecognition. However, both US GAAP and IFRS have guidance to which we have looked to assist in the application of PS 3430 for both the continuing involvement condition (US GAAP and IFRS) and the risk/rewards analysis (IFRS).

Criteria	Comment	Evaluation
Restructuring transactions (PS 3430.24): When a transferor continues to be involved in the individual assets…it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets…and applicable recognition criteria to evaluate whether: (a) derecognition of the asset…transferred would be appropriate; and (b) its continued involvement gives rise to a new asset or new liability that needs to be recognized. [PS 3430.24] *(PS 3430.24):* A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred	By analogy to PS 3430, one assesses whether the regulatory asset transferred to the Trust should be derecognized and whether a new asset or liability arises due to the IESO's continued involvement in the collection of the regulatory asset transferred to the Trust. Based on the analysis above, the derecognition of the asset is appropriate subject to further assessment of the three issues mentioned below. Based on an analysis of the MTSA Agreement and the Regulations, we have identified three additional items of continued involvement that need to be assessed: the security granted by the IESO to the Trust, the carrying costs to be paid by the IESO during the period to July 31, 2021, and the IESO's costs incurred as the Servicer. *Security granted to Trust* The issue is whether the security granted to the Trust would not allow the IESO to derecognize the regulatory asset transferred to the Trust. Before addressing the security granted to the Trust, it should be noted that the FHP Act allows the Trust to recover from the specified consumers, through the true up mechanism, any CEA amount uncollected, including the CEA amount collected by the Electricity Vendors but not remitted to IESO. Section 15 of FHP Act and the Regulation 206/17 note that: – *The Financial Services Manager shall determine the CEA payable by all specified consumers in respect of each month in a reference period by taking the following steps:* *1. Calculate the sum of the following:* *i. The estimated finance amount in respect of the reference period.* *ii. The true up amount in respect of the reference period.* *2. Divide the sum calculated under par. 1 by the number of months in the reference period.*	Derecognition criteria met; No new asset or liability to recognize

Criteria	Comment	Evaluation
(for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients. [PS 3430.25]	– *The determination of the true up amount should take into account historical and reasonably foreseeable,* i. *differences between the estimated and actual finance amount for the applicable reference period,* ii. *differences between amounts invoiced and amounts collected due to various factors, including applicable taxes, consumer defaults and delays, billing lags and write-offs, and* iii. *variations in billings due to variations in electricity consumption. (Emphasis added)* Furthermore, the MTSA Agreement states that: – *The duties, liabilities and obligations of IESO under the MTSA Agreement are limited, especially that the IESO is not responsible for any amounts not collected by Electricity Vendors from their customers or not remitted by Electricity Vendors to the Servicer.* In fact, the purpose of the security is to address the liquidity risk related to the failure of *Non-Investment Grade Rated Electricity Vendors to remit their Electricity Vendor CEA Collections*. As a result, IESO is required to provide security to the Trust pursuant to Section 3.15 of the MTSA Agreement as follows: – *The IESO shall provide to the Trust, security for any failure of Non-Investment Grade Rated Electricity Vendors to remit their Electricity Vendor CEA Collections in the form of (x) a letter of credit from a provider that satisfies the Rating Agency Condition and with a term extending to the first day of the immediately following calendar year, or (y) a performance guarantee or such other form of security as may be acceptable to the Issuer and that satisfies the Rating Agency Condition.* The amount of the security is estimated at around $100 million based on the formula described in Section 3.15. As discussed above, recognition and derecognition of assets under PSAS is based on a risks and rewards model. When performing an assessment for the derecognition of an asset in a securitization arrangement, we look at the risks and rewards associated with ownership of the asset. Those are risks that are inherent in the asset that is being transferred prior to its transfer. For example, 'late-payment risk' (i.e., the risk that the asset's obligor does not pay its obligation as due) is considered in the risks and rewards analysis. However, late payment by the transferor of cash collected, is not thought as	

Criteria	Comment	Evaluation
	a risk or reward associated with the transferred asset as it is not a risk or reward that was inherent in the asset prior to its transfer. The default risk contemplated in the security relates to the Electricity Vendors not remitting received CEA Receipts to IESO. It is not a security against the failure of the specified consumers to remit amounts due to the Electricity Vendors. There is no guidance on this issue under PSAS and limited guidance under other accounting frameworks on this issue. In our view, the risk of the Electricity Vendors not paying the cash it has collected is not inherent in the asset transferred, but arises as a result of the structure of the transaction. We believe that this risk is more analogous to structural liquidity risk. As noted earlier, PSAS has no guidance on the assessment of the risk and reward analysis, particularly as it relates to the security. IFRS, given its risk/rewards criterion (as the first step in determining whether derecognition has been achieved) has guidance to which one may analogized. KPMG and Deloitte[4] provide guidance on the accounting implications structural liquidity risk of securitization transactions. KPMG Insights into IFRS, 14th Edition 2017-2018, Section 7.5.220.10 states: – *It is important to differentiate structural liquidity risk from late-payment and default risk.* – *For example, in a securitization structural liquidity risk may arise because of variability in the timing of defaults on the assets whereby the structured entity that has issued securities to investors does not have enough cash to meet its obligations. This variability can arise without altering the cumulative expectation of defaults on the portfolio. In our view, this risk is not inherent in the financial asset transferred, but arises as a result of the structure of the transaction. Consequently, we believe that this risk should not be included in the risks and rewards analysis.* Furthermore, it should be noted that the IESO has been granted a right to recover any cost incurred related to the security from the specified consumers. A provision has been added to Section 10.2 of Regulation 429/04, which will come into force in 2021, which is when the IESO's security will be put in place: – *The IESO shall, in respect of each month, determine the rate payable by specified consumers in respect of the costs incurred by the IESO to fulfil its obligations, if any, under an agreement with a financing entity to provide security…*	

[4] In our survey of PWC's and EY's publicly available guidance, we found no guidance on structural liquidity risk.

Criteria	Comment	Evaluation
	Consequently, we believe that the structural liquidity risk should not be included in the risks and rewards analysis. *Carrying costs incurred by the Trust* The issue is whether a financial liability should be recognized on Day 1 for the carrying costs to be paid by the IESO during the period to July 31, 2021. The carrying costs include the funding cost (interest) and the financial entity expenses (operating costs incurred by the Trust). Section 9.1 of Ontario Regulation 206/17 notes that: – The IESO shall pay and remit to the Trust any amounts charged to the IESO by the Trust in respect of carrying costs of the Trust during the period from June 1, 2017 to July 31, 2021. – The IESO may grant security to the Trust in order to secure its obligations to pay and remit present and future amounts due under this section. – The carrying costs include the funding cost (interest, commitment fees or other similar costs payable by the Trust in respect of funding obligations), as well as the financial entity expenses (operating costs incurred by the Trust). *Financial entity expenses.* In our opinion, the operating costs incurred by the Trust are period costs, and no accrual should be made in advance of payment for these expenses as the operating costs incurred by the Trust which give rise to the payment requirement have not occurred yet. *Funding cost*. In our opinion, a financial liability should be recognized to cover the funding cost for the period from June 1, 2017 to July 31, 2021 only if there is a contractual obligation between the IESO and the Trust. The obligation to pay for the funding cost has been established by the Ontario Regulation 206/17 instead of a contractual obligation between the IESO and the Trust. As a result, there is no requirement to set up a financial liability on the derecognition of the regulatory asset transferred to cover the funding cost. A financial liability will be recognized when the carrying costs are invoiced by the Trust to the IESO.	

Criteria	Comment	Evaluation
	Costs of the IESO as the Servicer PS 3430.24 notes that "a new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred." Other accounting frameworks (US GAAP and IFRS) have identified a requirement to consider whether as a result of a requirement to service transferred financial asset there exists a servicing asset or liability. In this instance, IESO is required to service the transferred investment interest. Thus, there is an issue as to whether a servicing liability should be recognized on Day 1 given that the IESO is not receiving any additional compensation for servicing. Under these other accounting frameworks, when there is no servicing fee specified, or the fee to be received is not expected to compensate the entity adequately for performing the servicing, a liability for the servicing obligation is recognized at fair value. The MTSA Agreement notes that: – *The Issuer shall reimburse the Servicer for its direct costs relating to the performance by the Servicer of its duties and obligations hereunder…* As a result, since the IESO will be adequately compensated for performing the servicing, there is no requirement to recognize a liability for the servicing obligation. That is, as the IESO will be adequately compensated for the servicing activities it performs in the future, and as both sides of this future transaction are equally unfulfilled (i.e., servicing by IESO and obligation of the Trust to compensate IESO for that servicing), no liability would be recognized on Day 1.	

Management conclusion

IESO management has concluded that the regulatory asset should be derecognized upon transfer of the investment interest in the regulatory asset to the Trust.

The transfer of a specified portion of a regulatory asset transfers the control and the benefits associated with the right to collect cash flows in the future arising in investment asset acquired by the Trust. This will eliminate the IESO regulatory asset in the amount of the transfer to the Trust as the IESO will no longer control an economic resource or have access to future economic benefits of that asset. The funds collected from the transfer will in turn reduce the associated debt held by the IESO, maintaining the IESO's net $ nil balance in the market accounts.

Our conclusion

We have considered the foregoing analysis and management's conclusion. We concur with management's conclusion that the regulatory asset should be derecognized on transfer to the Trust as IESO no longer has rights or future economic benefits associated with the asset.

Other Matters

The ultimate responsibility for the decision on the appropriate application of PSAS for the specific transactions rests with management as preparers of the financial statements. Our judgment on the appropriate application of PSAS for the specific transaction is based solely on the facts, circumstances and assumptions provided to us as described above. Should these facts and circumstances differ, our conclusion may change.

The opinions expressed herein are as of the date of this letter only and as such we assume no obligation to update or supplement such opinion to reflect any facts or circumstances that may come to our attention after that date or any changes in generally accepted accounting principles, including but not limited to US GAAP, PSAS or IFRS that occur or become effective after that date.

This letter is intended solely for the information and use of the Board of Directors and management of the Company, and is not intended to be and should not be used, quoted, relied upon by, or otherwise referred to by anyone other than these specified parties or for any other purpose without our express written consent.

No one other than the Board of Directors and management of the Company is authorized by KPMG to rely upon any information or views expressed herein. KPMG shall have no responsibility or liability for loss or damages or claims, if any, to or by any third party as this letter has not been prepared for, and is not intended for, and should not be used by, any third party or for any other purpose.

Yours very truly,

Michel Picard
Partner
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KPMG_IESO.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: KPMG/IESO
Date: Tuesday, August 29, 2017 13:27:59
Attachment 1: image001.gif

Hi Cindy,

I am wondering if you were able to get permission to send us what the IESO/KPMG are working on.

Regards,

Lee Anne

--

LeeAnne Probert | Senior Manager | Assurance Services

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KPMG Memorandum.pdf

From: Picard, Michel
To: Veinot, Cindy (TBS)
Subject: KPMG Memorandum
Date: July 25, 2017 7:59:15 PM
Attachments: IESO Memorandum to file July 25 2017.pdf

Cindy,

Please find enclosed our Memorandum to file addressing the AG's comments.

I will forward the Deloitte Opinion as soon as I receive it.

Should you have any questions, please do not hesitate to me.

Good evening and enjoy the reading!

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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IESO Memorandum to file July 25 2017.pdf

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Yours very truly,

KPMG LLP

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Memo to file to address the issues raised by the AG, dated July 25, 2017

This memorandum addresses the issues raised by the Office of the Auditor General in its email sent to John Gordon on June 20, 2017. We have summarized the issues raised into 17 issues, each individually discussed in more detail in the balance of this memorandum. The comments set out herein are specific to the accounting by IESO and do not relate to the accounting by another entity, including the Province of Ontario.

Summary of the conclusions reached in this memorandum

The IESO changed its accounting policies to permit the recognition of the economic effects of rate regulation as from the 2016 financial year. IESO adopted the guidance of ASC 980 *Regulated Operations ("ASC 980")* to better reflect the economic substance of its operations and enhance the relevance, transparency and accountability of its financial reporting.

As further discussed in this memo, we believe that a rate-regulated entity reporting under PSAS is allowed to use the GAAP hierarchy under Public Sector Accounting Standards ("PSAS") to adopt ASC 980. We note that rate-regulated entities that were reporting under Part V of the CPA Handbook before they transitioned to IFRS recognized the economic effects of rate regulation using the GAAP hierarchy in Part V of the CPA Handbook, which is substantially consistent with the GAAP hierarchy in PSAS. These rate-regulated entities and their auditors concluded that the concepts in the other GAAP source (i.e. ASC 980) are compatible with the qualitative characteristics of financial information, the elements of financial statements (including the definitions of assets and liabilities), and the recognition and measurement criteria in Section 1000 of Part V of the CPA Handbook.

Based on the analyses performed in this memorandum, we concur with the following conclusions by management of the IESO:

- The IESO believes that the recognition of regulatory assets and liabilities better reflects the economic substance of IESO's operations and enhances the relevance, transparency and accountability of its financial reporting (see IESO's 2016 financial statements, note 3; issue 3, page 5);
- PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities (see issue 1, page 2);
- The IESO is similar to the other eight ISO entities across North America and the recognition of the market accounts and the economic effects of rate regulation improved the comparability of the IESO with its peers (see issue 2, page 4);
- The GAAP hierarchy was properly applied by the IESO (see issue 3, page 5);
- The GAAP hierarchy under PSAS does not prohibit the use of US GAAP, especially when US GAAP is the only accounting framework in North America that provides detailed guidance on rate-regulated operations (see issue 4, page 10);
- The IESO did not in its 2016 financial statements apply an exemption to recognize the economic effects of rate regulation, but used the GAAP hierarchy to do so (see issue 5, page 10);
- When the exemption from applying the GAAP hierarchy contained in Section 1100 of Part V of the CPA Handbook by rate-regulated entities was removed in 2009, rate-regulated entities continued to recognize the economic effects of rate regulation under Part V using the GAAP hierarchy in Section 1000 (see issue 5, page 12);
- The adoption of regulatory accounting under Part V of the CPA Handbook was not based on industry practice but was permitted through the application of the GAAP hierarchy (see issue 5, page 12);
- ASC 980 is not an exemption from, but an application of, US GAAP (see issue 6, page 13);
- Regulatory assets meet the definition of an asset under US GAAP, Part V of the CPA Handbook and PSAS (see issue 7, page 15);
- The IESO is a rate-regulated entity by the OEB and has a number of variance accounts approved by the OEB that meet the criteria for recognition under ASC 980 (see issue 8, page 19);
- IESO does not have to give precedence to IFRS over other accounting frameworks. It is appropriate for the IESO to reference the private sector guidance when applying the GAAP hierarchy as PSAS does not provide detailed guidance on rate-regulated accounting (see issue 9, page 20);
- The financial statements for the market accounts have included regulatory assets and liabilities for a number of years (see issue 10, page 21);
- IESO is a self-sustaining entity as it does not receive transfers or subsidies from the government and all its costs are recovered from customers through the market participants (see issue 11, page 22);

- Regulatory assets are neither considered intangible assets nor deferred costs (see issues 12, 14, pages 23, 25);
- The OEB meets the criteria of independent, third-party regulator (see issue 13, page 24);
- The transactions related to the market accounts should be recorded in the IESO's books as they meet the criteria in paragraphs 9 and 11 of PS 3450 *Financial Instruments*. The assets and liabilities should be recorded on a gross basis and revenue and expenses should be recorded on a net basis (see issue 15, page 27);
- The Ontario Fair Hydro Plan, Act 2017 is not considered to be a price controls regime as defined by ASC 980 (see issue 16, page 29); and
- Rate-regulated entities reporting under PSAS, which receive substantial subsidies from their governments, do not meet the scope criteria in ASC 980-10-15-2 (b) as their rates are not designed to recover the specific entity's costs of providing the regulated services or products (see issue 17, page 30).

1. Does PSAS provide explicit guidance on rate-regulated activities?

PSAS

No. PSAS neither explicitly permits, nor prohibits, the recognition, measurement, presentation or disclosure of rate-regulated activities. In the absence of specific guidance in PSAS, an entity is permitted under PSAS Section 1150 to apply the identified GAAP hierarchy in determining the appropriate accounting for the specified transactions. As analyzed below, the IESO believes that it met the criteria in PS 1150 when it adopted the recognition and measurement principles of ASC 980 for the economic effects of rate regulation.

Specifically, PS 1150.18 and 19 state:

> *"Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.*
>
> *Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances." (Emphasis added)*

Since the subject of rate regulation is not covered in the PSAS defined "primary sources of GAAP", in accordance with PSAS we have considered these additional sources.

We note that the sources listed in paragraph 19 are highlighted as examples of important sources to consult rather than being an exhaustive list of sources that should be considered by a public sector reporting entity when selecting an accounting policy. This view is supported by paragraph 18, which states that PS 1150.19-.24 *"identify some of the other sources"*. The frameworks referenced in paragraph 19 include frameworks from other jurisdictions, including frameworks for profit oriented enterprises, as well as frameworks specifically developed for public sector entities, which indicates that PS 1150 does not restrict public sector entities from consulting frameworks that were primarily developed for entities other than public sector reporting entities as long as the criteria in PS 1150 are met.

In the absence of guidance in an accounting framework, preparers and auditors are required to apply judgment in the development of accounting policies. Until AcSB, GASB and FASB issued their guidance on rate regulation, utilities and their auditors were solely required to apply judgment. Currently, FASB requires, and IASB (through IFRS 14), ASPE and GASB permit, the recognition of the economic effects of rate regulation when an entity meets defined criteria. PSAS is silent on the application of rate regulation and, as a result, utilities and their auditors are required to apply professional judgment in considering other aspects of the GAAP hierarchy.

AcSB

Within AcSB, Part I - IFRS and Part II - Accounting Standards for Private Enterprises (ASPE) provide limited guidance on the accounting for the economic effects of rate regulation as discussed further below.

– **IFRS**

IASB has not completed its current project on rate-regulated activities and current standards only include an interim standard (i.e. IFRS 14 *Regulatory Deferred Accounts*) that allows an entity within its scope to continue to account for rate-regulated activities in a manner consistent with its pre-IFRS accounting framework. The pre-IFRS accounting framework for those Canadian rate-regulated entities that have adopted

IFRS 14 is the legacy Canadian GAAP included in Part V of the CPA Handbook. As Part V did not include a separate section on the recognition and measurement of regulatory assets and liabilities, entities reporting under Part V have utilized the GAAP hierarchy in accordance with Sections 1100.04, .24 and 32B to adopt ASC 980 guidance for rate-regulated activities.

– **ASPE**

ASPE defines a rate-regulated entity, provides guidance on certain aspects of the disclosure and presentation of information in the financial statements of rate-regulated entities through AcG 19 *Disclosures by entities subject to rate regulation*, and provides specific guidance under four Sections (3061 *PPE*, 3465 *Income Taxes*, 3475 *Disposal of long-lived assets and discontinued operations* and 3850 *Interest capitalized*). While ASPE provides no specific guidance on the recognition of regulatory assets and liabilities, it clearly allows such accounting for entities that are subject to rate regulation. For example, AcG 19 par. 7 requires disclosure of assets and liabilities recognized solely as a result of the effects of rate regulation which would not be a possible disclosure if such effects could not be recorded in the entity's financial statements.

Rate-regulated entities reporting under ASPE have used the GAAP hierarchy to adopt the recognition and measurement guidance for regulatory assets and liabilities of ASC 980.

FASAB

The "*FASAB Handbook of Federal Accounting Standards and Other Pronouncements, as Amended ("FASAB Handbook")"* contains the body of accounting concepts and standards for the U.S. Federal Government. FASAB does not provide accounting guidance for entities with rate-regulated activities. However, we understand from our communication with FASAB that the FASAB GAAP hierarchy of accounting standards allows federal entities to apply FASB standards for matters not addressed in FASAB standards.

As an example, the U.S. Department of Energy ("DOE") reports under the Statement of Federal Financial Accounting Standards (SFFAS, which is an aspect of FASAB) and recognizes regulatory assets in its financial statements[1]. Extracts from the note 1.A Basis of presentation and note 5 Regulatory Assets are as follows:

Note 1.A: *These consolidated and combined financial statements have been prepared to report the financial position and results of operations of the United States (U.S.) Department of Energy (the Department or DOE). The statements were prepared from the books and records of the Department in accordance with generally accepted accounting principles applicable to federal entities.*

Note 6: "The Department's PMAs record certain amounts as assets in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 980, Regulated Operations. The provisions of this standard require that regulated enterprises reflect rate actions of the regulator in their financial statements, when appropriate. These rate actions can provide reasonable assurance of the existence of an asset, reduce or eliminate the value of an asset, or impose a liability on a regulated enterprise. In order to defer incurred costs under this standard, a regulated entity must have the statutory authority to establish rates that recover all costs, and those rates must be charged to and collected from customers." (Emphasis added)

We note the DOE's regulatory assets include balances arising from a variety of transactions, including debt financings, repayments towards previous funding of generation assets, and provisions for costs incurred to be funded through future operations.

GASB

GASB 62 permits (i.e. provides a choice to) a governmental entity to recognize the economic effects of rate regulation in financial statements for periods beginning after December 15, 2011. Before the issuance of GASB 62, preparers and auditors were required to apply judgment as to whether a governmental entity could apply ASC 980 (previously called FAS 71). GASB 62 section "How the Changes in This Statement Will Improve Financial Reporting" states that:

"The requirements in this Statement will improve financial reporting by contributing to the GASB's efforts to codify all sources of generally accepted accounting principles for state and local governments so that they derive from a single source. This effort brings the authoritative accounting and financial reporting literature

[1] https://www.energy.gov/sites/prod/files/2016/11/f34/DOE_FY2016_AFR.pdf

together in one place, with that guidance modified as necessary to appropriately recognize the governmental environment and the needs of governmental financial statement users. It will eliminate the need for financial statement preparers and auditors to determine which FASB and AICPA pronouncement provisions apply to state and local governments, thereby resulting in a more consistent application of applicable guidance in financial statements of state and local governments." (Emphasis added)

GASB 62 par. 149 states that *"If some of a business-type activity's operations are regulated and meet the criteria of paragraph 476 and the entity elects to apply paragraphs 476–500, those provisions should be applied to only that portion of the business-type activity's operations." (Emphasis added)*

IPSAS

IPSAS does not provide accounting guidance for entities with rate-regulated activities.

FASB

The recognition of the economic effects of rate regulation dates back to the early 1900s. FAS 71 required an entity to recognize the economic effects of rate regulation in financial statements for fiscal years beginning after December 15, 1983. Before the issuance of FAS 71, preparers and auditors were required to apply judgment with respect to the development of accounting policies to recognize the economic effects of rate regulation.

ASC 980 must be applied by entities that meet certain criteria. Section 10-15-2 of ASC 980 states that *"The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria…"*

2. How does IESO compare to other ISO entities in North America?

There are nine ISO entities in North America; seven in the U.S. and two in Canada (IESO and AESO). It is important to note that, similar to IESO, 7 of the 8 other ISO entities across North America are not-for-profit organizations (the 8th one is an LLC, non-stock company), 7 of the other 8 entities recognize the balances of the market participants and 6 of the other 8 entities recognize the economic effects of rate regulation (see Appendix D for a summary of these nine entities). All these entities state in the notes to their financial statements that their activities include the recovery of administrative fees for collecting amounts from the distributors of electricity and paying the contracts of the generators of electricity.

The two entities that do not recognize the economic effects of rate regulation are California ISO ("CAISO") and Southwest Power Pool ("SPP"). CAISO's accounting framework is GASB, which permits the recognition of regulatory assets and liabilities while SPP's accounting framework reporting is FASB, which requires the recognition of regulatory assets and liabilities that meet the criteria under ASC 980. Based on the communication between IESO and CAISO, we understand that the latter concluded that the need to recognize regulatory assets and liabilities (under FAS 71) was no longer necessary since it has other mechanisms in place to adjust its rates (under certain conditions) up or down, to ensure their revenue requirement for the year is met and, as a result, it does not have any variance accounts that would qualify as regulatory assets or liabilities under ASC 980. Based on the communication between IESO and SPP, we understand that the latter does not have any variance accounts that would qualify as regulatory assets or liabilities under ASC 980.

Although the IESO and 7 of the other 8 ISO entities are not-for-profit organizations, none have adopted the accounting for not-for-profit organizations as they do not meet its criteria. PSAS defines a government not-for-profit organization as a government organization that has all of the following characteristics:

(a) It is a separate entity with the power to contract in its own name and that can sue and be sued.

(b) It has counterparts outside the public sector as defined in paragraph .02.

(c) It is an entity normally without transferable ownership interests.

(d) It is an entity organized and operated exclusively for social, educational, professional, religious, health, charitable or any other not-for-profit purpose.

(e) Its members, contributors and other resource providers do not, in such capacity, receive any financial return directly from the organization.

The IESO does not meet either criteria (d) or (e), as it provides services for the fees it receives which would be considered a financial return.

3. Was the GAAP hierarchy appropriately applied?

In accordance with PS 2120.02, the IESO can adopt a new accounting policy, to reflect the economic effects of rate regulation, only if it is considered that the change of accounting policy would result in a more appropriate presentation of events or transactions in the financial statements of the government. PS 2120.02 states that

> "*a change in an accounting policy may be made… if it is considered that the change would result in a more appropriate presentation of events or transactions in the financial statements of the government.*"

As stated in the IESO's 2016 financial statements, the IESO believes that the recognition of regulatory assets and liabilities better reflects the economic substance of IESO's operations and enhances the relevance, transparency and accountability of its financial reporting.

PSAS does not explicitly address the accounting for transactions in a rate-regulated environment. Since PSAS is silent regarding the recognition of the economic effects of rate regulation, in accordance with PS 1150.05 IESO may consider other sources in the GAAP hierarchy to determine appropriate accounting policies for transactions in a rate-regulated environment. Using the GAAP hierarchy is a choice, not a requirement. As from 2016, the IESO chose to use the GAAP hierarchy to adopt the recognition and measurement principles of ASC 980. Said differently, the decision to adopt regulatory accounting in March 2017 for its 2016 financial statements is not prohibited as the choice was made by the IESO Board at that time based on its view that the financial statement presentation better reflects the economic effects of rate regulation. PS1150.05 states:

> "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:* (Emphasis added)
>
> *(a) the primary sources of GAAP; and*
>
> *(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.*"

Based on PS 1150.05 above, the selection of an appropriate accounting policy requires the exercise of professional judgment and these policies have to be consistent with the primary sources of GAAP and the concepts in PS 1000.

Primary sources of GAAP

As mentioned above, PSAS does not explicitly address the accounting for transactions in a rate-regulated environment.

Although PS 3210 *Assets* applies for fiscal years beginning on or after April 1, 2017, we have considered and concluded that this new standard does not provide any guidance on the accounting for the economic effects of rate regulation.

If the concepts of the other source of GAAP (i.e. ASC 980) are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not recognize intangible assets (PS 3150.03 and PS 1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through the other source of GAAP. As discussed in response to issue 12, management of the IESO and we concluded that ASC 980 is not in conflict with PS 3150.03 and PS1000.58 with respect to intangible assets.

Application of the concepts in PS 1000

As required by PS 1150.05 (b), we need to analyze whether the concepts in the other source (i.e. US GAAP and ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000. Based on the analysis below and in response to issue 7, we believe that these concepts under US GAAP are consistent and comparable to those under PSAS.

(i) Qualitative Characteristics of Financial Information

FASB	PSAS 1000	Evaluation
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	This Section describes the concepts underlying the development and use of accounting principles in government financial statements (par. 01)	Similar as FASB also considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	Similar

(ii) Elements of Financial Statements

FASB	PSAS	Evaluation
Assets		
Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events. (Concept #6.25-.34)	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar Regulatory assets meet the definition of asset as discussed in response to issue 7. FAS 71.75 states that the Board concluded that, for general-purpose financial reporting, the principal economic effect of the regulatory process is to provide assurance of the existence of an asset or evidence of the diminution or elimination of the recoverability of an asset.
Liabilities		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events. (Concept #6.35-.43)	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar FAS 71.11 states that rate actions of a regulator can impose a liability on a regulated enterprise. Such liabilities are usually obligations to the enterprise's customers.
Revenues		
Inflows from delivering or producing goods, rendering services or other	Increases in economic resources resulting from operations,	Although PSAS is based on the change in the balance

FASB	PSAS	Evaluation
activities that constitute the entity's central operations. (Concept #6.78-.79)	transactions and events of the accounting period. (par. 46)	sheet assets/liabilities model, the revenue recognized for regulatory assets would not be contradictory to this concept.
Expenses		
Outflows from delivering or producing goods, rendering services or carrying out other activities that constitute the entity's central operations. (Concept # 6.80-.81)	Decreases in economic resources resulting from operations, transactions and events of the accounting period. (par. 49)	Essential characteristics similar

(iii) Recognition Criteria

FASB	PSAS	Evaluation
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	To be recognized, an Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55) In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. (par. 58)	Essential characteristics similar Regulatory assets have an appropriate basis of measurement (i.e. historical cost). A reasonable estimate can be made of the regulatory assets as they represent the difference between the amount paid to a supplier for goods or services received and the amount collected from the customers through the market participants. As the regulatory assets are approved by the OEB for future recovery in rates, the IESO is the only party that will realize the economic benefits (i.e. the receipts of cash). As discussed in response to issue 12, regulatory assets are not considered intangible assets. Intangible assets are non-financial assets. Regulatory assets are financial assets as defined in PS 1000 as they will be used to discharge existing liabilities to the generators of electricity. FAS 71.75. The Board concluded that, for general-purpose financial reporting, the principal economic effect of the regulatory process is to provide assurance of the

FASB	PSAS	Evaluation
		existence of an asset or evidence of the diminution or elimination of the recoverability of an asset. The regulator's rate actions affect the regulated enterprise's probable future benefits or lack thereof. Thus, an enterprise should capitalize a cost if it is probable that future revenue approximately equal to the cost will result through the rate-making process.

(iii) Measurement Criteria

FASB	PSAS	Evaluation
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Essential characteristics similar Regulatory assets are measured at historical cost.

Evaluation whether regulatory assets under ASC 980 meet the definition of Assets as per Section PS 3210

Management of the IESO and we concluded that ASC 980 is not an exemption from the application of US GAAP (see discussion in response to issue 6) and regulatory assets under ASC 980 meet the definition of assets under PS 3210 (see discussion in response to issue 7).

Other sources of GAAP

Since the concepts in US GAAP and ASC 980 are consistent with PS 1000, IESO needs to determine the other sources of GAAP that it can use in reference to the criteria in PS 1150. It should be noted that US GAAP is the only widely applied accounting framework that provides detailed guidance on rate-regulated accounting to be applied to general-purpose external financial statements.

Criteria of PS 1150.08

Application of PS 1150.08 is required, in the absence of a source in Canada that specifically provides guidance on the accounting for rate-regulated transactions, to ensure that the alternative source of GAAP is consistent with PS 1150.05.

> *"A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS 1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:*
>
> *(a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.*
>
> *(b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.*
>
> *(c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources.*
>
> *(d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."*

As discussed in response to Issue 1, Part I - IFRS and Part II – ASPE only provide limited guidance on the accounting for the economic effects of rate regulation. As stated there:

- ASPE defines a rate-regulated entity, provides guidance on certain aspects of the disclosure and presentation of information in the financial statements of rate-regulated entities through AcG 19 *Disclosures by entities subject to rate regulation*, and provides specific guidance under four Sections (3061, 3465, 3475 and 3850). While ASPE does not provide specific guidance on the recognition of regulatory assets and liabilities, it clearly allows such accounting for entities that are subject to rate regulation. For example, AcG 19 par. 7 requires disclosure of assets and liabilities recognized solely as a result of the effects of rate regulation which would not be a possible disclosure if such effects could not be recorded in the entity's financial statements. Entities reporting under ASPE have used the GAAP hierarchy to adopt ASC 980.
- IASB has not completed their current project on rate-regulated activities and current standards only include an interim standard (i.e. IFRS 14) based upon what was done under previous GAAP. Entities reporting under IFRS, which meet the criteria in IFRS 14 have also previously adopted ASC 980.

Rate-regulated entities in North America reporting under US GAAP, GASB, FASAB, ASPE, IFRS (entities which have elected to use IFRS 14 upon transition to IFRS) and legacy Canadian GAAP before the Canadian entities transitioned to IFRS (or to other accounting frameworks) generally all recognize the economic effects of rate regulation in accordance with ASC 980.

As a result, based on PS 1150.08 (a) and (b), in the absence of a specific source in Canada that provides detailed guidance for the accounting for the economic effects of rate regulation, management of the IESO and we have concluded that ASC 980 is the main source that deals with the accounting for the economic effects of rate-regulated activities and is therefore a relevant source.

Criteria	**Evaluation**
Source deals with the specific circumstance	Yes, ASC 980 *Regulated Operations*
Source is issued by an accounting standard setter	Yes, FASB
Source continues to be relevant	Yes, still used by rate-regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Accounting for the economic effects of rate regulation under ASC 980 by Canadian rate-regulated entities is a long-standing practice in Canada in a variety of different industries. Although it is clear that industry practice in and of itself is not a sufficient basis for developing accounting policies, we note that this industry practice has continued to be acknowledged and recognized by the AcSB, including by reference to the disclosure and other requirements addressing rate-regulated accounting in ASPE, the AcSB's deferral of the adoption of IFRS in Canada for entities with rate-regulated activities, and the AcSB's continued participation in the IASB's project on rate-regulated activities, including their involvement in drafting IFRS 14.

Based on the judgment exercised by its management, IESO and we believe that the recognition of the economic effects of rate regulation results is a fair presentation of the financial affairs of IESO in accordance with PSAS. Based on discussions with the IESO, we understand that most, if not all, users of IESO's financial statements (including the IESO's Board of Directors, Province of Ontario, OEB and interveners, OPCD, OPG, Hydro One, LDCs, and other ISO entities in North America), exercising professional judgment, believe that the recognition of the economic effects of rate regulation provides better information, is well understood and results in a fair presentation in accordance with GAAP. It further provides users of financial statements with relevant and understandable information that represents faithfully how the impact of rate regulations affect the entity's financial position, performance and future cash flows. As mentioned earlier, 6 of the 8 other ISO entities across North America recognize the economic effects of rate regulation as it is considered to best support the fair presentation, transparency and accountability of their financial reporting and the two that do not do so do not have eligible transactions for recognition under ASC 980. This ensures compliance with PSAS 1150.11 which states:

> *"In selecting appropriate accounting policies and disclosures, interpretations of a source do not constitute evidence that the criteria in paragraph PS 1150.05 have been met if it is likely that most parties, exercising professional judgment, would reject them as not resulting in a fair presentation in accordance with GAAP."*

4. Do the other sources of GAAP under PS 1150 prohibit the use of US GAAP?

No. PS 1150 identifies some of the other sources that an entity might consult. PS 1150.18 and .19 state:

> 18. "*Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05."* (Emphasis added)
>
> 19. *"Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB),or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances."* (Emphasis added)

In response to issue 1 we set out linkages to IFRS, ASPE and GASB and identified that FASAB and IPSASB do not explicitly provide any relevant guidance for the recognition and measurement of regulatory balances. In addition, while FASB is not specifically mentioned as an example of "*important sources to consult*", it is also not prohibited. FASB's guidance is also specifically mentioned in GASB and is the basis on which ASPE and IFRS 14 rate-regulated accounting has been applied. Therefore, through the PSAS GAAP hierarchy, a rate-regulated entity can firstly consult ASPE as a source of GAAP and subsequently through the ASPE GAAP hierarchy, consult US GAAP and use ASC 980 for guidance.

As mentioned earlier, US GAAP is the only widely applied accounting framework that provides detailed guidance on rate-regulated accounting to be applied to general-purpose external financial statements. As stated in PS 1150.08 (a) *"a source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize."* As a result, the IESO believes that ASC 980 is an important and acceptable source to consult on matters not covered by PSAS provided it complies with PS 1150.05.

5. Did Part V of the CPA Canada Handbook – Accounting (the "legacy Canadian GAAP" or "Part V") provide an exemption to use ASC 980?

It is important to note that the legacy Canadian GAAP under Part V is still relevant as Canadian rate-regulated entities reporting under IFRS 14 are required through IFRS 14.11 to continue to apply their previous GAAP accounting policies for the recognition, measurement, impairment and derecognition of regulatory assets and liabilities, which were accounted for under Part V.

The GAAP hierarchy under PSAS, Section 1150 issued in 2005 was effective for fiscal years beginning on or after April 1, 2005, while the GAAP hierarchy under Part V of the CICA Handbook, Section 1100 issued in 2003 was effective for fiscal years beginning on or after April 1, 2005. As analyzed in Appendix F to this document, both GAAP hierarchies are consistent except for an exemption from applying Section 1100 granted to rate-regulated entities between 2003 and 2008 under Part V ("Original Section 1100"). After 2008, the exemption from applying Section 1100 was removed from the GAAP hierarchy under Part V ("Revised Section 1100").

Original Section 1100 under Part V was applicable for fiscal years beginning on or after October 1, 2003, except for rate-regulated entities. An exemption from applying Original Section 1100 was granted to those entities pending resolution of the AcSB project on rate-regulated operations.

> .32 *"This Section applies to fiscal years beginning on or after October 1, 2003, except in the circumstances described in paragraph 1100.34. Earlier adoption is encouraged.*
>
> .34 *Pending completion of a separate project on rate-regulated operations, an entity is not required to apply this Section to the recognition and measurement of assets and liabilities arising from rate regulation. Entities are required to apply this Section to all other assets and liabilities for fiscal years beginning on or after October 1, 2003.*
>
> .35 *An entity that chooses not to apply this Section to the recognition and measurement of assets and liabilities arising from rate regulation is required to comply with all disclosure requirements of GAAP, and to disclose the nature of the differences between its accounting policies for assets and liabilities arising from rate regulation and those required by the primary sources of GAAP."* (Emphasis added)

As explained in the Basis for Conclusions of Original Section 1100 of Part V, the AcSB granted an exemption from the application of Section 1100 to the assets and liabilities arising from rate regulation in the GAAP hierarchy pending completion of a separate project on rate-regulated operations.

.90 "The AcSB considered whether to grant temporary relief from the application of Section 1100 to any type of entity. Given the AcSB's active project on rate-regulated operations, members were sympathetic to the fact that such an entity may make changes to adopt Section 1100 and then have to make further changes (perhaps reversing previous decisions) to adopt the future requirements of any CICA Handbook - Accounting amendments related to rate-regulated operations. However, the AcSB expressed concern with a blanket exclusion of rate-regulated operations from Section 1100. The AcSB noted that the specific issues that rate-regulated operations face in applying Section 1100 appear to apply only to those assets and liabilities that are affected by rate regulation. The AcSB did not see a need to provide an exemption from the requirements of Section 1100 for any other aspect of accounting by a rate-regulated operation. Furthermore, the AcSB did not have sufficient information to develop a robust definition of a "rate-regulated operation". Many entities undertake both rate-regulated activities, and other activities that are unaffected by rate regulation. The AcSB did not see validity in exempting those activities unaffected by rate regulation.

.91 Accordingly, the AcSB granted temporary relief from the application of Section 1100 only to the recognition and measurement of assets and liabilities arising from rate regulation, pending completion of a separate project on rate-regulated operations. Entities are required to apply Section 1100 to all other assets and liabilities for fiscal years beginning on or after October 1, 2003. Entities that choose not to apply Section 1100 to the recognition and measurement of assets and liabilities arising from rate regulation must nonetheless comply with all disclosure requirements of GAAP, and disclose the nature, but not necessarily the effect, of the differences between its accounting policies for assets and liabilities arising from rate regulation and those required by the primary sources of GAAP." (Emphasis added)

As the AcSB's project for rate-regulated operations was stopped in 2007, the AcSB amended Section 1100 to remove the temporary exemption granted to rate-regulated entities. Handbook revision release no. 47, dated December 2007, stated:

"Deleted paragraphs 1100.34-.35 to remove the temporary exemption from the requirement to apply this Section to the recognition and measurement of assets and liabilities arising from rate regulation, and a disclosure requirement relating to this exemption."

"Added paragraph .32B to specify the effective date of this Section as it pertains to the recognition and measurement of assets and liabilities arising from rate regulation." (Emphasis added)

As a result of the 2007 amendment, rate-regulated entities were required to apply Revised Section 1100 to the recognition and measurement of assets and liabilities arising from rate regulation. Paragraph 32B was added to Section 1100 as follows:

".32B This Section applies to the recognition and measurement of assets and liabilities arising from rate regulation in interim and annual financial statements relating to fiscal years beginning on or after January 1, 2009. Rate regulation exists when all of the following criteria are present:

(a) The rates for regulated services or products provided to customers are established by or are subject to approval by a regulator or a governing body empowered by statute or contract to establish rates to be charged for services or products.

(b) The regulated rates are designed to recover the cost of providing the services or products.

(c) It is reasonable to assume that rates set at levels that will recover the cost can be charged to and collected from customers in view of the demand for the services or products and the level of direct and indirect competition."

Commencing in 2009, rate-regulated entities reporting under Part V used Section 1100 and concluded that while the primary source of GAAP did not provide specific guidance on the recognition and measurement of regulatory assets and liabilities, impacted entities were able to apply the GAAP hierarchy to reach a conclusion that ASC 980 (then FAS 71) was in accordance with Canadian GAAP.

It is useful to analyze how other sources of GAAP under Section 1100 of the legacy Canadian GAAP have been applied in 2009 by Canadian entities with rate-regulated activities, as the temporary exemption for the measurement and recognition of assets and liabilities arising from rate-regulated activities was removed from Section 1100.

.03 "An entity should apply every primary source of GAAP that deals with the accounting and reporting in financial statements of transactions or events encountered by the entity.

.04 When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the entity, or additional guidance is needed to apply a primary source to specific circumstances, an entity should adopt accounting policies and disclosures that are:

(a) consistent with the primary sources of GAAP; and

(b) developed through the exercise of professional judgment and the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section 1000."

As examples, we have provided below extracts from the consolidated financial statements of Ontario Power Generation, Toronto Hydro Corporation and Fortis Inc. for the year ended December 31, 2009 on the accounting policies adopted for the recognition and measurement of assets and liabilities arising from rate regulation under the legacy Canadian GAAP. OPG and Fortis are audited by EY and Toronto Hydro by KPMG.

Ontario Power Generation

"The CICA revised its guidance on accounting for rate-regulated operations, effective January 1, 2009, with amendments to Handbook Section 1100, Generally Accepted Accounting Principles, ("Section1100"), Handbook Section 3465, Income Taxes, ("Section 3465"), and Accounting Guideline 19, Disclosures by Entities Subject to Rate Regulation, ("AcG-19") as follows:

- *To remove the temporary exemption pertaining to the application of Section 1100 to rate-regulated operations, including the elimination of the opportunity to use industry practice as an acceptable basis for recognition and measurement of assets and liabilities arising from rate regulation"*

"In addition, effective January 1, 2009, with the removal of the temporary exemption in Section 1100, the Company must now apply Section 1100 to the recognition of assets and liabilities arising from rate regulation. Certain assets and liabilities arising from rate regulation continue to have specific guidance under a primary source of Canadian GAAP that applies only to the particular circumstances described therein, including those arising under Handbook Section 1600, Consolidated Financial Statements, Handbook Section 3061, Property, Plant and Equipment, Section 3465, and Handbook Section 3475, Disposal of Long-Lived Assets and Discontinued Operations. Other assets and liabilities arising from rate regulation do not have specific guidance under a primary source of Canadian GAAP. Therefore, Section 1100 directs the Company to adopt accounting policies that are developed through the exercise of professional judgment and the application of concepts described in Handbook Section 1000, Financial Statement Concepts. In developing these accounting policies, the Company may consult other sources including pronouncements issued by bodies authorized to issue accounting standards in other jurisdictions. Therefore, in accordance with Section 1100, the Company has determined that these assets and liabilities qualify for recognition under Canadian GAAP and this recognition is consistent with the Financial Accounting Standards Board Accounting Standards Codification Topic 980, Accounting for the Effects of Certain Types of Regulation (formerly Financial Accounting Standards No. 71). As a result, there is no effect on the Company's financial statements for the year ended December 31, 2009, with the exception of the impact of the amendment to Section 3465, as discussed above." (Emphasis added)

Toronto Hydro Corporation

"Following the removal of the temporary exemption for rate-regulated operations included in Handbook Section 1100, the Corporation developed accounting policies for its assets and liabilities arising from rate regulation using professional judgment and other sources issued by bodies authorized to issue accounting standards in other jurisdictions. Upon final assessment and in accordance with Handbook Section 1100, the Corporation has determined that its assets and liabilities arising from rate-regulated activities qualify for recognition under Canadian GAAP and this recognition is consistent with U.S. Financial Accounting Standards Board Accounting Standards Codification 980 – "Regulated Operations". Accordingly, the removal of the temporary exemption had no effect on the Corporation's results of operations as of December 31, 2009." (Emphasis added)

Fortis Inc.

"Effective January 1, 2009, the Canadian Accounting Standards Board (the "AcSB") amended the Canadian Institute of Chartered Accountants ("CICA") Handbook: (i) Section 1100, Generally Accepted Accounting Principles, removing the temporary exemption providing relief to entities subject to rate regulation from the requirement to apply the Section to the recognition and measurement of assets and liabilities arising from rate regulation; and (ii) Section 3465, Income Taxes, to require the recognition of future income tax liabilities and assets, as well as offsetting regulatory assets and liabilities, by entities subject to rate regulation.

Effective January 1, 2009, with the removal of the temporary exemption in Section 1100, the Corporation must now apply Section 1100 to the recognition of assets and liabilities arising from rate regulation. Certain assets and liabilities arising from rate regulation continue to have specific guidance under a primary source of Canadian GAAP that applies only to the particular circumstances described therein, including those arising under Section 3061, Property, Plant and Equipment, Section 3465, Income Taxes, and Section 3475, Disposal of Long-Lived Assets and Discontinued Operations. The assets and liabilities arising from rate regulation, as described in Note 4, do not have specific guidance under a primary source of Canadian GAAP. Therefore, Section 1100 directs the Corporation to adopt accounting policies that are developed through the exercise of professional judgment and the application of concepts described in Section 1000, Financial Statement Concepts. In developing these accounting policies, the Corporation may consult other sources, including pronouncements issued by bodies authorized to issue accounting standards in other jurisdictions. Therefore, in accordance with Section 1100, the Corporation has determined that all of its regulatory assets and liabilities qualify for recognition under Canadian GAAP, and this recognition is consistent with the U.S. Financial Accounting Standards Board's Accounting Standard Codification 980, Regulated Operations. Therefore, there was no effect on the Corporation's consolidated financial statements as at January 1, 2009 as a result of the removal of the temporary exemption from Section 1100." (Emphasis added)

Since the application of the GAAP hierarchy (see discussion at issue 3), the financial statement concepts (see discussion at issue 3), and the definitions of assets and liabilities (see discussion at issue 7) under Part V and PSAS are similar, and since all rate-regulated entities in Canada have used the GAAP hierarchy under Part V to adopt ASC 980, we believe that IESO can adopt ASC 980 on the basis that it meets the criteria in ASC 980.

6. Is ASC 980 an exemption from the application of US GAAP?

ASC 980 is not an exemption from US GAAP, it is part of US GAAP. There is no mention in ASC 980 that states that it is an exemption. This issue was addressed in the Basis for Conclusions of FAS 71:

51. *"The FASB Discussion Memorandum, Effect of Rate Regulation on Accounting for Regulated Enterprises, issued in 1982 presented a threshold issue: "Should accounting prescribed by regulatory authorities be considered in and of itself generally accepted for purposes of financial reporting by rate-regulated enterprises*

54. *The Board concluded that regulatory-prescribed accounting should not be considered generally accepted per se, but rather that the Board should specify how generally accepted accounting principles apply in the regulatory environment.*

55. *This Statement merely specifies how the effects of different types of rate actions are reported in general-purpose financial statements."*

Note that references to "regulatory prescribed accounting" are references to the accounting in regulatory required reports (e.g., rate applications) not in general purpose financial statements.

ASC 980-10-05-7 allows the recognition of assets in accordance with an order of regulatory authorities provided that the capitalization is appropriate under this section.

"Accounting requirements that are not directly related to the economic effects of rate actions may be imposed on regulated businesses by orders of regulatory authorities and occasionally by court decisions or statutes. This does not necessarily mean that those accounting requirements conform with generally accepted accounting principles (GAAP). For example, a regulatory authority may order an entity to capitalize and amortize a cost that would be charged to income currently by an unregulated entity. Unless capitalization of that cost is appropriate under this Topic, GAAP requires the regulated entity to charge the cost to current income." (Emphasis added)

ASC 980-10-05-7 indicates that only the economic effects of rate regulations that meet the recognition criteria under ASC 980 conform with GAAP. As stated in ASC 980-10-15-1, ASC 980 only provides incremental industry-specific guidance for the entities defined in this Scope Section.

"10-15-1 The Subtopics within the Regulated Operations Topic only provide incremental industry-specific guidance for the entities defined in this Scope Section, or as further defined in the Scope Sections of the individual Regulated Operations Subtopics. Entities within the scope of this Topic shall also comply with the applicable guidance not included in this Topic."

Although the Basis for Conclusions of FAS 71 have not been included to ASC 980[2], they provide useful information for the understanding of the Standard. The Basis for Conclusions of FAS 71, in the Section regarding *Relationship of Regulatory-Prescribed Accounting to Generally Accepted Accounting Principles, paragraphs 51- 55* specified how the effects of different types of rate actions are reported in general-purpose financial statements.

51. "The FASB Discussion Memorandum, Effect of Rate Regulation on Accounting for Regulated Enterprises, presented a threshold issue: "Should accounting prescribed by regulatory authorities be considered in and of itself generally accepted for purposes of financial reporting by rate-regulated enterprises?

52. Virtually all respondents to the Discussion Memorandum indicated that accounting prescribed by regulatory authorities should not be considered in and of itself generally accepted for purposes of financial reporting by rate-regulated enterprises. Respondents noted that the function of accounting is to report economic conditions and events. Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the generally accepted accounting principles applicable to business enterprises in general. The mere issuance of an accounting order not tied to rate treatment does not change an enterprise's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of generally accepted accounting principles.

53. Respondents also noted that regulatory-prescribed accounting has not been considered generally accepted per se in the past.

54. The Board concluded that regulatory-prescribed accounting should not be considered generally accepted per se, but rather that the Board should specify how generally accepted accounting principles apply in the regulatory environment.

55. Some respondents to the FASB Exposure Draft, Accounting for the Effects of Regulation of an Enterprise's Prices Based on Its Costs, suggested that the Board clarify the relationship of this Statement to an enterprise's regulatory accounting and to regulators' actions. This Statement does not address an enterprise's regulatory accounting. Regulators may require regulated enterprises to maintain their accounts in a form that permits the regulator to obtain the information needed for regulatory purposes. This Statement neither limits a regulator's actions nor endorses them. Regulators' actions are based on many considerations. Accounting addresses the effects of those actions. This Statement merely specifies how the effects of different types of rate actions are reported in general-purpose financial statements." (Emphasis added)

This issue was addressed during a rate application of OPG (see rate application number OEB-2013-0321, Filed: 2014-03-19, Exhibit L, Tab 1.3, Schedule 1 Staff-006, Page 1 of 2
http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/430200/view/OPG_IRR_Issue%201_0_20140326.PDF

Question raised through interrogatory:

"Under ASC 980, please confirm OPG's understanding that the rate regulator has the authority to set and approve regulatory accounting policies which must then be included in the financial statements of the rate-regulated entity. If not, please explain."

Answer provided by OPG:

"OPG confirms that the OEB has the authority to set and approve regulatory accounting policies for the purposes of setting payment amounts and reporting to the OEB. However, the OEB does not have authority to set financial accounting requirements, as noted in the EB-2008-0408 Report of the Board (page 4), nor does ASC 980 mandate the inclusion of regulatory accounting policies in the financial statements of a rate-regulated entity.

[2] In the FASB's codification project Basis of Conclusions from issued standards were not carried forward into the ASCs.

Effective January 1, 2012, OPG is required to prepare its financial statements in accordance with US GAAP pursuant to Ontario Regulation 395/11 under the Financial Administration Act (Ontario). Where applicable under US GAAP, OPG must therefore be in compliance with ASC 980. ASC 980 sets out specific requirements in accounting for the economic effects of rate regulation (i.e., economic benefits or obligations that are required to be obtained from, or settled with, the ratepayers as a result of regulation). ASC 980 does not require OPG to reflect the regulatory accounting policies prescribed by the regulator in its financial statements. In fact, reflecting such policies, other than as part of accounting for the economic effects of regulation in accordance with the specific guidance in ASC 980, would not be in compliance with ASC 980 and therefore US GAAP." (Emphasis added)

PS 1150.13 is very similar to ASC 980-10-05-7 as both prohibit the recognition of assets that do not conform with GAAP.

Similar to ASC 980-10-05-07, management of the IESO and we believe that PS1150.13 allows the recognition of assets in accordance with regulatory or legislative requirements provided these requirements are allowed by Section 1100, otherwise the financial statements cannot be described as being in accordance with GAAP.

PS1150.13: *"A public sector reporting entity may be required to prepare financial statements in accordance with regulatory, legislative or contractual requirements. When these requirements are within the range of acceptable choices allowed by this Section, the basis of accounting can be described as being in accordance with GAAP. At times, conflict between GAAP and regulatory, legislative or contractual requirements may exist. In such cases, users of financial statements need to know that the statements are not prepared in accordance with GAAP. Therefore, if the basis of accounting used to prepare such financial statements conflicts with the requirements of this Section, that basis cannot be described as being in accordance with GAAP."*

7. Do regulatory assets meet the definition of asset under US GAAP, Part V and PSAS?

PSAS

PS 1000.35 defines assets as *"economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained."* This definition is consistent with the definition of assets in paragraph 3 of the new standard PS 3210. The analysis performed below takes into account the additional guidance in PS 3210 on what is meant by an economic resource, control, future economic benefits and past events and transactions. The analysis of the three essential characteristics as defined by PS 3210.4 are analyzed in the next table.

Characteristics	Additional guidance	Comments
They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (par. 4(a))	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	The economic benefit embodied in the variance accounts (i.e., regulatory asset) is the right to collect the incurred costs from the customers in order to settle the liability for the energy already consumed by the ratepayers. The electricity Act, 1998 ("EA") section 25.33(1) states: "*The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market*

		rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and b) *amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract."*
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the future economic benefits when it: a. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to implement the right. The IESO can control the asset or restrict others' access to it. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section."*
The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future. (par. 25) The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	The past event giving rise to IESO's control occurs as the customer uses energy and becomes committed to pay. The IESO, through its OEB license, has the right to collect amounts from the customers for the energy consumed. FAS 71.75 states that the Board concluded that, for general-purpose financial reporting, the principal economic effect of the regulatory process is to provide assurance of the existence of an asset or evidence of the diminution or elimination of the recoverability of an asset. The regulator's rate actions affect the regulated enterprise's probable future benefits or lack thereof. Thus, an enterprise should capitalize a cost if it is probable that future revenue approximately equal to the cost will result through the rate-making process.
Conclusion: The right to collect regulatory assets meets the definition of assets.		

US GAAP

The Edison Electric Institute ("EEI")'s letter to the IASB dated November 23, 2011 related to the IASB Agenda Consultation 2011 (see Appendix I) provides analyses of whether regulatory assets and liabilities meet the definitions of asset and liability under US GAAP and whether FAS 71 is consistent with the FASB Conceptual Framework. EEI is the association of the US shareholder-owned electric companies representing 95% of the ultimate customers in the shareholder-owned segment of the industry. Extracts from the letter:

> Page 13: *"The deliberations resulting in SFAS 71 ultimately acknowledged that there is no "special accounting" for rate-regulated activities; there are only generally accepted accounting principles which must account for (among other things) the effects of regulation consistent with the US Financial Reporting Framework. In fact, regulated entities in the US were already accounting for the effects of rate regulation although to varying degrees and not necessarily consistently prior to the issuance of SFAS 71. SFAS 71 did not introduce new accounting for the effects of rate regulation; rather, it narrowed the scope and recognition of those related previous accounting practices in order to provide a consistent framework and refined recognition and measurement criteria consistent with the US Framework."* (Emphasis added)

Pages 16 to 19 provide an analysis which supports that regulatory assets and liabilities meet the general definitions of assets and liabilities under the FASB Conceptual Framework.

> *"Implicit in the issuance of SFAS 71 (now codified within ASC 980), is consistency of that standard with the FASB Conceptual Framework. FASB Concept Statement No. 6 identifies the definitions of elements of financial statements, while Concept Statement No. 5 addresses the relevant recognition and measurement criteria under the FASB's Conceptual Framework. Both are summarized in the table below and further support that regulatory assets and liabilities meet the general definitions of assets and liabilities under the FASB Conceptual Framework."*

Paragraphs 58 and 59 of the Basis for Conclusions of FAS 71 concluded that regulatory assets meet the criteria of Concepts Statement 3 of an asset.

> *58. "The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met."*
>
> *59. "Most respondents that opposed special accounting for the effects of regulation cited the need for comparability between regulated and unregulated enterprises. Paragraph 119 of FASB Concepts Statement No. 2, Qualitative Characteristics of Accounting Information, indicates that ". . . the purpose of comparison is to detect and explain similarities and differences." The Board concluded that comparability would not be enhanced by accounting as though regulation had no effect. Regulation creates different circumstances that require* different accounting." (Emphasis added)

As discussed in response to issue 1, GASB and FASB also allow for the application of ASC 980 in financial statements prepared in accordance with their frameworks.

CGAAP (pre-IFRS)

As mentioned earlier, the exemption to not apply section 1100 under Part V by a rate-regulated entity was removed in 2009, and, as a result, those entities were allowed to utilize Section 1100, and particularly paragraph 32B, in their evaluation of the appropriate recognition and measurement of regulatory assets and liabilities. As mentioned earlier, the GAAP hierarchy under Part V was similar to the GAAP hierarchy under PSAS and, when looking to other sources of GAAP, both hierarchies required the other sources of GAAP (which included, or did not preclude, ASC 980) to be evaluated based on the following criteria[3]:

1. whether they are consistent with accounting policies and disclosure within PSAS (or Part V),
2. whether they are consistent with the application of concepts in Section 1000 of PSAS (or of Part V),

[3] See particularly Part V, section 1100.03 and .07 and PSAS 1150.05 and .08.

3. does the source meet all of the following criteria for the other source:
   (a) deals with the specific circumstance
   (b) is issued by an accounting standard setter
   (c) continues to be relevant
   (d) uses a consultative process and deliberation when developing policies

A rate-regulated entity reporting under Part V was required by Section 1000 *Financial statement concepts* to analyze whether the concepts in the other source of GAAP (i.e. ASC 980) were compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in Section 1000 of Part V. These requirements included the evaluation whether regulatory assets and liabilities under ASC 980 met the definitions of asset and liability under Section 1000 of part V.

It is important to note that the publication issued by the Office of the Auditor General of British Columbia *Summary of the Comparison of the Canadian PSAS with the CICA Handbook Part V* states that the framework under Part V is either similar to PSAS or silent in some aspects (see Appendix E).

After the removal of the exemption from Part V, all rate-regulated entities concluded that ASC 980 met all the requirements and continued to recognize regulatory assets and liabilities under Part V until they transitioned to IFRS or other accounting frameworks.

As a result, since rate-regulated entities reporting under Part V recognized the economic effects of rate regulation using the GAAP hierarchy and since PSAS has a consistent GAAP hierarchy and accounting framework, management of the IESO and we believe that a rate-regulated entity reporting under PSAS should also be allowed to adopt ASC 980.

IFRS

IFRS 14 is silent as to whether regulatory assets meet the definition of asset.

However, IFRS has similar a definition of assets as both PSAS and US GAAP, and recent developments at the IASB are proceeding in a direction that suggests support for our view that regulatory assets are consistent with the conceptual definition under PSAS.

In 2012, the IASB has restarted a project on rate-regulated activities. The preliminary discussions that took place over the past several months at the IASB meetings indicate that the IASB's tentative thinking is that regulatory assets and liabilities meet the definitions of an asset and liability in the new Conceptual Framework. This was a combination of years of work at the IASB on the new Conceptual Framework. For example, the IASB staff discussed Agenda Paper 9A (see Appendix H) at the IASB meeting of June 21, 2017.

> Paragraph 17 states *"During the May 2017 Board meeting (see below) we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation. We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting."*

The IASB staff discussed Agenda Paper 9 (see Appendix H) at the IASB meeting of May 16, 2017, which addressed the new definitions of asset and liability and the related guidance under the new IFRS Conceptual Framework.

> Paragraph 16 states *"Respondents to the Discussion Paper Reporting the Financial Effects of Rate Regulation, published in September 2014 (the Rate regulation DP), and participants in subsequent outreach asked us to explain how the model links to [the forthcoming revisions to] the Conceptual Framework for Financial Reporting (the Conceptual Framework), particularly the definitions of assets and liabilities. We outline, in paragraphs 17-21, the main aspects of the definitions and supporting guidance that we consider most pertinent to understanding the basis for the model. We have used the proposals in the Exposure Draft Conceptual Framework for Financial Reporting (the Conceptual Framework ED), updated when applicable for the Board's tentative decisions in subsequent discussions."*
>
> Paragraph 18 states "*The definitions of assets and liabilities in the Conceptual Framework focus on rights and obligations. The guidance supporting the definitions highlights the importance of commercial substance and the need for contractual terms to have a discernible effect on the economics of a contract. In particular, paragraph 4.55 of the Conceptual Framework ED indicates that terms that bind neither party have no*

commercial substance and should be disregarded."

Paragraph 17 (a) states *"The Conceptual Framework ED provides the following definitions: An asset is a present economic resource controlled by the entity as a result of past events. An economic resource is a right that has the potential to produce economic benefits."*

Paragraph 19 states*: "The guidance accompanying the proposed definition of an asset highlights that for an entity to have an asset, it must have a right that both has the potential to produce economic benefits for the entity beyond those available to all other parties and is controlled by the entity. An entity controls an economic resource if it has the right to deploy the economic resource in its activities and if, in addition, any economic benefits from that resource flow to the entity (either directly or indirectly) rather than to another party. Control in this context does not imply that the entity can ensure that the resource will produce economic benefits in all circumstances."*

While these papers are not authoritative, we believe it demonstrates that current thinking around this topic is evolving such that the lack of rate-regulated accounting by entities following IFRS around the world does not undermine our conclusion that regulatory assets are consistent with the conceptual definitions under PSAS.

8. Does the OEB regulate the IESO?

Yes. The IESO is rate-regulated by the OEB in accordance with the Electricity Act, 1998 (the Electricity Act") and the Ontario Energy Board ("OEB") Act, 1998 (the "OEB Act"). The IESO's activities subject to rate regulation by the OEB include the following:

(a) IESO's expenditure, revenue requirements and fees;

(b) Smart metering activities; and

(c) Market accounts.

Although the IESO is rate-regulated by the OEB, in considering ASC 980-10-05-7, the economic effects of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP. Therefore, it is important to determine whether IESO has a basis to conclude that the OEB approved the future recovery of costs incurred in the past through rate setting policies. The following analysis demonstrates that IESO is a rate-regulated entity by the OEB.

We note that the Report of the Ontario Energy Board on the Pension and OPEB costs issued on May 18, 2017 states on page 9 that "*The OEB is of the view that the IESO is a rate-regulated entity…*" (see Appendix G). As further detailed in the following paragraphs and in appendices 1 to 3, the OEB has permitted the IESO to set-up variance accounts for costs incurred in the past that will be fully recovered through future rates.

IESO's expenditure, revenue requirements and fees

The IESO is required to obtain approval from the OEB under s. 25(1) of the Electricity Act for the approval of its own expenditures, revenue requirement and fees.

Extracts from the Electricity Act noting the OEB's review and approval process for the IESO's expenditures, revenue requirement and fees can be found in Appendix A.1. Extracts from the 2016 Decisions and Orders issued by the OEB related to IESO's expenditure, revenue requirements and fees for the financial year 2016 can also be found in Appendix A.2. For all prior years, the Decisions and Orders issued by the OEB can be found on the OEB website.

Smart metering activities

The OEB Act states that the Smart Metering Entity shall not charge for meeting its obligations under Part IV.2 of the Electricity Act except in accordance with an order of the Board, which is not bound by the terms of any contract.

The OEB issued a Decision and Order on March 28, 2013 that permits IESO to create a variance account to recover the MDMR costs (the Smart Metering Charge) (see Appendix B).

Market accounts

The OEB Act, Electricity Act and associated regulations outline that variance accounts can or will be established for the Ontario Electricity Support Program ("OESP"), Regulated Price Plan ("RPP") and Rural and Remote electricity Rate Protection ("RRRP"). Variance accounts have been approved by the OEB to recover the RPP and RRRP costs that have been deferred. The OESP costs that have been deferred at the request of the OEB should be approved for recovery at the next rate application.

Specifically (see Appendix C):

OESP: the OESP Reg, O. Reg 314/125 S 6, sets out that the IESO shall establish a variance account.

RPP: Section 25.33 (5) of the Electricity Act sets out that the IESO shall establish and maintain such variance accounts as may be necessary. Section 79.16 (3) of the OEB Act, which deals with the commodity price for electricity for low volume consumers, sets out that the Board shall take into account balances in variance accounts established under section 25.33 of the Electricity Act, 1998 and make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.

RRRP: The RRRP Reg, O. Reg 442/01 S 5(9), sets out that the IESO shall establish a variance account.

It should be noted that the financial statements of the market accounts have included variance accounts for a number of years before the market accounts were recognized in the IESO's financial statements. These variance accounts, which relate to the RRRP, RPP and OESP costs, met and continue to meet the recognition criteria in ASC 980.

9. The private sector is driven by the generation of profit. In our view, the organization should have been analogized to PSAS first and then to more current standards on the issue.

Because IESO is an OGO, it has a choice between following PSAS or IFRS. IESO has chosen PSAS as the accounting framework it will follow in preparing its financial statements. Since IFRS is designated as an alternative to PSAS for OGOs, we considered whether IFRS needs to be given precedence when applying the PSAS GAAP hierarchy.

As noted in the discussion under issue 3, there are a number of criteria in PS 1150 that should be considered when assessing sources other than the primary source of GAAP. However, there is no hierarchy or ordering of sources set out in PS 1150. Instead, PS 1150 establishes an overall framework for the exercise of professional judgment. In our view, as long as ASC 980 meets the criteria in PS 1150, we believe that it is an acceptable alternative source that may be considered by the IESO in establishing its accounting policy for rate-regulated activities. Different entities reporting under PSAS thus may reasonably choose different paths under PS 1150 when dealing with transactions or events that are not addressed with in the primary source.

Accordingly, we believe that there is no requirement for IESO to consider IFRS as the only alternative source other than the primary source of GAAP in its application of PS 1150.

Paragraph 11 of the *Introduction to Public Sector Accounting Standards ("Introduction")* states:

"These standards apply to all public sector entities that issue general purpose financial statements unless:

(a) specifically directed or permitted to use alternative standards by PSAB, or

(b) limited in applicability as outlined in the individual Sections.

When applying the CPA Canada Public Sector Accounting (PSA) Handbook, where the standards are silent on an issue, public sector entities should apply GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, Section PS 1150."

Based on PS 1150.08 (a) and (b), in the absence of a specific source in Canada that provides alternative guidance for the accounting for the economic effects of rate-regulated activities, the management of IESO and we have concluded that a Canadian rate-regulated entity is permitted to use ASC 980 as a source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.

"PS1150.08 *"A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS 1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:*

(a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.

(b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction."

As noted above, management of the IESO and we believe it is appropriate for the IESO to reference the private sector guidance when applying the GAAP hierarchy as PSAS does not provide detailed guidance on regulatory accounting. It should also be noted that the IESO's activities and mandate, including its regulated activities, are commercial in nature and IESO derives all of its revenue from those activities.

The CPA Handbook, Accounting has two accounting frameworks for commercial oriented organizations: IFRS and ASPE. ASPE defines a rate-regulated entity, provides guidance on certain aspects of the disclosure and presentation of information in the financial statements of rate-regulated entities through AcG 19 *Disclosures by entities subject to rate regulation*, and provides specific guidance under four Sections (3061, 3465, 3475 and 3850). ASPE provides no guidance on the recognition of regulatory assets and liabilities, though in accordance with AcG 19 par. 7 entities must disclose such balances if they are recognized. IASB has not completed their project on rate-regulated activities and current standards only include an interim standard allowing an entity within its scope to continue to account for rate-regulated activities in a manner consistent with its pre-IFRS accounting framework. See the further discussions on Canadian accounting standards at issue 1.

It is important to note that rate-regulated entities that prepare their general purpose financial statements in accordance with ASPE (e.g. the three Fortis subsidiaries in Ontario), as well as those rate-regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS, generally all recognize the economic effects of rate regulation in accordance with ASC 980, through the GAAP hierarchy in Section 1100 in ASPE and IFRS 14 in IFRS.

The relevance of private sector regulatory accounting principles to a government entity, was also identified in the basis of conclusions for the issuance of FAS 71. Paragraph 64 of the Basis for Conclusions of FAS 71 issued in 1982 noted that a number of U.S. governmental utilities believed that users' emphasis on comparability between investor-owned utilities and governmental utilities supported the continuation of the recognition of the economic effects of rate regulation for governmental utilities. As mentioned earlier, as from 2011 GASB has adopted the guidance of ASC 980 in GASB 62.

> *"A number of governmental utility respondents to the Exposure Draft asked that governmental utilities be included within the scope of this Statement. They noted that many governmental utilities have been guided by the same accounting practices and standards as investor-owned utilities in their general-purpose financial statements, and they expressed the view that users' emphasis on comparability supports continuation of that practice. In their view, the Board's decision not to address governmental utilities in this Statement should not preclude them from applying it. The Board agreed with those respondents and modified paragraph 5(a) so as not to preclude application by governmental utilities with rates set by their own governing board."*

10. While it could have adopted IFRS as an "other government organization", it would be a first-time adopter and does not have a past practice of using rate-regulated accounting so it cannot adopt IFRS 14, Regulatory Deferral Accounts.

We disagree with the above statement as the financial statements for the market accounts have included regulatory assets and liabilities for a number of years.

The IESO's 2016 financial statements included for the first time the assets and liabilities related to the market participants. These assets and liabilities included regulatory assets and liabilities that were also recognized in the market participants' financial statements. These variance accounts, which relate to the RRRP, RPP and OESP programs, met and continue to meet the recognition criteria in ASC 980.

As a result of the inclusion of the market accounts in the IESO's financial statements, which include regulatory assets and liabilities, should the IESO meet the GBE criteria or take the option offered to OGOs to use IFRS, then IESO would then be permitted to adopt IFRS 14 as it also meets the scope criteria in IFRS 14 paragraph 5 as follows:

> *"An entity is permitted to apply the requirements of this Standard in its first IFRS financial statements if and only if it:*
>
> *(a) conducts rate-regulated activities; and*
>
> *(b) recognised amounts that qualify as regulatory deferral account balances in its financial statements in accordance with its previous GAAP."*

11. Has IESO been self-sustaining for the past years?

The management of the IESO believes that IESO is a self-sustaining entity. IESO does not have share capital and does not receive transfers or subsidies from the Province of Ontario. Based on management of the IESO, although the IESO currently has a note payable and a credit facility from the OEFC for corporate purposes, the IESO would be able to obtain similar sized facilities from a third-party financial institution. TD Bank had previously provided a corporate line of credit, which was replaced by the current OEFC line of credit. As the OEFC interest rate was lower than TD's, IESO has decided to utilize the OEFC line based on economic considerations. It should also be noted that the IESO currently has third party credit ratings from Moody and DBRS, which provide banks/lenders information on the IESO's creditworthiness status. The following is an extract from the note 7 of the IESO's 2016 annual report:

"Note payable to Ontario Electricity Financial Corporation (OEFC)

In April 2014, the IESO entered into a three-year note payable with the OEFC. The note payable is unsecured, bears interest at a fixed rate of 2.046% per annum and is repayable in full on April 30, 2017. Interest accrues daily and is payable in arrears semi-annually in April and October of each year. As at December 31, 2016, the note payable to the OEFC was $90.0 million (December 31, 2015 – $90.0 million).

For the year ended December 31, 2016, the interest expense on the note payable was $1,841 thousand (2015 – $1,841 thousand).

Credit facility

The IESO has an unsecured credit facility agreement with the OEFC, which will make available to the IESO an amount up to $95.0 million. Advances are payable at a variable interest rate equal to the Province of Ontario's cost of borrowing for a 30-day term plus 0.50% per annum, with draws, repayments and interest payments due monthly. The credit facility expires April 30, 2017. As at December 31, 2016, no amount was drawn on the credit facility (December 31, 2015 – $nil).

For the year ended December 31, 2016, the interest expense on the credit facility was $nil (2015: $279,000)."

We set out below our consideration of the criteria to meet under PSAS for a self-sustaining entity.

PSAS, Section 1300	**Criteria met?**
.30 A government business enterprise should, in the normal course of its operations, be able to maintain its operations and meet its liabilities from revenues received from sources outside of the government reporting entity. These revenues include not only amounts from the sale of goods and services, but also transfers received from other governments or sources outside of the government reporting entity. PS 3410.04 defines government transfers as follows: *"Government transfers are transfers of monetary assets or tangible capital assets from a government to an individual, an organization or another government for which the government making the transfer <u>does not</u>:* *(a) receive any goods or services directly in return, as would occur in a purchase / sale or other exchange transaction;* *(b) <u>expect to be repaid in the future, as would be expected in a loan;</u> or* *(c) <u>expect a direct financial return</u>, as would be expected in an investment."* (Emphasis added)	Met. IESO does not receive government transfer payments, as defined in PS 3410.04, from the Province. All its costs are to be recovered from the customers through the market participants after IESO's budget's review and approval has been obtained from the Ministry of Energy and the OEB. For each credit facility with the OEFC, the IESO has a credit agreement document with commercial term clauses. As noted in the note 7 to the IESO's 2016 annual report, these facilities are subject to repayment terms and provide a direct financial return to the OEFC.
.31 When determining if an organization can maintain its operations and meet its liabilities with revenues received from outside of the government reporting entity, the	

PSAS, Section 1300	Criteria met?
following factors should be considered:	
(a) the organization's history of maintaining its operations and meeting its liabilities;	Met. IESO does not rely on the Province. Similar to all other rate-regulated entities, IESO relies on its ability to recover all its costs from the customers through the market participants.
(b) whether the organization would continue to maintain its operations and meet its liabilities without relying on sales to, or subsidies in cash or kind from, the government reporting entity;	Met. IESO does not receive subsidies in cash or in kind, nor does it sell any goods or services to the Province of Ontario.
(c) past, present and future economic conditions within which the organization operates; and	Met. The FHP allows IESO to recover all its costs incurred related to the FHP from the customers through the market participants.
(d) whether the organization has realistic and specific plans that show how it expects to be able to maintain its operations and meet its liabilities in the future.	Met. The FHP allows IESO to recover all its costs incurred related to the FHP from the customers through the market participants. The variance account related to the FHP will be sold, on a monthly basis, to a Trust to be established by the OPG. Any variance accounts not sold to the Trust, will be kept in the IESO's variance account and be recoverable in the future via OEB approved rate.

12. Are regulatory assets considered intangible assets?

No**.** There are two fundamental bases for this conclusion.

First, we note that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets since the FASB has specific guidance dealing with this type of asset. An entity that meets the recognition criteria in ASC 980-10-15-2 applies ASC 980, not the intangible assets standard under US GAAP. The guidance in ASC 980-10-15-2 requires an entity to apply ASC 980 in its general-purpose external financial statements if its regulated operations meet all of the following criteria:

"(a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

Since IESO's regulated operations meet the criteria mentioned in 980-10-15-2, it can apply ASC 980. Within ASC 980, there are no references that indicate that the assets recognized under the topic are intangible assets. Furthermore, there are no references in ASC 350 *Intangibles-Goodwill and Other* that indicate that assets recognized under ASC 980 are intangible assets. Within IFRS and Parts II and V of the CPA Handbook, there are no references that indicate that regulatory assets are considered intangible assets.

Second, and following from the discussion and conclusions at issue 7 above, we considered the definitions of financial and non-financial assets under PSAS. An intangible asset would need to be a non-financial asset. The definitions of financial assets and non-financial assets in PS 1000.39 and .42, respectively, are:

> ***"Financial assets** are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations."*
>
> ***"Non-financial assets** are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:*
>
> *(a) are normally employed to deliver government services;*
>
> *(b) may be consumed in the normal course of operations; and*
>
> *(c) are not for sale in the normal course of operations."*
>
> Regulatory assets cannot be consumed in the normal course of operations. However, by virtue of the fact that they represent a financial claim on customers that has arisen due to the fact that the OEB requires the amount to be collected in a future period, a regulatory asset will be used to discharge existing liabilities either to the generators of electricity or the financial institution financing the obligation to the generators of electricity. Therefore, we believe that regulatory assets meet the definition of financial assets under PSAS. This is also supported by PS 1000.42(b), which states that "*a financial asset is any asset that is a realizable asset that is convertible to cash."*

Although intangible assets are mentioned in PSAS, it does not offer a definition. As mentioned in PS 1150.25 and PS 1000.57 and .58, intangible assets are considered non-financial assets and since PSAS has no appropriate public sector recognition and measurement criteria for their recognition, they are not recognized as assets. The costs, benefits and economic value of regulatory assets can be reasonably and verifiably quantified, as they represent the difference between the amount paid to a supplier for goods or services received and the amount collected from the customers through the market participants.

> 25. *"Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1100, comprise the recognized non-financial resources of a government."*
>
> 57. *"Purchased natural resources and Crown lands are recognized in government financial statements. However, when natural resources and Crown lands have been inherited by the government in right of the Crown and have not been purchased, they are not given accounting recognition as assets in government financial statements. <u>These items are not recognized as assets because the costs, benefits and economic value of such items cannot be reasonably and verifiably quantified using existing methods.</u> Similarly, art and historic treasures are also not recognized as assets."*
>
> 58. *"<u>In the absence of appropriate public sector recognition and measurement criteria for intangibl</u>es, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."* (Emphasis added)

It is worth noting that the IASB has an ongoing project on rate-regulated activities and are currently developing an accounting model to provide a principle-based framework for recognizing regulatory assets (see discussion under issue 7 above).

13. Does the IESO meet the first criteria in ASC 980-10-15-2 related to the regulator?

Yes. The criteria for the regulator (i.e. the OEB) is included in the first criteria of ASC 980-10-15-2 which states:

> *"The enterprise's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers."*

Although the Basis for Conclusions included in FAS 71 have not been incorporated into the Accounting Standards Codification, they provide useful information for the understanding of the Standard.

Paragraphs 60 to 64 of FAS 71 relate to the scope and, in particular, to the role of the regulator.

> *"60. The Discussion Memorandum discussed regulation of various industries, and it asked whether a Board pronouncement should identify specific industries that are affected. Most respondents indicated that*

applicability of an FASB Statement on rate regulation should be specified by clearly describing the nature of the regulated operations to which it applies rather than by attempting to delineate specific industries. Some noted that changes in the political environment can cause changes in the nature of regulation. Accordingly, whether an industry meets the criteria for applicability might change over time. The Board agreed with those respondents and, accordingly, specified criteria that focus on the nature of regulation rather than on specific industries.

61. This Statement specifies the economic effects that result from the cause-and-effect relationship of costs and revenues in the rate-regulated environment and how those effects are to be accounted for. The nature of those effects led to the criteria for applicability of this Statement (paragraph 5).

62. The first criterion is the existence of third-party regulation. That criterion is intended to exclude contractual arrangements in which the government, or another party that could be viewed as a "regulator," is a party to a contract and is the enterprise's principal customer. For example, the normal Medicare and Medicaid arrangements are excluded from the scope of this Statement because they are contractual-type arrangements between the provider and the governmental agency that is responsible for payment for services provided

63. Some respondents to the Exposure Draft indicated that cooperative utilities should be included in the scope of this Statement. They observed that some cooperative utilities' rates are subject to third-party regulation, but others' rates are set by their own governing board. The governing board is elected by the members of the cooperative, and it has the same authority as an independent, third-party regulator. In their view, the difference between cooperative utilities that are subject to third-party regulation and those that are not does not justify different accounting. The Board agreed with those respondents, and modified the first criterion to include enterprises with rates established by their own governing board providing that board is empowered by statute or by contract to establish rates that bind customers.

64. A number of governmental utility respondents to the Exposure Draft asked that governmental utilities be included within the scope of this Statement. They noted that many governmental utilities have been guided by the same accounting practices and standards as investor-owned utilities in their general-purpose financial statements, and they expressed the view that users' emphasis on comparability supports continuation of that practice. In their view, the Board's decision not to address governmental utilities in this Statement should not preclude them from applying it. The Board agreed with those respondents and modified paragraph 5(a) so as not to preclude application by governmental utilities with rates set by their own governing board."

It is also important to note that both Hydro One and OPG are classified as Government Business Enterprises and are reporting under IFRS in their consolidated financial statements, are consolidated by the modified equity method into the province's books, are regulated by the OEB, and their respective regulatory assets and liabilities are reported in the province's books.

In considering the applicability of this guidance, management of the IESO and we have concluded that the IESO's regulated operations meet the first criteria related to the regulator.

14. Are regulatory assets considered deferred costs under PSAS?

No. The regulatory assets recorded by IESO are not deferred costs. Costs that meet the recognition of an expense are recorded as such, and costs that meet the definition of a tangible capital asset have been recorded as such. A deferral model would have IESO capitalize costs rather than expense or record as other assets. Regulatory assets record an asset based on the right to collect rates in the future.

While IFRS 14 refers to these as "regulatory deferral accounts", they are not consistent or synonymous with what is being discussed by the Framework Task Force or a deferral model. See discussion below related to the conceptual framework under PSAS.

The proposed conceptual framework under PSAS

That being said, even if regulatory assets were considered deferred costs, the concept of deferrals is supported in PSAS under both existing standards and the Board's conceptual framework for future standards. PSAB's conceptual framework Discussion Paper 3, Conceptual Framework Fundamentals and the Reporting Model, indicated that stakeholder feedback "*noted that the asset and liability definitions should allow some deferral/matching, in particular, in relation to transfers received*".

The discussion paper noted that developing a "solid, objective basis for deferring inflows and outflows to future periods" was a key objective influencing stakeholder views on an appropriate financial reporting model, and suggested that deferrals that meet the definitions of assets and liabilities should be allowed.

In support of the conceptual framework, a report from PSAB's Joint Working Group comprised of selected PSAB members and deputy ministers of finance recommended that:

> *"…expansion of the description/definition of liabilities will address liabilities associated with exchange transactions that originate from deferred income which are not currently addressed in the PSA Handbook. Alternatively, if these changes cannot be accommodated, new financial statement elements for deferred inflows and outflows (i.e., deferred revenue/expense) should be considered without recording the deferral directly to accumulated surplus/deficit as a means to avoid impacting the statement of operations."*

Consistent with the principles of the conceptual framework, the concept of deferrals is presently incorporated within certain sections of the PSAS, including:

- ***Development fees accounted for in accordance with Section PS 3100, Restricted Assets and Revenues.***

  .11 Externally restricted inflows should be recognized as revenue in a government's financial statements in the period in which the resources are used for the purpose or purposes specified. An externally restricted inflow received before this criterion has been met should be reported as a liability until the resources are used for the purpose or purposes specified.

  .12 Income on externally restricted assets may or may not be restricted, depending on the terms of the agreement or legislation. If the provisions of the relevant agreement or legislation require that the income be restricted, then the revenue recognition principle in paragraph PS 3100.11 would apply. For example, governing legislation may stipulate that income on unspent development contributions also has to be used for development. Such income would be recorded as a liability until used for the purpose or purposes specified.

- ***Government transfers meeting the three characteristics of liabilities in accordance with Section PS 3410, Government Transfers and Section PS 3200, Liabilities.***

  .19 A transfer with or without eligibility criteria but with stipulations should be recognized by a recipient government as revenue in the period the transfer is authorized and all eligibility criteria have been met, except when and to the extent that the transfer gives rise to an obligation that meets the definition of a liability for the recipient government in accordance with LIABILITIES, Section PS 3200.

  .20 The determination under paragraph PS 3410.19 as to whether a liability would arise for a recipient government in relation to a transfer would be influenced by:

  (a) the stipulations of the transfer alone; or,

  (b) the stipulations of the transfer taken together with the actions and communications of the recipient government before the financial statement date;

  and whether either set of circumstances would create an obligation that meets the definition of a liability in LIABILITIES, Section PS 3200. Paragraph PS 3410.08 provides guidance for evaluating the extent to which transfer terms meet the definition of stipulations for the purposes of this Section.

- ***Accounting for retirement and postretirement benefits using an accrued benefit method under PS 3250 and PS 3255***

  PS 3250

  .022 Accounting for retirement benefits on the basis of employee services reflects the fact that there is no obligation for an employee when hired and that an obligation for retirement benefits exists as the employee renders service. The accounting task is to determine how to attribute the cost of the total retirement benefits promised to each period of employee service.

  .023 For defined benefit plans, there are two main groups of actuarial cost methods. They are level cost methods and accrued benefit methods. Under the level cost methods, retirement benefit expenses are computed in such a manner as to produce a total current period benefit cost that remains constant, either in absolute dollars or as a percentage of salary, throughout an employee's service life. However, level cost

methods are not recommended for accounting purposes because they do not reflect the cost of benefits earned by employees to the financial statement date.

.024 Under the accrued benefit methods, a distinct unit of retirement benefit is associated with each year of employee service rendered to the financial statement date. The actuarial present value of that unit of benefit is computed separately for the period during which it accrued. These methods are recommended because they reflect more directly the cost of retirement benefits earned by employees to the financial statement date.

.025 An accrued benefit method should be used to attribute the cost of retirement benefits to the periods of employee service.

PS 3255

.06 Post-employment benefits, compensated absences and termination benefits are liabilities of a government. Accounting for all benefit plans is important because many governments have accumulated significant related liabilities. The fundamental accounting task is to determine the amount of the liability for these benefits and to what periods to attribute the costs.

.24 For a separately measured plan providing post-employment benefits or compensated absences that do not vest or accumulate, a government should recognize any actuarial gain or loss:

(a) immediately, in the period in which it arises; or

(b) over a period linked to the type of benefit.

PSAB's exposure draft on the proposed asset retirement obligation section PS 3280 also incorporates the concept of deferral in the recognition and allocation of asset retirement costs, noting specifically that:

.25 Upon initial recognition of a liability for an asset retirement obligation, a public sector entity should recognize an asset retirement cost by increasing the carrying amount of the related tangible capital asset (or a component thereof) by the same amount as the liability.

.26 The public sector entity should allocate the asset retirement cost to expense in a rational and systematic manner. A rational and systematic manner could include amortization over the remaining useful life of the tangible capital asset (or a component thereof), or some other appropriate period depending on the use of the related asset.

Consequently, PSAS supports deferrals that meet the definition of an asset or liability in accordance with PS 1000, *Financial statement concepts*; PS 3200 *Liabilities*; and PS 3210 *Assets*.

15. Should the transactions related to the market accounts be recorded in IESO's books? If so, should they be recorded on a gross or net basis?

Management of the IESO and we believe that the transactions related to the market accounts should be recorded in IESO's books. Management of the IESO and we believe that the revenue and expenses should be presented on a net basis as IESO is acting as an agent for the market participants, but the assets and liabilities cannot be presented on a net basis and must be presented on a gross basis as they do not meet the netting criteria of 3450 *Financial Instruments* in paragraphs .059 and .066(b).

PS 3450 Financial Instruments

The assets and liabilities relating to the market transactions include cash restricted for the market activities, revolving line of credit, interest receivable and payable, amounts due to and due from market participants, HST receivable, and regulatory assets and liabilities related to the RRRP, RPP and OESP programs regulated by the OEB.

Paragraph 11 of PS 3450 states that *"A government should recognize a financial asset or a financial liability on its statement of financial position when, and only when, a government becomes a party to the contractual provisions of the instrument."*

Paragraph 9 of PS 3450 states that "*A contract establishing a financial instrument creates, at its inception, rights and obligations to receive or deliver economic benefits. The financial assets and financial liabilities portray these rights and obligations in financial statements. The assessment of those benefits is a measurement question and does not affect the timing of recognition. Recognition occurs when a government becomes a party to a financial instrument or non-financial derivative contract."*

Based on the above guidance, since the IESO is responsible for procuring supply, capacity and conservation measures and as the IESO entered into these energy contracts with the generators, management of the IESO and we believe that these contracts meet the definition of financial instruments.

Based on the above guidance, the IESO should recognize these assets and liabilities on the statement of financial position.

Should these assets and liabilities be presented on a gross or net basis? Based on PS 3450, since the counterparties are different and do not realize the asset and settle the liability simultaneously, we believe that these assets and liabilities cannot be presented on a net basis as they do not meet the netting criteria in paragraphs .059 and .066(b).

Paragraph 059 states "A financial asset and a financial liability should be offset and the net amount reported in the statement of financial position when, and only when, a government:

(a) currently has a legally enforceable right to set off the recognized amounts; and

(b) intends either to settle on a net basis, or to realize the asset and settle the liability simultaneously."

Since the counterparties are different, there are no enforceable right to set off between the counterparties. Paragraph .066 (b) states:

"The conditions set out in paragraph PS 3450.059 are generally not satisfied and offsetting is usually inappropriate when:

(b) financial assets and financial liabilities arise from financial instruments having the same primary risk exposure but involve different counterparties."

IFRIC project on Centrally Cleared Client Derivatives

The IFRS Interpretations Committee ("IFRIC") has addressed a similar issue over the past few months. The IFRIC received a request to clarify the accounting for centrally cleared client derivative contracts from the perspective of the clearing member (see Appendix J). The wording for the final agenda decision is as follows:

"The Committee concluded that the clearing member first applies the requirements for financial instruments. More specifically, the Committee observed that:

a) if the transaction(s) results in contracts that are within the scope of IAS 39 Financial Instruments: Recognition and Measurement, then the clearing member applies the recognition requirements in paragraph 14 of IAS 39 to those contracts. The clearing member presents assets and liabilities separately applying IAS 39 in the statement of financial position, unless net presentation is required pursuant to the offsetting requirements in paragraph 42 of IAS 32.

b) If the transaction(s) is not within the scope of IAS 39 and another IFRS Standard does not specifically apply, only then would the clearing member apply the hierarchy in paragraphs 10–12 of IAS 8 Accounting Policies, Changes in Accounting Estimates and Errors to determine an appropriate accounting policy for the transaction(s)."

The circumstances are analogous, the relevant guidance on recognition and netting is consistent between IFRS and PSAS in this respect and so the IFRIC conclusion is consistent with IESO's accounting treatment for the recognition and netting of financial assets and liabilities as a result of entering into contractual arrangements.

14. "An entity shall recognise a financial asset or a financial liability in its statement of financial position when, and only when, the entity becomes a party to the contractual provisions of the instrument.

42. A financial asset and a financial liability shall be offset and the net amount presented in the statement of financial position when, and only when, an entity:

a) currently has a legally enforceable right to set off the recognised amounts; and

b) *intends either to settle on a net basis, or to realise the asset and settle the liability simultaneously.*

Other ISO entities in North America

7 of the other 8 entities recognize the assets and liabilities of the market participants on a gross basis and their revenue on a net basis (see Appendix F). AESO (previously named Power Pool of Alberta) is the only entity that does not recognize the assets and liabilities of the market participants.

PWC's previous analysis

As the first auditor of IESO, PWC performed in 2003 an accounting analysis as to how the transactions with the market participants should be included in the IESO's financial statements. The accounting analysis was performed under Part V and only addressed the revenue recognition related to the market transactions in the corporate accounts of the IESO (previously named IMO). The IESO's accounting analysis was not updated when PS 3450 *Financial Instruments* was released in 2011. The following is an extract from the PWC report dated February 27, 2003:

> *"The principal source of authoritative literature for Canadian GAAP are the Accounting Recommendations issued by the Accounting Standards Board, as set out in the Handbook of the Canadian Institute of Chartered Accountants (CICA). Where an emerging topic is not addressed in a CICA Handbook Section, the Accounting Standards Board may issue guidance by way of an EIC Abstract. While EIC Abstracts are less authoritative than CICA Handbook Sections, financial statements are expected to be prepared in accordance with such guidance.*
>
> *We made specific reference to CICA Handbook Section 1000 "Elements of Financial Statements" and EIC – 123 "Reporting revenue gross as a principal versus net as an agent". Relevant extracts from this guidance are given below"*

The analysis performed by PWC assessed how the revenue related to the market transactions should be recognized using EIC 123 "*Reporting revenue gross as a principal versus net as an agent" ("EIC 123")*. It should be noted that EIC 123 does not address if, when and how the related receivables and payables should be recognized in the financial statements.

PWC provided its conclusion in the Executive Summary:

> *"We agree with management's position that physical electricity sales and purchases as well as legislated charges and rebates are transactions for the account of market participants which should not be reported in the IMO's corporate financial statements."*

PWC also reviewed the following industry precedents:

> *"We examined the publicly available financial statements of the following similar corporations:*
>
> *Power Pool of Alberta (now called AESO)*
>
> *We reviewed the 2001 Annual Report of this entity. The Power Pool of Alberta recognizes as revenue only the equivalent of the systems fees received by the IMO. The Annual Report and financial statements do not disclose the value of market transactions undertaken through the Power Pool.*
>
> *PJM Interconnection LLC (USA)*
>
> *We reviewed the 2001 Annual Report of this entity. PJM recognizes as revenue only service fees and reimbursements of operating expenses, and not the value of market transactions.*
>
> *Although not recognized in the financial statements, PJM has provided disclosure of the value of settlements processed by the market. This disclosure is given in Management's Discussion & Analysis."*

As a result, PWC concluded that transactions in the market accounts should not be reflected on a gross basis in IESO's profit and loss statement.

We note that PJM's assets and liabilities related to the market transactions are shown on their balance sheet, and the revenue and expenses are shown on a net basis in their consolidated financial statements for a number of years. PJM also recognizes regulatory assets and liabilities.

16. Does ASC 980-10-15-7 (a) forbid the IESO to recognize the economic effects of rate regulation in times of price controls imposed by government?

No, management of the IESO and we believe that the Ontario Fair Hydro Plan, Act 2017 ("FHP") is not a price control and hence is not subject to the scope limitation discussed in ASC 980-10-15-7 (a) (or paragraph 8 of FAS 71) and paragraph 70 of the Basis for Conclusions of FAS 71.

> 980-10-15-7 (a) states *"Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of*

paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply."

Paragraph 70 of the Basis for Conclusions of FAS 71 states *"The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date."* (Emphasis added)

Therefore, there are two issues – first, are such economic events actually "price controls" and, second, if they are not, do such transactions meet the requirements of ASC 980 to be recognized in the regulated entity's general purpose financial statements.

With respect to the first issue, the OEB's rate setting process does not represent "price controls" as such term is intended to be applied in the standard. We note they have not been imposed in times of emergency, high inflation or other unusual conditions. Rather they have been applied in managing the timing of charging cost increases through to customers for the purchase of energy. To conclude that the instant case is one of "price controls" would result in a conclusion that all rate setting processes are "price controls' which clearly is not the case.

With respect to the second issue, and notwithstanding the conclusion on the first, we note that the regulatory actions result in the criteria in ASC 980 for recognition being met.

In accordance with the Legislation for the FHP, certain costs related to the PPAs in place will be deferred and the recovery of those costs will be included in a period other than the period in which the costs would be charged to expense. In fact, the difference between the amounts paid to the generators and the amounts collected from the customers through the market participants will be recorded by the IESO in a pre-approved variance account. The OEB will regulate the timing of the recovery and set the rates to ensure that the IESO can fully recover the variance account relating to the PPA costs. Since the IESO will have certainty as to the recoverability of the variance account relating to the PPA costs, it is not subject to the scope limitation.

The payment by ratepayers for the PPAs are currently subject to Decisions and Orders issued by the OEB. The variance accounts approved by the OEB for the RRRP, RPP and OESP programs have been discussed earlier. The FHP, will create a variance account similar to the RPP and the rate for the recovery of the PPA costs will continue to be set by the OEB to ensure the IESO can fully recover the variance account.

980-10-05-8: *"Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP."* (Emphasis added)

17. Why don't other rate-regulated entities under PSAS record the economic impacts of rate regulation?

Since we do not have access to the facts and circumstances related to the rate-regulated entities reporting under PSAS, it is difficult to provide a definitive view. However, as discussed in response to issue 3, it should be noted that it is a choice whether or not to use the GAAP hierarchy under PSAS to apply ASC 980 which may not have been taken by these entities. In addition, as discussed in response to issue 9, different entities reporting under PSAS may reasonably choose different paths under PS 1150 when dealing with transactions or events that are not addressed with in the primary source. Furthermore, in order to recognize the economic effects of rate regulation, these entities must meet the scope criteria in ASC 980-10-15-2, especially (b) which states *"The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products."*

Based on a review of the financial statements of three rate-regulated entities in the Territories (Northwest Territories Hydro Corporation and its subsidiary Northwest Territories Power Corporation and Qulliq Energy Corporation), it is possible that these entities have concluded that they do not meet the criteria in ASC 980-10-15-2 (b) since they have no certainty of recovering their costs of providing services as they receive significant financial assistance from their government.

Northwest Territories Hydro Corporation and its subsidiary Northwest Territories Power Corporation

Extract from note 1.c) of the 2015 Financial statements of both Northwest Territories Hydro Corporation and its subsidiary Northwest Territories Power Corporation.

> *"Economic dependence*
>
> *NTPC has historically been able to maintain its operations and meet its liabilities through the rate regulation process without receiving any significant financial assistance from the GNWT and has been classified as a government business enterprise (GBE). Over the past few years, in order to mitigate rate increases to customers, the GNWT has provided larger increases in subsidization to customers through rates by providing direct contributions to NTPC to apply against those rate increases. As a result of this government driven policy, NTPC is economically dependent on the GNWT to maintain its operations and meet its liabilities. It is expected that the ongoing operations of NTPC will depend on continued financial support from GNWT. This economic dependence resulted in NTPC being classified as an other government organization (OGO), beginning in fiscal 2015. The financial impacts of this change in classification from GBE to OGO are described in Notes 2 and 24."* (Emphasis added)

Qulliq Energy Corporation

Extract from note 1 of the 2015-2016 annual report of Qulliq Energy Corporation.

> *"Economic dependence – The Corporation is economically dependent on the Government of Nunavut which, directly and indirectly, accounts for the majority of the Corporation's sales of power. The Government of Nunavut also guarantees the Corporation's debt."*

The facts and circumstances of IESO are different as IESO does not receive transfers or subsidies from the Province of Ontario to cover its costs. IESO relies on its ability to recover the costs from the customers through the market participants.

Appendix A: Relates to the IESO's expenditure, revenue requirements and fees

A.1 Extracts from the Electricity Act

Section 25 of the Electricity Act states:

(1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24.

(2) Until the Board approves the proposed expenditure and revenue requirements for the fiscal year and the fees the IESO proposes to charge during the fiscal year, the fees approved for the previous fiscal year remain in effect unless the Board orders otherwise.

(3) Where the IESO is unable to make its submission under subsection (1) within the time required under that subsection, the IESO shall file its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review as soon as possible after the Minister has approved its business plan under section 24.

(4) The Board may approve the proposed expenditure and revenue requirements and the proposed fees or may refer them back to the IESO for further consideration with the Board's recommendations.

(5) In reviewing the IESO's proposed expenditure and revenue requirements and proposed fees, the Board shall not take into consideration the remuneration and benefits of the chair and other members of the board of directors of the IESO.

(6) The IESO shall not, without the approval of the Board,

(a) establish, eliminate or change any fees it has established; or

(b) eliminate or change any fees established by a predecessor that remain in effect.

(7) The Board may hold a hearing before exercising its powers under this section, but is not required to do so."

A.2 Extracts from the Decisions and Orders issued by the OEB

For example, in connection with the application for approval of the 2016 revenue requirement, expenditures and fees, the OEB issued two Decisions and Orders (December 1, 2016 and December 29, 2016) (see below). The first Decision and Order addresses the 2016 expenditure and revenue requirement and the second Decision and Order addresses the fees to be charged for domestic customers and for export customers for the financial year 2016.

- The review process included 15 intervenors and the issuance of a settlement proposal.
- A settlement conference was held on August 17 and 18, 2016, in which 10 of the 15 intervenors, as well as OEB staff, participated. On September 7, 2016, the IESO filed a settlement proposal for the OEB's approval reflecting an agreement on all issues on the issues list except the IESO's proposal for a single usage fee. A written hearing was held on the unsettled issue.
- Extracts from the Decision and Order issued by the OEB on December 1, 2016

  As part of the Package Settlement, and subject to the settlement terms agreed to by the IESO set out under Issue 1.1, the Parties accept that:

  - the IESO's operating costs budget of $182.1 million for fiscal year 2016 is appropriate.
  - the IESO's proposed compensation costs and staffing levels are appropriate.
  - the IESO's revenue forecast of $1.0 million for registration fees in fiscal year 2016 is appropriate.
  - the IESO's capital expenditure budget for fiscal year 2016 is appropriate.
  - to continue the Forecast Variance Deferral Account to track variances between actual and OEB-approved revenues and costs is appropriate.
  - to retain an Operating Reserve of $10 million in the Forecast Variance Deferral Account is appropriate.
  - to clear 2015 Year-End balances in the Forecast Variance Deferral Account that are in excess of the $10 million operating reserve is appropriate.
  - to use the 2014 balances in the Registration Fees Deferral Account and the Forecast Variance Deferral Account (which includes the OPA's Operating Reserve) to cover the OPA's merger costs of $5.6 million is appropriate.
  - to fund its share of the merger costs of $5.3 million using the 2014 year-end Operating Reserve of $8.3 million is appropriate.
- Extracts from the Decision and Order issued by the OEB on December 29, 2016
  - The OEB also notes that under the previously approved Forecast Variance Deferral Account, the IESO tracks any difference between its actual expenses and its approved revenue requirement. Therefore, any over-collection during 2016 will ultimately be returned to customers.[4]

    [4] *The Forecast Variance Deferral Account was established by the OPA. In this proceeding, the IESO asked to continue it. This was agreed upon in the settlement proposal, which the OEB approved on December 1, 2016*
  - In respect of the IESO's usage fees for the 2017 rate period, the OEB approves the IESO's request to apply the fees approved in this proceeding ($1.1636/MWh for domestic customers and $0.9603/MWh for export customers) on an interim basis as of January 1, 2017.
  - The OEB notes that it is unusual for the OEB to determine, in the same decision, the final rates for one rate period and the interim rates for the following rate period. In this case, because the IESO's request for interim 2017 fees arose in the context of its 2016 application, and because the 2017 application has

4

not yet been filed, the OEB has for administrative convenience dealt with both matters at once. The determination to allow interim fees is made without prejudice to the OEB's ultimate decision on the IESO's 2017 application once filed, and should not be construed as predictive, in any way whatsoever, of the OEB's final determination of the IESO's 2017 fees or of the effective date of such fees.

- Under s. 25(4) of the *Electricity Act, 1998*, "The Board may approve the proposed expenditure and revenue requirements and the proposed fees or may refer them back to the IESO for further consideration with the Board's recommendations." The OEB has approved the proposed expenditure and revenue requirements, but not the proposed single usage fee. The OEB refers the matter of the usage fee back to the IESO for further consideration, and recommends the following:
  - The IESO should submit a revised proposal to the OEB to recover its approved revenue requirement through two separate usage fees, one for domestic customers and one for export customers.
  - Each usage fee should represent a revenue-to-cost ratio of 100%, based on the Elenchus cost allocation evidence.

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Appendix B: Relates to the smart metering activities

B.1 Extracts from the relevant Acts and Regulations

Electricity Act:

Objects or nature of the business of the Smart Metering Entity

53.8 The objects of the Smart Metering Entity, if it is a corporation, or the nature of its business activities, if the Smart Metering Entity is a limited partnership or a partnership, include, in addition to any other objects or business activities, the following:

(8) To recover, through just and reasonable rates, the costs and an appropriate return approved by the Board associated with the conduct of its activities

OEB Act:

Order re the Smart Metering Entity

(2.1) The Smart Metering Entity shall not charge for meeting its obligations under Part IV.2 of the *Electricity Act, 1998* except in accordance with an order of the Board, which is not bound by the terms of any contract.

Rates

(3.0.1) The Board may make orders approving or fixing just and reasonable rates for the Smart Metering Entity in order for it to meet its obligations under this Act or under Part IV.2 of the *Electricity Act, 1998*.

Orders re deferral or variance accounts

(3.0.2) The Board may make orders permitting the Smart Metering Entity or distributors to establish one or more deferral or variance accounts related to costs associated with the smart metering initiative, in the circumstances prescribed in the regulations.

Orders re recovery of smart metering initiative costs

(3.0.3) The Board may make orders relating to the ability of the Smart Metering Entity, distributors, retailers and other persons to recover costs associated with the smart metering initiative, in the situations or circumstances prescribed by regulation and the orders may require them to meet such conditions or requirements as may be prescribed, including providing for the time over which costs may be recovered.

B.2 Extracts from the DECISION and ORDER issue by the OEB on March 28, 2013

Extracts from the Decision and Order issued by the OEB on March 28, 2013

- Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.
- THE BOARD ORDERS THAT:
  - Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.
  - The Smart Metering Entity shall file with the Board, and shall also forward to intervenors, a draft Accounting Order for each of the three new Deferral and Variance Accounts referenced in section 1.5 a) of the Settlement Agreement within 10 days of the date of the issuance of this Decision and Order.

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

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Appendix C: Relates to the market accounts

C.1 Extracts from the relevant Acts and Regulations for the OESP, RPP and RRRP

C.1.1. OESP

O. Reg. 314/15: ONTARIO ELECTRICITY SUPPORT PROGRAM:

Compensation for distributors, unit sub-meter providers and the IESO

3. …

(2) The IESO shall collect the charge calculated by the Board under subsection (1) from market participants and any other person who, with the approval of the IESO, withdraws electricity from the IESO-controlled grid for use by consumers in Ontario.

(3) For the purposes of subsection (2), the amount that the IESO shall collect from each market participant and any other person contemplated in that subsection shall be based on the total of,

Variance account

6.

(1) The IESO shall establish a variance account in connection with subsections 3 (2) and (3) that records differences between the amounts collected by the IESO under subsection 3 (2) and the amount of compensation paid or retained by the IESO under subsection 3 (4).

(2) The IESO shall record interest on the balance of the account as the Board may direct.

C.1.2. RPP

OEB Act:

Commodity price for electricity: low volume consumers, etc.

79.16 …

(3) In determining rates under clause (1) (b), the Board shall take into account balances in variance accounts established under section 25.33 of the Electricity Act, 1998 and make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct.

Electricity Act:

Electricity pricing to reflect costs

IESO to make adjustments

25.33

(1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

(a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the *Ontario Energy Board Act, 1998*; and

(b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract. 2014, c. 7, Sched. 7, s. 8 (1).

Distributors and retailers to make adjustments

(2) Distributors and retailers shall, through their billing systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of consumers in Ontario that are prescribed by regulation reflect,

(a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and

(b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract. 2014, c. 7, Sched. 7, s. 8 (2).

Exception

(3) Any adjustment that would otherwise be made under subsection (1) or (2) and that relates to electricity that is consumed by any of the following types of consumers shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO:

1. Repealed
2. A consumer whose rates are determined by the Board under section 79.16 of the *Ontario Energy Board Act, 1998*.
3. A consumer who is a member of a class of consumers prescribed by the regulations.

Adjustments, payments, set-offs and credits

(4) The IESO, distributors and retailers shall,

(a) make such adjustments in their accounts as may be required or permitted by the regulations to record adjustments described in subsections (1), (2) and (3); and

(b) make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in subsection (3).

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section.

C.1.3. RRRP

O. Reg. 442/01: RURAL OR REMOTE ELECTRICITY RATE PROTECTION

5.

(0.1) In this section, "rate protection interest costs" means interest costs incurred by the IESO for the purpose of ensuring that payments to distributors are made in accordance with clause (7) (b).

(1) The Board shall calculate the amount of the charge to be collected by the IESO under subsection (5) for each kilowatt hour of electricity that is withdrawn from the IESO-controlled grid, as determined in accordance with the market rules, for use by consumers in Ontario, so that the total amount forecast to be collected is equal to the total amount of rate protection to be provided.

(2) At least 60 days before the end of each calendar year, the IESO shall submit to the Board,

(a) a forecast of the number of kilowatt hours of electricity that will be withdrawn from the IESO-controlled grid, as determined in accordance with the market rules, for use by consumers in Ontario during the next calendar year; and

(b) supporting documentation for the forecast.

(3) The forecast shall be derived from information submitted to the Board under section 25 of the Electricity Act, 1998 in respect of the next fiscal year.

(4) Revoked

(5) The IESO shall collect the charge calculated by the Board under subsection (1) from market participants and any other person who, with the approval of the IESO, withdraws electricity from the IESO-controlled grid for use by consumers in Ontario.

(6) A distributor or retailer who bills a consumer for electricity shall aggregate the amount that the consumer is required to contribute to the compensation required by subsection 79 (3) of the Act with the wholesale market service rate described in the Electricity Distribution Rate Handbook issued by the Board, as it read on October 31, 2001.

(7) Each month, the IESO shall,

(a) record the charges collected under subsection (5) in the preceding month; and

(b) from those charges, pay to distributors the compensation to which they are entitled under subsection 79 (3) of the Act.

(8) Any amounts remaining after payments are made to distributors under clause (7) (b) may be used by the IESO to defray any rate protection interest costs it has incurred.

(9) The IESO shall establish a variance account that records differences between the amounts collected by the IESO under subsection (5) and the sum of the amount paid under clause (7) (b) and any amounts used for the purposes of subsection (8).

C.2 Extracts from the DECISIONS and ORDERS issued by the OEB

C.2.1. Related to OESP

The OEB issued a Decision and Rate Order on December 15, 2016.

- The OESP is a rate assistance program for low-income electricity customers introduced on January 1, 2016, which provides for eligible low income customers to receive a monthly credit on their bills. At the same time, all electricity customers in the province pay a charge to fund the program.
- The OEB Act was amended in June 2015 to include section 79.2, which deals with rate assistance. Sections 79.2 (9) and (10) allow the OEB to order collection of funds from consumers to recover the costs of the program.
- O. Reg. 314/15 prescribes the methodology by which the OEB sets the OESP charge. Section 3(1) of the regulation requires that "the total amount forecast to be collected is equal to the sum of the total amount of rate assistance to be provided and OESP administrative costs."
- O. Reg. 314/15 also specifies that the total program cost as calculated above is to be recovered through a charge for each kilowatt hour of electricity that is withdrawn from the IESO-controlled grid or that is supplied by embedded generators for use by consumers in Ontario.
- The OEB is currently reviewing the OESP program including categories of consumers who are eligible for this relief. The OEB is also continuing to aggressively market the program to achieve maximum participation by low income customers.
- The OEB will not adjust the OESP charge at this time. The program is less than a year old and given the OEB's review that is underway, it is premature to make an adjustment to the charge at this time. The OESP charge to be collected by the IESO shall continue to be $0.0011 per kWh. In order for distributors to recover the OESP charge they pay to the IESO, they shall continue to collect a charge from their customers in the same amount, namely $0.0011 per kWh on loss-adjusted consumption.

It should be noted that the new legislation for the Ontario Fair Hydro Plan Act, 2017 (Bill 132) recently approved has transferred the program from the ratepayers to the taxpayers. It is expected that IESO will be permitted to recover this variance account.

C.2.2. Related to RPP

The OEB issued a report called Regulated Price Plan, Price Report for the period from May 1, 2017 to April 30, 2018 (see Appendix A).

- This report contains the electricity commodity prices under the RPP for the period May 1, 2017 through April 30, 2018.
  - The calculation of the total RPP electricity supply cost involves several separate forecasts, including:
  - the hourly market price of electricity;
  - the electricity consumption pattern of RPP consumers;
  - the electricity supplied by those assets of OPG whose price is regulated;
  - the costs related to the contracts signed by non-utility generators with the former Ontario Hydro;
  - the costs of the supply contracts, and conservation and demand management (CDM) initiatives of the IESO; and
  - **the net variance account balance (as of April 30, 2017) carried by the IESO.**
- Table ES-1: Average RPP Supply Cost Summary

RPP Supply Cost Summary

for the period from May 1, 2017 through April 30, 2018

Forecast Wholesale Electricity Price		$22.81
Load-Weighted Price for RPP Consumers ($ / MWh)		$24.83
Impact of the Global Adjustment ($ / MWh)	+	$87.67
Adjustment to Address Bias Towards Unfavourable Variance ($ / MWh)	+	$1.00
Adjustment to Clear Existing Variance ($ / MWh) (note 1)	+	$1.40
Average Supply Cost for RPP Consumers ($ / MWh)	=	**$114.90**

Source: Navigant

Note 1: The variance account set-up during the prior year is recovered in the rates charged the following year.

C.2.3. Related to RRRP

The OEB issued a Decision and Rate Order on December 15, 2016 (see Appendix A).

- The RRRP is charged to all customers in Ontario in accordance with how much electricity they consume. The total amount collected through the RRRP is a source of revenue for identified rural and remote electricity distributors whose costs are higher because they serve small numbers of customers over large geographic areas or in remote regions. The RRRP revenue allows them to reduce the amount they would otherwise have to charge eligible customers for distribution service.
- Each year, the OEB approves an RRRP benefit amount to be collected from electricity distributors by the IESO. Electricity distributors in turn levy an OEB-approved retail RRRP charge to recover the RRRP amount paid to the IESO.
- In November 2016, the Ontario Government passed amendments to O. Reg. 442/01 to increase the amount of RRRP rate protection for eligible rural Hydro One customers from $125.4 million to $243.4 million. This increase is to be effective January 1, 2017. The total amount of rate protection for 2017 is as follows:

TOTAL RRRP REQUIREMENT for 2017

($ in millions per year)

IESO Estimated over-collection (in 2016) (Note 2)	-$ 9.34
Hydro One Benefit per O.Reg 442/01	$ 243.40
First Nations (per sch1 of O.Reg 442/01)	$ 1.60
Algoma Power (per EB-2016-0055)	$ 13.50
Hydro One Remotes (per EB-2016-0083)	$ 32.26
Total	$ 281.42

Note 2: The variance account of 2016 is recovered in the rates charged in 2017.

- Ontario Regulation 442/01 and section 79(1) of the OEB Act require that the OEB annually set the RRRP rate to be collected by the IESO for all electricity withdrawn from the IESO-controlled grid so that it equals the RRRP benefit amount approved by the OEB for the same period. Similarly, the OEB sets the retail RRRP charge to be charged by electricity distributors to recover costs they paid to the IESO.
- The IESO is required by regulation to pay out the funds to distributors eligible for rate protection and to track any over or under collections. The variances in a given year are added to or deducted from the total amount to be collected from electricity distributors in the following year.

Dec_Order
Regulatory Charges 2

Appendix D: Comparison between IESO and the eight other ISO entities in North America (Based on ISO entities' 2015 financial statements)

	IESO	AESO	ISO New England	NYISO	MISO	PJM	CAISO	ERCOT	Southwest Power Pool
Location	Ontario	Alberta	US	US	US	US	US	US	US
Accounting framework	PSAS	IFRS (transitioned in 2015)	US GAAP	US GAAP	US GAAP	US GAAP	GASB	US GAAP	US GAAP
Auditors	KPMG	EY	KPMG	KPMG	EY	PWC	PWC	Baker Tilly	BKD
Type of organization	Not-for-profit	Not-for-profit	Not-for-profit	Not-for-profit	Not-for-profit	LLC, non-stock company	Not-for-profit	Not-for-profit	Not-for-profit
Subject to income tax	No	No	No	No	No	Yes	No	No	No
Capital structure	No share capital, accumulated deficit of $97m	No share capital and no equity	No share capital and no equity	No share capital and no equity	No share capital and no equity	Paid in capital of $1m and retained earnings of $7m	No share capital, unrestricted net assets of $125m	No share capital, unrestricted net assets of $8m	No share capital, accumulated deficit of $129m
Governance	Independent board	Independent board	Independent board	Independent board	Independent board	Independent board and Members committee	Independent board	Independent board	Independent board
Regulator	OEB	AUB	FERC	FERC, NY State Dept. of Public Service Commission	FERC	FERC	FERC	Interstate (no FERC), PUCT	FERC issued an order - Fees are regulated by the Board of directors
Recognized regulatory balances	Recognized as from 2016	Assets: $25m; Liabilities: $1m	Assets: $65m; Liabilities: $2m	Assets: $14m; Liabilities: $15m	Assets: $24m; Liabilities: $-m	Assets: $12m; Liabilities: $7m	**Not recognized**	Recognized in 2014 a liability of $34m but nil in 2015	**Not recognized**

	IESO	AESO	ISO New England	NYISO	MISO	PJM	CAISO	ERCOT	Southwest Power Pool
Description of revenue	System fees based on approved rates for each MGW of electricity withdrawn from the IESO-controlled grid and embedded generation	Three types of charges: transmission tariff, energy market charge and load settlement charge	Recover its operating and debt service costs in tariff	Tariffs allow recovery of capital requirements, operating expenses and debt service costs through a surcharge to market participants. Revenue is recognized for net financing obligations and capital costs incurred based on revenue requirement formula in the tariffs.	Tariff include cost recovery adder for transmission services cost, energy market support service cost and ISO cost recovery.	Recognizes revenue as amounts billed and unbilled under PJM and PJM settlement's tariff rate schedules	Charge a grid management charge to market participants to recover operating costs, capital expenditures, debt service costs and to provide for an operating reserve	Consist mainly of system administration fees.	Revenue consists of member assessments, tariff administrative fees, contract services and miscellaneous
Policy for the transactions related to market participants	As from 2016, IESO includes the financial transactions of market participants within the IESO-administered markets	Based on discussion with the CFO, AESO does not recognize the assets and liabilities nor the revenue and expenses related to the energy costs	Accounts payable on the Statements of Financial Position are segregated between (i) the amounts owed for energy transactions and transmission, for which the ISO functions as paying agent, which are included in the accounts payable as "settlement, net," and (ii) the administrative expenses incurred by the Company in the course of	Settlements of market participant's energy transactions are not reflected in NYISO's Statements of Activities since they do not represent revenues or expenses of NYISO, as NYISO merely acts as an intermediary in the settlement process. In this role, NYISO receives and disburses funds from and to market participants for each settlement period. Effective July 1, 2012, NYISO's two FERC-approves tariffs, the Open Access Transmission Tariff (OATT) and the Market Administration and Control Area Services Tariff (services Tariff), were amended to clarify NYISO's role as the single counterparty to market participant transactions in the NYISO markets. For	The cash collateral deposits represent funds from customers that provide cash collateral as a form of financial assistance to secure the customers' performance under the terms and conditions of the Tariff related to the purchase of transmission service, market services, ancillary services, and related products or services. All restricted cash items are offset by liabilities on the balance	Recognize on the balance sheet the amounts due to the market participants. Billings and collections by PJM for work it performs on behalf of the counterparties to the specific interconnection agreements are reported on a net basis in the Consolidated Statement of Income, Comprehensive Income and Paid in Capital, Retained Earnings and AOCI.	In addition, the Company also performs a settlement and clearing function by charging and collecting payments from users of these services and paying providers of such services. Cash held by the Company on behalf of market participants is recorded in a restricted asset account with a corresponding liability due to the market participants in the statements of net position. Except for the retention of restricted assets noted above, the Company's financial statements reflect a net reporting of market activities wherein the financial statements do not include the revenues and expenses, cash flows, or assets and liabilities associated with the market transactions it facilitates. GMC revenues have a priority claim against any market-related receipts. Any market	Market settlement liabilities primarily represent two types of funds held on behalf of the ERCOT market: congestion management funds and prepayments of settlement obligations. Market participant settlement amounts are collected and redistributed by ERCOT in the normal course of managing the settlement of ERCOT'S markets. Such	Restricted cash deposits consist primarily of customer security deposits, amounts deposited for engineering studies and funds held in escrow for disputed invoices. Customers may be required to make deposits with the Company prior to the performance of transmission services, market transactions and engineering studies. An offsetting liability equal to the deposit balance is recorded in current liabilities. Funds held in escrow related to disputed invoices are also

	IESO	AESO	ISO New England	NYISO	MISO	PJM	CAISO	ERCOT	Southwest Power Pool
			operations. The reference to "settlement, net" is used due to the nature of billing and payment for the amounts owed for energy transactions and transmission markets, and represents the customer's net amount due, less any amounts which may have been owed to them.	all market participant transactions in the NYISO markets, flash title passes through NYISO immediately prior to passing to the ultimate buyer and seller of the product. This arrangement reinforces NYISO's authority to continue to net a market participant's offsetting financial positions in NYISO markets for credit and billing purposes; provides clarity in NYISO's legal standing to pursue collection from a bankrupt market participant and, also complies with the FERC directives on credit policy requirements for competitive wholesale electricity markets.	sheets. The cash and cash equivalent collateral deposits less interest are offset in restricted deposits. Collection on the Assessment Fee is offset by the FERC assessment liability. The remainder of restricted cash and cash equivalents is offset in the market participant liability.		defaults are allocated to market participants.	settlement obligations are generally held for less than 15 days before distribution to the market in accordance with timetables set forth in ERCOT's Protocols.	recorded as a customer deposit under current liabilities. Weekly settlements of market participants' energy transactions are not reflected in the Company's statements of operations since they do not represent revenues or expenses of the Company, as the Company merely acts as an intermediary in the settlement process.
Revenue in connection with the settlements of market participants - **Gross vs net basis**	Net basis	Not recognized	Net basis	Net basis	Net basis	Net basis	Net basis	Net basis	Net basis

	IESO	AESO	ISO New England	NYISO	MISO	PJM	CAISO	ERCOT	Southwest Power Pool
Assets and liabilities related to the market participants shown on the balance sheet	As from 2016, recognized assets and liabilities of the market participants	Not recognized	Security deposits - $161m and related deposit payable - $176m; Unbilled receivable, net - $28m; the net unbilled receivables, the majority of which has been determined as a result of the settlement process, includes those amounts that will be billed and included in the invoice or remittance advice to participants on subsequent invoices issued twice per week; A/P settlement, net - $23m Accounts payable on the statement of financial position is segregated	Restricted cash - $353m consists primarily of market participant security deposits held in escrow accounts, amounts prepaid by market participants in advance of settlement billing dates, amounts collected on settlement invoices; Market participants security deposits due - $257m; A/R - settlement invoices - $24m - NYISO invoices market participants weekly for settlement charges and Rate Schedule 1 revenue. Current due settlement invoices represent amounts invoiced on December 30, 2015 and due to be collected on January 4, 2016; Market participant prepayments - $8m – consists mainly of amounts received from certain market participants who do not provide an alternate form of financial assurance and must prepay their obligations to NYISO in advance of settlements billing dates are recorded as market participant prepayments. Also, certain	Restricted cash deposits - $550m and related deposit payable - $500m; As of December 31, 2015 and 2014, the Company had collected $4,324 and $86,497, respectively, in market participant payments due to other market participants and/or MISO transmission owners. These funds are scheduled to be paid in a subsequent period; Market participant liabilities - $29m	Deposits on hand - $1,060m and related due to members - $1,060m. Due to members - $198m (no detail provided)	Restricted cash - $327m and related due to market participants - $342m. Market funds pending settlement - $61m consists of amounts collected during the settlement and clearing function that will pass-through to market participants in subsequent periods.	Restricted cash deposits - $364m and related deposit payable - $364m; Market participant liabilities - $357m includes prepayments of settlement obligations of $63m	Restricted cash deposits - $197m and related deposit payable - $197m.

	IESO	AESO	ISO New England	NYISO	MISO	PJM	CAISO	ERCOT	Southwest Power Pool
			between amounts owed for energy transactions and transmission for which ISO functions as a paying agent, which are included in accounts payable as "settlement, net"	market participants choose to make advance payments to the NYISO to be applied to future settlement invoices.					

	IESO	AESO	ISO New England	NYISO	MISO	PJM	CAISO	ERCOT	Southwest Power Pool
Consolidated by the province or state	Yes	No	Not available	Not available	Not available	Not available	NO. Chapter 854 of the Statutes of 1996 created an *Independent System Operator {ISO),* a state-chartered, nonprofit market institution. The ISO provides centralized control of the statewide electrical transmission grid to ensure the efficient use and reliable operation of the transmission system. The ISO is governed by a five-member board, the members of which are appointed by the Governor and confirmed by the Senate. The State's accountability for this institution does not extend beyond making the initial oversight board appointments. As the primary government is not financially accountable for the ISO, the financial information of this institution is not included in the financial statements of this report. For information regarding obtaining copies of the financial statements of the ISO, contact the Independent System Operator, P.O. Box 639014, Folsom, California 95763-9014 or go to its website at www.caiso.com.	Not available	Not available

Appendix E: Summary Comparison of Canadian Public Sector Accounting Standards with the CICA Handbook Part V

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Appendix F: Other sources of GAAP

The following table analyzes the differences, if any, between the GAAP hierarchy under PSAS (section 1150) and the legacy Canadian GAAP (section 1100).

PSAS	Legacy Canadian GAAP	Difference
PS2120.02, "a change in an accounting policy may be made… if it is considered that the change would result in a more appropriate presentation of events or transactions in the financial statements of the government."	1506.14 "An entity shall change an accounting policy only if the change: (a) is required by a primary source of GAAP (see GENERALLY ACCEPTED ACCOUNTING PRINCIPLES, Section 1100); or (b) results in the financial statements providing reliable and more relevant information about the effects of transactions, other events or conditions on the entity's financial position, financial performance or cash flows."	Similar
PS1150.02 "This Section applies to all governments. It also applies to those organizations that consider the CPA Canada Public Sector Accounting Handbook (CPA Canada PSA Handbook) to be the most appropriate to their objectives and circumstances. An entity applying this Section is referred to as a "public sector reporting entity".	1100.4 Basis of Conclusions "The CICA Handbook - Accounting is silent or provides limited guidance in certain specific areas. This does not imply, however, that entities may do whatever they please. Section 1100 provides guidance on sources to consult when selecting accounting policies and determining appropriate disclosures, when a matter is not dealt with explicitly in the primary sources of GAAP."	Similar
PS1150.05 "When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with: (a) the primary sources of GAAP; and (b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000."	1100.04 "When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the entity, or additional guidance is needed to apply a primary source to specific circumstances, an entity should adopt accounting policies and disclosures that are: (a) consistent with the primary sources of GAAP; and (b) developed through the exercise of professional judgment and the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section 1000."	Similar
PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS 1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria: (a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from	1100.07 "An entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph 1100.04. An entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria: (a) The specificity of the source. A source that deals with the specific circumstances is likely to be more relevant than one from which the entity must analogize. (b) The authority of the issuer or author. A source	Similar

PSAS	Legacy Canadian GAAP	Difference
which the public sector reporting entity must analogize. (b) `The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction. (c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources. (d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."	issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction. (c) The continued relevance of the source. The passage of time may diminish the relevance of certain sources. (d) The development process for the source. A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."	
PS1150.10 "A public sector reporting entity considers all sources of GAAP that it consults in the context of the concepts described in paragraph PS 1150.05(b), which describes the concepts underlying the development and use of accounting principles in financial statements. A public sector reporting entity adopts accounting policies that are consistent with these concepts. The Public Sector Accounting Board (the Board) considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the qualitative characteristics of financial information, the elements of financial statements, and the recognition and measurement criteria in paragraph PS 1150.05(b)."	1100.10 "An entity considers all sources of GAAP that it consults in the context of FINANCIAL STATEMENT CONCEPTS, Section 1000. Section 1000 describes the concepts underlying the development and use of accounting principles in general purpose financial statements (financial statements). An entity adopts accounting policies that are consistent with the concepts described in Section 1000. The Board considers a source to be consistent with the concepts in Section 1000 when the guidance in that source is compatible with the qualitative characteristics of financial information, the elements of financial statements, and the recognition and measurement criteria in Section 1000."	Similar
PS1150.19 "Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances."	1100.24 Pronouncements issued by bodies authorized to issue accounting standards in other jurisdictions may be useful sources to consult. In particular, accounting pronouncements published with the authority of the US Financial Accounting Standards Board (FASB), or the International Accounting Standards Board (IASB), are often important sources to consult on matters not covered by primary sources of GAAP or to assist in applying a primary source of GAAP to specific circumstances.	Similar
Silent	1100.32B "This Section applies to the recognition and measurement of assets and liabilities arising from rate regulation in interim and annual financial statements relating to fiscal years	PSAS is silent

PSAS	Legacy Canadian GAAP	Difference
	beginning on or after January 1, 2009. Rate regulation exists when all of the following criteria are present: (a) The rates for regulated services or products provided to customers are established by or are subject to approval by a regulator or a governing body empowered by statute or contract to establish rates to be charged for services or products. (b) The regulated rates are designed to recover the cost of providing the services or products. (c) It is reasonable to assume that rates set at levels that will recover the cost can be charged to and collected from customers in view of the demand for the services or products and the level of direct and indirect competition."	

Based on the above analysis, there are no substantive differences between the way the GAAP hierarchies are applied when the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the entity, except that legacy Canadian GAAP specifically stated that a rate-regulated entity would apply the GAAP hierarchy for the recognition and measurement of assets and liabilities arising from rate regulation in interim and annual financial statements relating to fiscal years beginning on or after January 1, 2009. The legacy Canadian GAAP eliminated the temporary relief from the application of Section 1100 for the recognition and measurement of assets and liabilities arising from rate regulation. PSAS does not contradict this guidance.

Appendix G – Report of the Ontario Energy Board on Pension and OPEB costs

OEB
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Appendix H – Agenda Paper 9 of May 2017 and Agenda Paper 9A of June 2017

ap09-rra.pdf

ap09a-rra-update-of-boards-discussion.pd

Appendix I – EEI Letter addressed to the IASB

EEI letter.pdf

Appendix J – IFRIC project on Centrally Cleared Client Derivatives

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Legal and Accounting Call.rtf

From: Nelms, Scott (MOF) []
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Subject: Legal and Accounting Call
Date: Friday, March 03, 2017 15:59:29
Attachment 1: Letter to DM_Feb 28 2017.pdf
Attachment 2: White Paper - ASC 980.pdf
Attachment 3: White Paper - GASA.PDF
Attachment 4: Global Adjustment Deferral_White Paper_OPG r1a.pdf
Attachment 5: Global Adjustment Deferral - White Paper - Terms to MOE Feb 21_2017.pdf
Attachment 6: PSAB INDICATORs OF CONTROL.DOCX

Hi All,

As discussed on the call, please see the attached documents from IESO, OPG and Treasury Board.

Thanks,

Scott

Scott Nelms

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Letter to DM_Feb 28 2017.pdf

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Powering Tomorrow.

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February 28, 2017

Deputy Minister Serge Imbrogno
Ontario Ministry of Energy
900 Bay Street
Hearst Block, 4th Floor
Toronto, ON M7A 2E1

Dear Deputy Imbrogno:

Attached are two documents prepared in conjunction with our KPMG advisors. The first outlines the proposed adoption by the IESO of the guidance in *ASC980 Regulated Operations* and the recognition of regulatory assets, as a more appropriate and transparent presentation in our financial statements.

The second is associated with the potential recognition and de-recognition of the regulatory assets associated with the IESO's role under the Global Adjustment Smoothing Account.

The conclusions of the second analysis are based on the structure of the account as the IESO currently understands it, and may vary depending on the final legislative materials.

We are available to address any questions you may have on these matters.

Sincerely,

Bruce B. Campbell

Attach.

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President and CEO
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White Paper - ASC 980.pdf

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White Paper - Adoption of the guidance in ASC 980 Regulated Operations

Independent Electricity System Operator ("IESO" or the "Company") is considering making changes in its accounting policies to reflect the balances of market participants within the IESO-administered markets (see separate technical analysis) and the economic impacts of rate regulation, as the changes would result in a more appropriate presentation of events or transactions in its financial statements.

Issue being considered in this document is: Can the IESO adopt the guidance in ASC 980 *Regulated Operations (US GAAP in FASB)*?

Background and Assumptions

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. IESO is rate regulated by the OEB in accordance with the Electricity Act, 1998 and the Ontario Energy Board ("OEB") Act, 1998 but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
3. The IESO is required to obtain approval from the OEB under s. 25(1) of the Electricity Act, 1998 for the approval of its own expenditures, revenue requirement and fees. The last rate approval was obtained on December 29, 2016[1].
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix A). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

Appropriate Accounting Principle

PS2120.02, "*a change in an accounting policy may be made… if it is considered that the change would result in a more appropriate presentation of events or transactions in the financial statements of the government."*

PS1150.05 "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

[1] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/556699/view/Dec_Order_IESO_20161229.PDF

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000."

PS1150.19 "*Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.*"

PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

(a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.

(b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.

(c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources.

(d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."

PS1150.10 "PSAB considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in paragraph PS 1150.05(b)."

PS1000.58 "In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."

PS3210.03 "*Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."*

PS3210.04 "Assets have three essential characteristics:

(a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.

(b) The public sector entity can control the economic resource and access to the future economic benefits.

(c) The transaction or event giving rise to the public sector entity's control has already occurred."

Issue: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

In accordance with PS2120.02, the IESO can reflect the economic impacts of rate regulation only if it is considered that the change of accounting policy would result in a more appropriate presentation of events or transactions in the financial statements of the government. As mentioned in the Agenda ref. 9A of the IASB meeting of February 2017[2], rate regulated entities have long argued that, without recognizing regulatory assets and regulatory liabilities, the entity's performance is distorted by the rate regulator's intervention in the imposition of performance obligations on the entity and the timing of cash flows from the ratepayers.

[2] http://www.ifrs.org/Meetings/MeetingDocs/IASB/2017/February/AP09-Rate-regulated-Activities.pdf

The recognition of regulatory assets and liabilities would better reflect the economic substance of IESO's operations and enhance the transparency and accountability of its financial reporting. For example, during the period from 2007 to April 2013 the IESO incurred costs relating to the Smart Meter Program amounting to $90.9 million, and these costs were expensed and are included in the accumulated deficit. In the absence of applicable regulatory accounting under PSAS, the IESO was unable to recognize a regulatory asset for this charge, despite receiving a rate order to recover it over the period from May 1, 2013 to October 31, 2018. Should the IESO choose to adopt ASC 980, a regulatory asset for the Smart Metering Charge would be recognized at December 31, 2016 for an amount of approximately $21.6 million, which would represent the remaining unamortized amount that would have been reported if the asset was recognized originally in 2013.

PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consider other sources based upon PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment.

Within AcSB, Accounting Standards for Private Enterprises (ASPE) defines a rate regulated entity but provides no guidance on regulatory assets and liabilities however requires disclosure of such balances if they are recognized. IASB has not completed their project on rate regulated activities and current standards only include a holding standard based upon what was done under previous GAAP. It will be important for the IESO to monitor the IASB's ongoing project on rate regulated activities as this may affect the recognition, measurement, presentation and disclosures of the regulatory assets and liabilities. Both FASB and GASB have guidance on accounting in a regulatory environment. IPSASB does not provide any guidance on accounting by rate regulated entities.

It is important to note that rate regulated entities in Canada that prepare their general purpose financial statements in accordance with US GAAP (e.g. Hydro One and Ontario Power Generation), ASPE (e.g. the three Fortis subsidiaries in Ontario), as well as those rate regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS (e.g. over 60 LDCs in Ontario), generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles set out ASC 980 *Regulated Operations.*

Statement 62 issued by GASB in December 2010 is effective for financial statements for periods beginning after December 15, 2011. The objective of the Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the three criteria in paragraph 476 as follows:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

The criteria above and the guidance in paragraphs 476-500 are based on ASC 980 *Regulated Operations*.

It is also important to note that in its statement of financial position, the Ontario Electricity Financial Corporation ("OEFC"), which reports under Canadian public sector accounting standards, recognizes a net unamortized liability balance for power purchase contracts, as detailed in the summary of significant accounting policies:

"The liability for power purchase contracts was originally calculated by discounting estimated losses over the life of the contracts. Under the *Electricity Restructuring Act, 2004*, OEFC began receiving actual contract prices for power from electricity consumers, effective January 1, 2005, and no longer incurs losses on these power purchase contracts. At that time, the Ministry of Finance estimated that the bulk of the liability would be eliminated over 12 years as existing electricity contracts expire. As a result, the bulk of the liability is being amortized to revenue over that period."

Although this liability is not defined as a regulatory liability in the OEFC's financial statements, the argument can be made that it substantively meets the definition under ASC 980 of a regulatory liability, as the OEFC had no further obligation and should have reversed the liability into income. After consultation with the AG at that time, it was decided to amortize the gain over the remaining term of the contracts.

In summary

Rate regulated entities in North America reporting under US GAAP, ASPE, IFRS (entities which have elected to use IFRS 14) and GASB generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles based on ASC 980 *Regulated Operations* (see Appendix B for the accounting framework used by the Canadian rate regulated entities).

Evaluation of Other Sources of GAAP

When looking to other sources of GAAP, PSAS requires the other sources of GAAP to be evaluated

1. *as to whether they are consistent with accounting policies and disclosure within PSAS,*
2. *as to whether they are consistent with the application of concepts in PS 1000 and*
3. *as to all of the following criteria:*
    - *(a) Source deals with the specific circumstance*
    - *(b) Source is issued by an accounting standard setter*
    - *(c) Source continues to be relevant*
    - *(d) Source uses a consultative process and deliberation when developing policies*

As required by PS 1150.05(b), we need to analyze whether the concepts in the other source (i.e. ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000.

(i) Qualitative Characteristics of Financial Information

FASB	**PSAS 1000**	**Evaluation**
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	Public, legislators, councilors, investors, analysts, other governments (par. 14)	FASB considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	Similar

(ii) Elements of Financial Statements

FASB	PSAS	Evaluation
Assets		
Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events. (Concept #6.25-.34)	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar
Liabilities		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events. (Concept #6.35-.43)	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar
Revenues		
Inflows from delivering or producing goods, rendering services or other activities that constitute the entity's central operations. (Concept #6.78-.79)	Increases in economic resources resulting from operations, transactions and events of the accounting period. (par. 46)	Similar
Expenses		
Outflows from delivering or producing goods, rendering services or carrying out other activities that constitute the entity's central operations. (Concept # 6.80-.81)	Decreases in economic resources resulting from operations, transactions and events of the accounting period. (par. 49)	Similar

(iii) Recognition Criteria

FASB	PSAS	Evaluation
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55)	Similar

(iii) Measurement Criteria

FASB	PSAS	Evaluation
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Similar

Criteria of PS 1150.08

Criteria	Evaluation
Source deals with the specific circumstance	Yes, ASC 980 Regulated Operations
Source is issued by an accounting standard setter	Yes, FASB
Source continues to be relevant	Yes, still used by rate regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Evaluation whether regulatory assets meet the definition of Assets as per Section PS3210

PS3210 defines assets as *"economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."* (par. 03)

The analysis of the three essential characteristics as defined by PS3210.4 are analyzed in the next table.

Characteristics	Additional guidance	Comments
They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (par. 4(a))	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	The economic benefit embodied in the variance accounts (i.e regulatory asset) is the right to collect the incurred costs from ratepayers in order to settle the liability for the energy already consumed by the ratepayers. The electricity Act, 1998 ("EA") section 25.33(1) states: "*The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and* *b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract."*
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits

	future economic benefits when it: a. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to implement the right. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section."* The legislation would be amended to permit IESO to collect specifically the deferral of the energy costs and the related interest and administrative costs.
The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future. (par. 25) The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	The past event giving rise to IESO's control occurs as the energy cost is incurred, as IESO has a right to collect it from the ratepayers.
Conclusion: The right to collect the deferral of the energy costs and the related interest and administrative costs meets the definition of assets.		

When concepts are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not recognize intangible assets (PS 3150.03, .14 and PS1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through another source of GAAP.

It is worth noting that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets as the FASB has specific guidance to deal with this type of asset. It is also worth noting that the IASB has an ongoing project on rate regulated activities and are currently developing an accounting model based on the principles of IFRS 15 *Revenue from contracts with customers* to provide a principle-based framework for recognizing regulatory assets (see Agenda Ref. 9 for the IASB meeting on February 23, 2017). Furthermore, the Summary Comment Letter Analysis related to the ED/2009/8 on Rate Regulated Activities published by the IASB in July 2009 states on page 2 of 50:

"The International Financial Reporting Interpretations Committee ("IFRIC") observed that it had previously discussed whether a regulatory asset should be recognized in the context of service concession arrangements, either as deferred costs or as an intangible asset to reflect an expectation that the entity will

recover these costs as part of the price charged in future periods. It had concluded that entities applying IFRSs should recognize only assets that qualified for recognition in accordance with the IASB's *Framework for the Preparation and Presentation of Financial Statements* and relevant accounting standards, such as IAS 11 *Construction Contracts*, IAS 18 *Revenue*, IAS 16 *Property, Plant and Equipment* and IAS 38 *Intangible Assets*."

Entities that are not eligible to elect to apply the requirements of IFRS 14 do not recognize regulatory assets because in 2009 the IFRIC determined they did not meet the criteria for recognition of an intangible asset under IAS 38.

Therefore, we can conclude that ASC 980 is NOT in conflict with PS 3150.03, .14 and PS1000.58 with respect to intangible assets.

Conclusion:
FASB is appropriate to use as "*other source of GAAP"*. FASB standard ASC 980 has extensive guidance for rate regulated entities including the recognition of regulatory assets and use of rate regulated accounting by IESO would be consistent with current reporting practices of H1, OPG and OEFC.

Appendix A:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

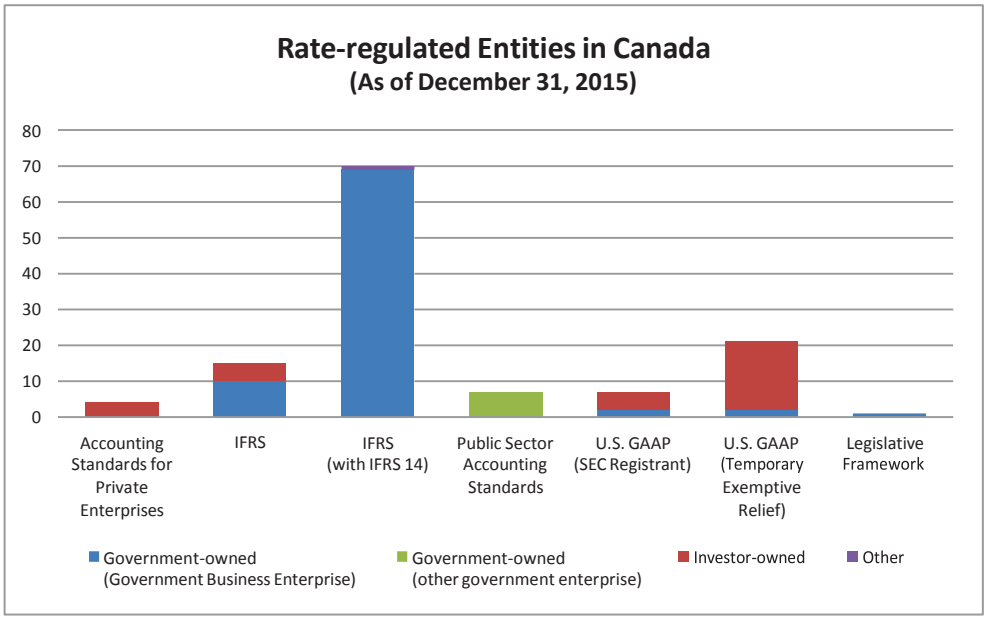
Appendix B:

Extract from the "Accounting Standards Advisory Forum Agenda Ref: 3A dated September 29, 2016" available on the IFRS website

Canadian Rate-regulated Entities

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS. If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards. A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

20. The chart above highlights two key points:

(a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

(b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up of several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

http://www.ifrs.org/Meetings/MeetingDocs/ASAF/2016/September/1609-ASAF-03A-Rate-regulated-Activities-Canada.pdf

White Paper - GASA.PDF

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White Paper on the Province's proposed Global Adjustment Smoothing Account

Below is a summary of IESO's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account.

Understanding that the finalization of the legal terms, the financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Issues being considered in this document are:

Issue #1: Can the IESO recognize deferral or variance accounts related to the annual Global Adjustment Smoothing Account as a regulatory asset on its statement of financial position?

Issue #2: Can the IESO derecognize the deferral or variance accounts related to the Global Adjustment Smoothing Account upon sale to the OPG Trust**?**

1. Recognition of regulatory assets (deferral and variance accounts)

Background and Assumptions for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. IESO is rate regulated by the OEB in accordance with the Electricity Act, 1998 and the Ontario Energy Board ("OEB") Act, 1998 but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
3. The IESO is required to obtain approval from the OEB under s. 25(1) of the Electricity Act, 1998 for the approval of its own expenditures, revenue requirement and fees. The last rate approval was obtained on December 29, 2016[1].
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix A). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The province is contemplating deferring the recovery of a portion of the annual Global Adjustment Smoothing Account (comprised primarily of the electricity costs paid to the generators) over a period of 25-30 years, so that costs incurred would be fully recovered through future rates.
7. The *Electricity Act, 1998* and the *OEB Act, 1998* would be amended through legislation to require the deferral of the recovery of the Global Adjustment Smoothing Account and the future recovery in rates charged to customers.

[1] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/556699/view/Dec_Order_IESO 20161229.PDF

8. The OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred cost.

9. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

Appropriate Accounting Principle for issue #1

ASC 980 Regulated Operations

- 980-10-15-2 *"The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:*

  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

- 980-10-20 Glossary, Definition of incurred costs *"A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."*

- 980-10-05-8 "*Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.980-340 – Other Assets and Deferred Costs."*

- 980-340-25-1 "*Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*

  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

  A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date."

- 980-340-40-1: "*If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings."*

- 980-350-50-1: "*In some cases, a regulator may permit an entity to include a cost that would be charged to expense by an unregulated entity as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the entity shall disclose the remaining amounts of such assets and the remaining recovery period applicable to them.*"
- 980-340-55-2: "*In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period.*"
- 980-340-55-3: "*The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants.*"

Issue #1: Can the IESO recognize deferral or variance accounts related to the annual Global Adjustment Smoothing Account as a regulatory asset on its statement of financial position?

US GAAP includes special accounting provisions that are applicable to entities with activities that are subject to rate regulation (see White Paper - Adoption of the Guidance in ASC 980 Regulated Operations). The result is that rate regulated entities are required to recognize regulatory assets and liabilities provided the following three criteria are met:

Criteria	Comment	Evaluation
The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO has unrecognized variance accounts related to the MDMR (smart meters), that have been approved by the OEB in accordance with the Electricity Act and the OEB Act (see Appendix A). It is important to note that Hydro One and OPG are both consolidated into the province's books, are both regulated by the OEB and their respective regulatory assets and liabilities are reported in the province's books.	Met
The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators. The contemplated transaction is based on the fact that the OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred costs.	Met

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.”	Since the deferral or variance accounts would be sold to the OPG Trust at least on a monthly basis and cash would be received on the same day, this criteria would be met. This criteria would need to be monitored on a yearly basis to ensure that IESO and the OPG Trust would be able to recover the future deferred amount taking into account the levels of demand or competition during the recovery period.	Met
Conclusion: The three criteria would be met.		

Conclusion: Based on the assumptions mentioned above, IESO should be able to recognize a regulatory asset for the deferral of the annual Global Adjustment Smoothing Account. As mentioned in the ASC 980 guidance above, it is important that an accounting order be issued by the OEB which indicates the way the incurred costs would be handled for rate-making purposes as the OEB's action provides reasonable assurance of the existence of a regulatory asset.

2. Derecognition of regulatory assets (deferral and variance accounts)

Background and Assumptions for issue #2

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The annual Global Adjustment Smoothing Account that would be deferred in the deferral or variance accounts (the "Asset") would be significant.
2. The IESO does not currently have the financial capability to finance the Asset and is contemplating selling the Asset to a Trust to be set-up by OPG (the "OPG Trust").
3. The OPG Trust would be consolidated by OPG.
4. Proposed terms of the sale agreement between the IESO and the OPG Trust:
   - The sale contract would be structured as an absolute sale, which would assign future economic benefits or cash flows related to the Asset exclusively to the OPG Trust.
   - The arrangement would be structured whereby there is no recourse or obligations remaining of IESO related to the Asset.
   - The arrangement is not considered to be a financing transaction as IESO would have no obligations to the OPG Trust after the Asset is sold to the OPG Trust.
   - IESO would not retain any rights or benefits from the Asset.
   - IESO would not have any rights to interest or penalties on the Asset once it has been transferred to the OPG Trust.
   - The contract would be clear that IESO cannot pledge the Asset as collateral to obtain future cash flows or financing.
   - IESO would continue to collect related cash flows on the OPG Trust's behalf and remit those cash flows to the OPG Trust without material delay. In addition, IESO would not be entitled to reinvest such cash flows, except for investments in cash or cash equivalents during the short settlement period from the collection date to the date of required remittance to the OPG Trust, and interest earned on such cash and cash equivalents is passed to the OPG Trust. The contract would define IESO's role strictly as that of agent, under a pass-through arrangement.
   - Servicing, origination, and arrangement fees, would be collected by IESO in rates charged to ratepayers as part of its market dealings.
   - The Asset would be sold to the OPG Trust at least, on a monthly basis and cash would be received on the same day.

Appropriate Accounting Principles for issue #2

Public Sector Accounting Standard ("PSAS") 3210, *Assets*, defines an asset as "…*economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained*." [par. 3]

.04 *"Assets have three essential characteristics:*

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred."

.22 *"Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not*."

.24 *"A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms*

and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries."

As noted in PS1000 Financial statement concepts:

.37 *"An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:*

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred."

As noted in PS3450, derecognition of a financial liability:

.042 *"A government should remove a financial liability (or part of a financial liability) from its statement of financial position when, and only when, it is extinguished (i.e., when the obligation specified in the contract is discharged or cancelled, or expires)."*

.043 *"A financial liability (or part of a financial liability) is extinguished when the debtor either:*

(a) discharges the liability (or part of it) by paying the creditor, normally with cash, other financial assets, goods or services; or

(b) is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"

.046 "*Payment to a third party, including a trust (sometimes called "in-substance defeasance"), does not, by itself, relieve the debtor of its primary obligation to the creditor in the absence of legal release."*

.047 "*If a debtor pays a third party to assume an obligation and notifies its creditor that the third party has assumed its debt obligation, the debtor does not derecognize the debt obligation, unless the condition in paragraph PS 3450.043(b) is met. If the debtor pays a third party to assume an obligation and obtains a legal release from its creditor, the debtor has extinguished the debt. However, if the debtor agrees to make payments on the debt to the third party or direct to the original creditor, the debtor recognizes a new debt obligation to the third party."*

Issue #2: Can the IESO derecognize the deferral or variance accounts related to the annual Global Adjustment Smoothing Account upon sale to the OPG Trust?

PS3210 does not specifically address the derecognition of a regulatory asset as the concept of a regulatory asset does not exist under PSAS.

As mentioned above, regulatory assets do not meet the definition of intangible asset or financial asset. Specifically, regulatory assets do not meet the definition of financial asset because they are imposed on customers through the tariff (i.e., imposed by the OEB) and do not represent a right to receive payments from another party as a result of a contract.

More generally, PSAS.3210.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Based on PS1000.37(b), an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.

Based on the assumptions mentioned above, the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, including the following:

- the contract would define IESO's role strictly as that of agent, under a pass-through arrangement;
- all cash flows related to the Asset would be transferred without material delay to the OPG Trust;
- rights to interest or penalties on the Asset would be for the benefits of the OPG Trust;
- IESO cannot pledge the Asset; and
- no recourse or obligations remaining of IESO related to the Asset.

IESO should also evaluate whether the sale of the Asset should in fact be considered as a borrowing arrangement. In the absence of detailed guidance on this subject, we can analogize to the guidance in PS3450 *Financial Instruments* for the derecognition of a financial liability. Par. 43 states that *"A financial liability (or part of a financial liability) is extinguished when the debtor is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"* Based on the assumptions mentioned above, since the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, it can be concluded that the sale of the Asset is not a borrowing arrangement.

Conclusion: Based on the proposed terms of the sale agreement between the IESO and OPG Trust mentioned above, the deferral or variance accounts would be derecognized at the point where the IESO would derive no future economic benefit from it. This would occur where the IESO ultimately transfers the rights, risk and rewards related to those deferral or variance accounts to the OPG Trust. This would occur on the receipt of cash from the OPG Trust.

Appendix A:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

Global Adjustment Deferral_White Paper_OPG r1a.pdf

February 27, 2017

Mr. Serge Imbrogno
Deputy Minister,
Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Dear Deputy:

Below is a summary of OPG's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account and financing structure. These views are contingent on the proposed terms and conditions that were sent to the Ministry of Energy on February 21, 2017.

Understanding that the finalization of the legal terms, the Trust indentures, financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, input from capital markets, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Please do not hesitate to contact me if you have any questions regarding this summary.

Sincerely,

Mr. Ken Hartwick
Chief Financial Officer and Senior Vice President, Finance
Ontario Power Generation
W: 416-592-6985
C: 647-544-6985
ken.hartwick@ opg.com

cc. Jeff Lyash, President and CEO, OPG

Background:

The Province has indicated that it will take steps to reduce electricity bills in the near term. It has identified reductions in the Global Adjustment Charge (GAC) charged to electricity customers as a means to achieve its policy goals. The Province is proposing to temporarily reduce the amount of the GAC charged to electricity customers (primarily RPP-eligible customers). The exact quantum and duration of the program is still not known but based on discussions with the Province GAC charges of approximately $2-5B per year for the next 5-10 years would be deferred and collected over future periods commencing after the deferral period. A combination of senior debt and subordinated debt (mainly sourced by additional equity from the shareholder) would be issued to fund the amount deferred. The financing cost of the debt and other costs of running the program would form part of the amounts recovered from customers over the term of the program.

The Province has requested that OPG administer the GAC deferral, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the activity and accounting with OPG. Given the significant amount of financing required for the GAC deferral, OPG has developed a financing structure (depicted below) to:

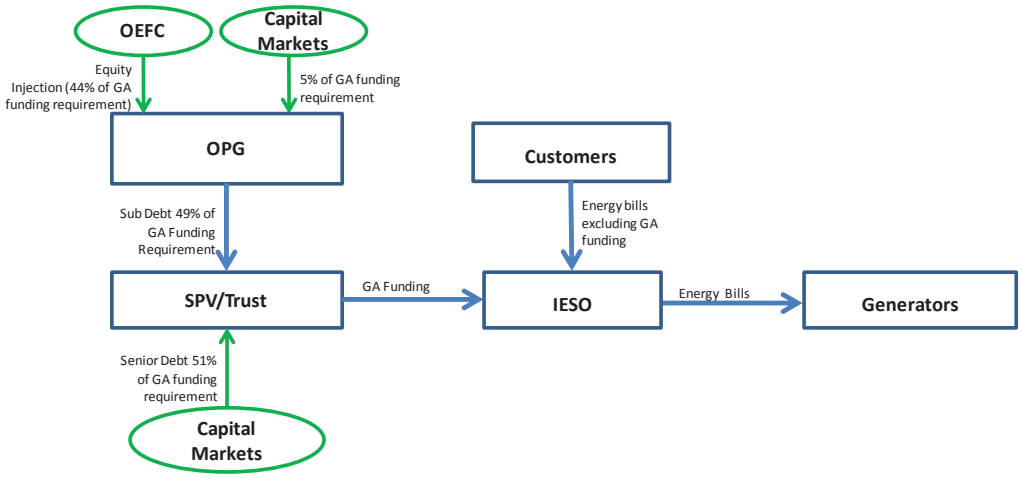
- restrict the risk to OPG;

- maximize the cost-effectiveness of the Trust or the Special Purpose Vehicle ("SPV") financing vehicle; and
- allow for consolidation into OPG financial statements.

The success of this structure is dependent on achieving a number of objectives which are reviewed in the following sections:

A. Ability to Recognize an Asset and Record Revenue
B. Ability to Consolidate the SPV into OPG
C. Ability to Finance
D. External Assessment
E. Risk Summary

All of the percentages shown in the graphic below are indicative and will be highly dependent on the legislation that the Province will enact:



Process:

The IESO will effectively sell the 'right to collect' deferred future revenue from ratepayers (GA Recovery Right asset) to the SPV in return for cash proceeds. In order for the SPV to purchase this asset the SPV will obtain the financing from two key sources: 51% directly from capital markets and 49% as subordinated debt from OPG. OPG will obtain 44% of this financing as an equity injection from the Province and 5% from capital markets.

A. Ability to Recognize an Asset and Record Revenue

Accounting Requirements under International Financial Reporting Standards (IFRS)

1) It is our understanding that the IESO and KPMG have concluded that the sale of this 'right to collect' future revenue (or regulatory asset) is not a financing transaction and will not be recorded as a financial liability. Based on that conclusion, the right to collect will be accounted for as an intangible asset in the SPV.

2) In order to the SPV to record this right as an intangible asset, the right must meet the following conditions:
   - The intangible asset must be separable and arise from a contractual or legal right (i.e. mandated by the Legislation and SPV Indenture Agreement).
   - The SPV must have the control and power to obtain future economic benefits from the intangible asset.
   - The SPV must be able to demonstrate that the intangible asset is purchased at fair value.

3) In order for the SPV to recognize appropriate revenue to offset any ongoing costs, the Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis. This may result in additional amounts to be deferred to achieve the desired customer impact. Payment of revenue to the SPV is also important to service the interest expenses of the debt.

B. Ability to Consolidate the SPV into OPG under IFRS

OPG 'Control' of the SPV - Accounting Requirements

1) In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the SPV, or whether it has the ability to affect the returns of the SPV through its power over the SPV. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity. Based on the relevant accounting guidance under IFRS, OPG has proposed terms necessary to demonstrate that OPG has control over the SPV. OPG's external auditors, Ernst & Young, has provided their concurrence that based on the information provided to them to date that the following conditions should permit consolidation of the SPV by OPG.

Directive:

1. The SPV must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a SPV vehicle to administer, finance and operate the Global Adjustment plan. The control, risk and rewards of that SPV will determine its consolidation into OPG as a business enterprise.

SPV:

2. The SPV should not operate in a predetermined way such that OPG does not have decision-making authority over the SPV's ongoing activities after its formation (i.e. should not operate on 'autopilot').
3. OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV.
4. The Province cannot have the right to veto OPG's decisions about the relevant activities of the SPV. OPG must have the power over the relevant activities of the SPV and be compensated. The relevant activities of the SPV include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
5. OPG must have the power to determine or change operating and financing policies of the SPV, which will affect the variability of risks and returns.
6. The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
    - The SPV
    - Any of OPG's investments in the most subordinated debt of the Trust
7. OPG must own greater than 50% of the most subordinated debt and targeted to be no less than 5%[1] of the total debt of the SPV. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources. A quantitative analysis should be performed at a later date to corroborate the appropriateness of the 5% threshold to support that the 5% subordinated debt investment is sufficient to absorb most of the expected variability in the SPV.
8. OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:

[1] While the rest of the letter refers to a 10% investment in the most junior subordinated debt with OPG owning 5%, it should be noted that OPG should own more than 50% of the most subordinate debt. For simplicity, the degree to which OPG's ownership beyond 50% is not shown in this letter.

a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks
b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the SPV to achieve a more favourable return compared to the return from the restructured asset
c. The SPV shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the SPV to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.
d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.
e. OPG should participate in the detailed design of the above and the SPV documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.

Nothwithstanding the above, under certain Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), the OEFC may provide bridge financing beyond the designated percentage for a defined period. The relevant terms should ensure that this temporary measure does not detract from the rights of OPG to direct all of the relevant activities of the SPV. Additionally, OPG should not be protected from risk of loss by the OEFC with respect to its subordinated investment, nor should it lose its right to derive the residual returns should such bridge financing be required.

Legislation

9. The Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis, so that the SPV is able to recognize appropriate revenue to offset any ongoing costs.
10. The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustees.
11. The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. As irrevocability would be difficult under Canadian law one mitigation would be to provide a Provincial guarantee which only applies with cancellation or amendment of the legislation.
12. The spirit of the above terms should be reflected in the SPV Indenture Agreement as well as Legislation, wherever possible.

2) The Trust is expected to be financed as follows:
   - 51% senior secured debt from external markets
   - 39% senior subordinated debt from OPG (via Province equity injection into OPG)

- 10% junior subordinated debt from OPG (5% from external markets and 5% from Province equity injection into OPG).

When assessing control, an investor shall consider the nature of its relationship with other parties and whether those parties are acting on the investor's behalf (i.e. they are 'de facto agents'). If OPG is assessed to be a 'de facto agent' of the Province, it will compromise the ability for OPG to consolidate the Trust. The split above is to meet the following conditions to ensure that OPG is not considered a 'de facto agent' of the Province:

- The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
  - The Trust
  - Any of OPG's investments in the most subordinated debt of the Trust
- OPG must own greater than 50% of the most subordinated debt and targeted to own no less than 5% of the total debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.

3) The Province will need to conclude on whether OPG still meets the definition of a Government Business Enterprise as defined under Public Sector Accounting Board standards in order to obtain the preferred consolidation treatment after the transaction. We also recommend that the Province to undertake the analysis deemed necessary to confirm the accounting treatment in its consolidated Public Accounts, including if the recognition of the intangible asset would result in an offsetting liability in the Public Accounts.

C. Ability to Finance

Property Right or Right to Collect
Legislative Requirements for Financing
The GA Recovery Right must be structured to encompass the following elements:

- Right to recover from and bill Ontario electricity customers for (1) the principal amount of GA that is being deferred, (2) all interest and other financing costs incurred in respect of the deferral of the GA, (3) all fees, expenses and other administrative costs associated with such financing;
- Repayment/amortization schedule as agreed by the IESO and any purchaser of such GA Recovery Right (or pursuant to a pre-defined schedule/formula that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis);
- Repayment/amortization schedule must include a true up mechanism to ensure all costs associated with the deferral can be recovered from customers;
- IESO may dispose of the GA Recovery Right, provided that any such disposition shall be a true sale and absolute transfer to the purchaser of the IESO's right, title and interest in and to the GA Recovery Right;
- Purchaser will have the right to require the IESO (or any successor) to collect the principal amount of GA Recovery Right, together with interest, financing and administration costs, on the agreed repayment/amortization schedule;
- Right must be irrevocable and, if amended by future governments, debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment;
- GA Recovery Right will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity; and
- Make certain amendments to the Electricity Act to allow OPG to implement the SPV financing structure (e.g. allowing OPG to create subsidiaries and holding companies, and to have a beneficial interest in the SPV, etc). This would provide flexibility to accommodate possible variations to the financing structure that may be desirable over time.

Detailed legislative requirements are specified in the attachments as follows:

Attachment 1 Legislative requirements to allow deferral of global adjustment amounts to be financeable

Attachment 2 Statutory amendments

The proposed financing structure for the SPV is:

	Risk Profile	Source	% of Total Funding Requirements
Tranche A Senior Debt	The least risky	Capital Markets	51%
Tranche B Sub Debt	In between A&C	OPG via OEFC	39%
Tranche C Sub Debt)	The most risky	OPG via OEFC	5%
		OPG via Capital Markets	5%

SPV structure is used to accomplish the following:

- SPV holds right to charge customers for the benefit of debt holders;
- Allows the financing vehicle to be ring-fenced from OPG as an SPV structure is set up as generally single purpose entities with no other operations that could add risk to the SPV, dilute debt holder rights, allow parties from other operations to claim rights to the future recovery from customers or allow these other parties to initiate bankruptcy proceedings;
- Enables SPV to potentially get a higher credit rating than OPG;
- Supports consolidation with OPG provided accounting requirements are satisfied;

This approach supports a number of objectives of the GA Recovery Right:

- 51% external senior debt supports separation of the SPV from the Province
- 5% junior subordinated debt establishes OPG's "at risk" equity which supports separation of the SPV from the Province
- Subordinated debt provides flexibility to the financing structure and additional credit support to external debt holders
- Subordinated debt sourced from OPG (mainly funded by equity injection from the Province) minimizes impact on OPG credit metrics reducing risk of an OPG rating downgrade that could result in the SPV being consolidated directly with the Province as the SPV would be considered an arm of the Province.

Recent transactions used as precedents are:

Duke Energy Florida Project Finance LLC
June 2016
5 series of bonds totalling USD$1.3B
Weighted average life from 2 to 19 years with interest rates from 1.2% to 3.1%
Credit rating AAA

Utility Debt Securitization Authority
Sponsored by Long Island Power Authority
March 2016
Amount issued USD$0.6B
Weighted average life of 12 years and weighted average yield of 2.7%

August 2016
Amount issued USD$0.5B
Weighted average life of 7 years and weighted average yield of 2.0%

Credit rating AAA

Cumulative outstanding (including previous issuances): USD$4.2B

D. External Assessment

Shakerhill Partners, an external advisor, identified the following items in an assessment of the structure and financeability of the structure:

- The structure is financeable however there are a number of significant risks to the structure:
  - Canadian and Ontario law does not provide the same protection to property right as exists in the US federal and state constitutions to limit the ability of governments to adversely impair contracts to the detriment of the holder;
  - Legislation could mitigate some of the risks – deferred recovery asset to be "uncapped", regular semi-annual true up to ensure recovery, Province provides sufficient committed liquidity to the IESO so that temporary shortfall in recovery does not affect payments to SPV, term of the deferral recovery substantially exceeds the longest maturity of debt of the SPV and that true-up mechanism take account of potential for currency, interest rate and duration mis-match between the debt of the SPV and the recovery mechanism;
  - Size of the program may be too large for Canadian securitization market requiring access to the US securitization market;
- Final maturity of debt should not exceed 30 years from inception of the program
- True up mechanism should be designed such that the forecast of recovery is less than 10% of the customer bill under downside scenarios to limit growth of the deferral balance as a higher portion of the customer bill increases the political risk to debt holders which could result in a lower credit rating and potential impact on financeability
- Securitized debt products are specialized and price at a premium to other fixed rate instruments however a successful program supported by a strong credit rating this premium could shrink over time to a minor spread over Provincial debt
- OPG's credit rating should be maintained provided sufficient equity is injected to maintain credit metrics
- While the structure is not expected to impact the Province there are risks that the program could negatively impact the rating agencies view of the Province's financial management.

E. Risk Summary

i. Consolidation

- Elements of the proposed structure were established to support consolidation of the SPV into OPG. These items may not be sufficient to establish OPG as risk owner of the SPV and the SPV may need to be consolidated directly with the Province.

ii. Financeability

- The legislation establishing the structure and the property right for recovering the financing and associated costs may not be adequate for financing purposes resulting in more expensive financing or an inability to obtain the required external financing.

iii. Cost of Financing

- Future governments may enact legislation that changes the right of the SPV to recover amounts from customers.
- The right to recover amounts from future customers must be irrevocable and subject to full recovery from the government in the event that future governments reduce or eliminate the recovery. A legal structure that is weaker than the precedent US transactions increases the risk to debt holders and the cost of financing.
- Interest rates on bonds in the securitization market are higher than equivalent rated bonds. Rate for a AAA securitization credit is about 50 bps higher than GOC (rated AAA) for a 5 year term. This difference is attributable to the specialized structure of the bond, smaller investor pool for this bond, smaller size of the market and higher perceived risks of the bond.
- Any regulator involvement must not be seen to modify any terms of debt issued or the property right securing the debt as this would increase risk to debt holders.

- It may not be possible to issue debt to match the terms of the deferred asset so shorter term debt would be used which raises risk to re-finance the maturing debt as the market may no longer be interested in this product. As well, underlying reference interest rates may be higher and the market may require a higher spread to invest in this product.
- With the GA Recovery Right program continuing for 10 years, debt issued over this period is subject to changes in both the underlying reference interest rates and appetite of the market for this product.

iv. OPG Credit Rating

- Minimizing the impact of significant additional debt on OPG's credit rating is dependent on higher EBITDA arising from earned income on the GA Recovery Right in excess of external debt. Ability of the SPV to record revenue reflecting the growth in asset value.
- Potential OPG credit rating downgrade if legislative structure is not adequate to support long term recoverability, inability to record revenue from growth in asset value or agencies view equity injection as debt.
- OPG credit rating downgrade could result in loss of GBE status or result in SPV being consolidated directly with the Province.

Attachment 1

LEGISLATIVE REQUIREMENTS TO ALLOW DEFERRAL OF GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

The IESO currently has a right to collect GA monthly from ratepayers through provisions in the *Electricity Act, 1998*. It is proposed that collection of a certain portion of the monthly GA be deferred for collection in the future, and that the right to recover the deferred GA from ratepayers be used as a basis for structured financing/securitization.

The current proposal is for a trust to be created as a financing vehicle (the "**Trust**") in connection the deferred GA. The Trust will finance the deferral of the GA by purchasing the right to recover such deferred GA from the IESO for the principal amount of the GA being deferred. For example, if the amount of GA that is being deferred is $200 million in a given month, the Trust will purchase from the IESO the right to future recovery of the deferred GA and the associated financing costs (including interest and transaction costs) for $200 million in cash.

The Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province).

For accounting purposes, OPG will need to have the ability to direct the activities of the Trust, through a services agreement and/or through the Trust's constating document.

Based on securitized financing raised by utilities in the US (backed by utility cost recovery orders) and the current regulatory framework in Ontario, the legislation in Ontario would need to be amended to provide the following, at a minimum:

1. The IESO will be empowered to create an asset (the "**Regulatory Asset**") consisting of all right, title and interest in and to:

   (a) right to recover from and bill Ontario electricity ratepayers for:

   (i) the principal amount of GA that is being deferred for collection;
   (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and
   (iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

all on such repayment/amortization schedule as agreed by the IESO and any purchaser of such right (or pursuant to a pre-defined schedule/formula in the legislation that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis); and

(b) all revenues, collections, claims, rights to payments, money or proceeds arising from the rights and interests set out in paragraph (a) above, regardless of whether such revenues, collections, claims, rights to payments, money or proceeds are imposed, billed, received, collected or maintained together with or commingled with other revenues, collections, rights to payments, payments, money or proceeds.

2. The IESO may dispose of the Regulatory Assets created from time to time on such terms as the IESO determines in accordance with the terms of directives to be issued to the IESO from time to time by the Minister, provided that any such disposition shall be a true sale and absolute transfer of the IESO's right, title and interest in and to a Regulatory Asset to the purchaser of the Regulatory Asset.

3. The Regulatory Assets will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity thereof.

4. The legislation will need to recognize the Regulatory Assets as amounts that may be recovered by the IESO (e.g. it could be designated as a "GA Deferral" and would be included in the amounts collectible by the IESO through the GA collection mechanism, and would include interest and financing costs).

5. The purchaser of the Regulatory Asset will have the right to require the IESO (or any successor) to collect the principal amount of GA deferred, together with interest, financing and administration costs, on the agreed repayment/amortization schedule. **[NTD: In the LIPA securitization rate order, if the entity that is authorized to collect rates to service the bonds ends up defaulting, there is the ability to request a court to order "sequestration" and payments of amounts owing to the owner of the Regulatory Asset. Consider whether to include a similar right here. Alternatively, consider whether a security interest over the moneys collected by the IESO could be provided to the purchaser.]**

OEB would be provided with oversight over the internal administrative costs collected by the Financing Trust. This could be accomplished by (a) providing the purchaser of the Regulatory Asset with the right to require

the IESO or a successor to collect only the principal amount of GA together with interest and financing costs and third party fees and expenses, and (b) requiring the IESO to collect amounts through the global adjustment and make payments to the purchaser of the Regulatory Asset with respect to the internal administrative costs incurred by the purchaser in connection with the purchase and management of the Regulatory Asset and the Financing Trust, in accordance with the order of the OEB then in effect. Under this mechanism, the OEB would be required to review the purchaser's internal administrative costs through a streamlined process and issue such orders in accordance with rules to be prescribed under a new regulation under the OEB Act, which would clearly limit the OEB's scope of review and could establish the basis for the purchaser to receive an appropriate fee for its services.

6. In the event that any action is taken or permitted by the Province or any regulatory authority that limits, alters, or impairs the value of a Regulatory Asset or reduces the ability of the IESO or the purchaser of the Regulatory Asset to collect or recover the costs associated therewith, the owner of the Regulatory Asset and the holders of any bonds or other securities issued to finance the purchase of the Regulatory Asset, will have a right of action against the Province for any damages suffered as a result of such amendment.

STATUTORY AMENDMENTS

The following is preliminary and is based on our current understanding of the proposed structure and objectives. For example, we have assumed that the structure will not entail the insertion of a new Holdco between OPG and the Province. As these aspects are refined, some of the suggested amendments described below may not be needed and other aspects that we are not aware of may need to be considered. Accordingly, these suggested amendments are provided for discussion purposes and are subject to change. We would welcome the opportunity to work with OPG and the Ministry on refining the scope and substance of required legislative and regulatory amendments.

A. Amendments to Implement Structure

Certain *Electricity Act, 1998* amendments would be needed to implement the anticipated structure (which we understand, as noted above, would not include a Holdco), as follows:

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.

- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.

- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.

- **Section 53.■ (new)**: New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.

- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

Based on our understanding that the global adjustment smoothing mechanism is intended to benefit residential and small business customers only and that the Minister will be responsible for determining how much global adjustment smoothing is to be applied in a given month, if any, amendments to the *Electricity Act, 1998* and Ontario Regulation 429/04 (Adjustments Under Section 25.33 of the Act) would be needed to implement the mechanism, as follows:

(i) Electricity Act:

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**

- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**

- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.

- **Note**: As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:

    - Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by

the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.

- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

(ii) O. Reg. 429/04 (Adjustments Under Section 25.33 of the Act):

- **Section 1(1):** Consider adding definitions for "Financing Trust" and "global adjustment smoothing amount" or such other terms as may be preferred.

- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. **[NTD: See above note re use of Minister directives]**

- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].

- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be (M-X-N)/(P-Q). Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. **[NTD: See above note re use of Minister directives]**

- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.

  - **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x (R+S-T)]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x U]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 16(7)4:** Consider amending the description of "Global Adjustment" that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.

- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.

- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

D. Amendments Under OEB Act to Implement Cost Recovery for Financing Trust

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) Ontario Energy Board Act:

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments "with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct." Consider whether any amendments are needed, and confirm this works with the framework being proposed.

- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.

    - The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.

- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.

    - Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
    - Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh

or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

- Paragraph 6(1)3 of the RPP Regulation provides that "In determining the rates (for RPP-eligible consumers), the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs."
- The Ontario Energy Board has developed a Regulated Price Plan Manual (revised February 16, 2016) to describe the processes and methodologies it uses for determining electricity commodity prices that are charged to RPP consumers pursuant to Section 79.16 of the OEB Act and paragraph 6(1)3 of the RPP Regulation.

(ii) O. Reg. 95/05 (Classes of Consumers and Determination of Rates)

- **Paragraph 6(1)3:** Amend so as to require the Board, when forecasting the cost of electricity to be consumed by the consumers to whom the rates apply, to take into consideration not only the adjustments required under section 25.33 of the Electricity Act but also the application or prior application of global adjustment smoothing amounts determined by the IESO in accordance with Minister directives under section ■ of the Electricity Act, and to ensure that the RPP rates reflect those amounts. **[NTD: See above note re use of Minister directives]**

(iii) New Regulation (Payments to the Financing Trust)

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:

    - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
    - the frequency of the OEB making determinations under this part of the regulation;
    - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;

- the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
  - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
  - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and
  - the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

Global Adjustment Deferral - White Paper - Terms to MOE Feb 21_2017.pdf

GA Smoothing – OPG Accounting Considerations

- An SPV/Trust is a stand-alone entity able to conduct business separately under a Trust agreement

The conditions required for OPG to consolidate the SPV/Trust are outlined in the following table

Issue	Response
1. Decision Making	• OPG must have decision making authority on the operation of the SPV/Trust (without a veto right by the Province), including naming of trustees, establishing operating plans and budgets, setting or changing financing policies. • The SPV/Trust while operating within the legislation, must be controlled by OPG to operate freely and to alter terms and conditions not specified in the legislation to ensure recovery of the deferred amounts
2. Business Risk	• The SPV/Trust must have variability of returns as a normal business enterprise would, including such things as interest charged on deferred amounts, decisions on how to finance these deferred amounts, the ability to make / lose and keep any spread from financing
3. Funding	• The Province cannot directly or indirectly fund more than 50% of SPV/Trust or any investment in the SPV/Trust • OPG must own at least 50% of the most exposed equity /sub-debt in the SPV/Trust
4. Directive	• Directive that is issued should not be prescriptive or direct OPG to set up this business. The directive should only be “guiding” i.e. to allow OPG to evaluate options and put forward to the OPG Board a recommended plan for Shareholder approval

GA Smoothing – OPG Accounting Considerations - continued

Issue	Response
5. Other required Attributes:	The legislation that supports the formation of the SPV/Trust must have the following attributes: • Must require interest, carrying and administrative costs be paid to the Trust to allow for Revenue recognition • The amount to be deferred must either be specified or be calculated based on a specific formula that is not subject to ongoing decision making by the Province. **The Province cannot have the ability to override this formula** • Legislation should be written to avoid the possibility of being revoked with wording to ensure the SPV/Trust and its debt holders would have their capital guaranteed and paid for directly by the Province if such a situation were to happen • The spirit of the legislation should be reflected in the Trust Indenture Agreement

GA Financing Structure Requirements

KEY ELEMENTS REQUIRED TO ENSURE THE DEFERRAL OF GA CHARGES CAN BE FINANCED:

Creation of Strong Property Rights

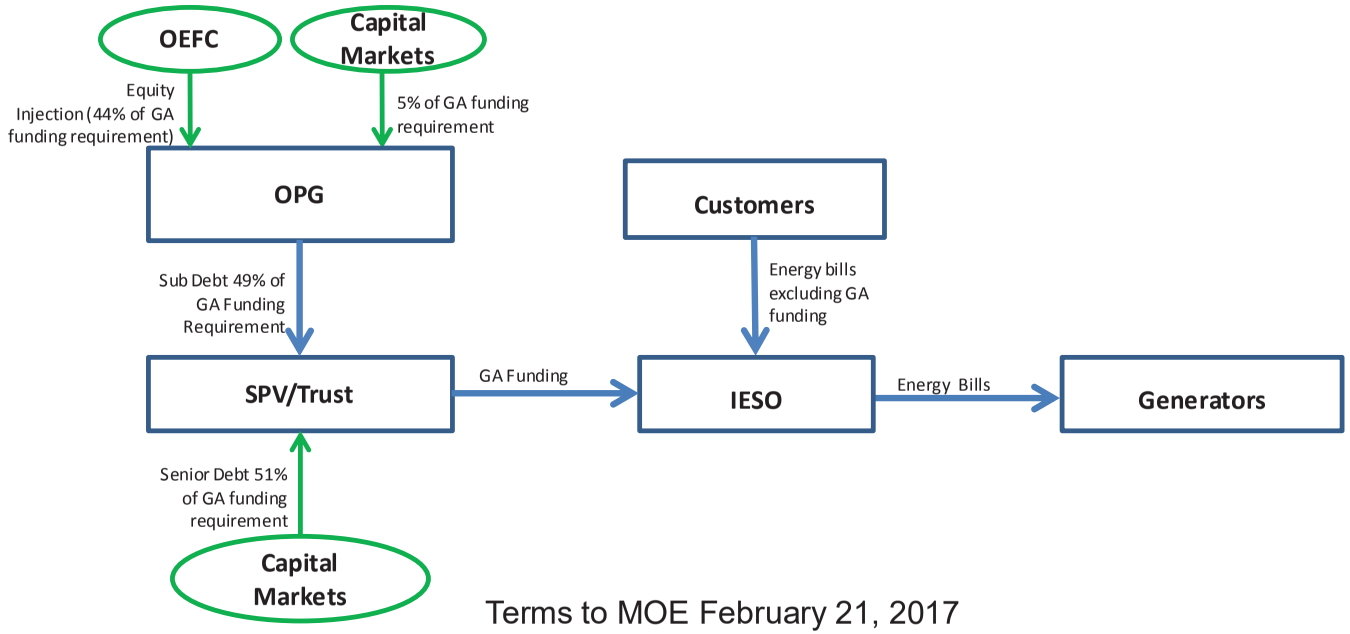
- Legislation enshrines the ability of the IESO to create a Right to charge customers in the future for the Global Adjustment (GA) deferred today including principal amount deferred, interest and other financing costs on the amount deferred and fees, expenses and other administrative costs.
- The Right can be sold to an appropriate Trust or Special Purpose Vehicle (SPV) to obtain funds to pay amounts due to generators under contracts or regulation. These SPVs are generally single purpose entities with no other operations that could add risk to the entity, dilute debt holder rights, allow parties from other operations to claim rights to the future recovery from customers or allow these other parties to initiate bankruptcy proceedings.
- Right must be irrevocable and if the Right is amended by future governments the debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment.
- Right must specify the recovery period or the mechanism for setting the recovery rate including true up of the rate to ensure all amounts are recovered

Economic Factors

- Limits on the recovery amount (principal, interest, fees and expenses) charged to customers in future periods must have compensating elements such as longer recovery period to ensure the full amount deferred plus interest, financing and other administration costs is recovered from customers.
- Need to balance customer relief with debt holder risk. Longer recovery periods and larger deferred balances increase risk to the debt holder of future government intervention.
- The amount required by the SPV to purchase and service the Right will be funded 51% from debt holders, 5% from OPG through capital markets and 44% from OPG via equity injection to OPG from the Province. The funding from OPG will be loaned to the SPV as subordinated debt.

GA Financing Structure Requirements - continued

- SPV will be used to raise the GA financing and ring fence OPG from its legal obligations
- SPV will be structured to allow for GBE accounting consolidation into OPG
- Given that SPV will be consolidated into OPG for accounting purposes, the significant amount of debt required to fund the GA deferral will have a severe impact on OPG's credit rating. If 100% of the requirement is funded by debt OPG would be downgraded.
- To manage this exposure and minimize the cost of funding. The required funding would be split into 2 buckets:
    1. 56% from capital markets, and
    2. The remainder provided by the Province via equity injection, which would be loaned to SPV as subordinated debt.
- The use of equity to fund a portion of the GA deferral also allows for an improvement in both Net Income and EBITDA as incremental revenue is captured by the increase in the value of the deferral which would offset the fiscal impact of the borrowing at Province level.
- Credit rating metrics are generally maintained within established limits.



Terms to MOE February 21, 2017

PSAB INDICATORs OF CONTROL.pdf

INDICATORs OF CONTROL
Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization
Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses
Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization
Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations

Other indicators that may provide evidence of control exist when the government has the power to:

Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members
Appoint or remove the CEO or other key personnel
Establish or amend the mission or mandate of the organization
Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis
Establish borrowing or investment limits or restrict the organization's investments
Restrict the revenue-generating capacity of the organization, notably the sources of revenue
Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources

Legal and Accounting Call.rtf

From: Nelms, Scott (MOF) []
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Subject: Legal and Accounting Call
Date: Friday, March 03, 2017 15:59:29
Attachment 1: Letter to DM_Feb 28 2017.pdf
Attachment 2: White Paper - ASC 980.pdf
Attachment 3: White Paper - GASA.PDF
Attachment 4: Global Adjustment Deferral_White Paper_OPG r1a.pdf
Attachment 5: Global Adjustment Deferral - White Paper - Terms to MOE Feb 21_2017.pdf
Attachment 6: PSAB INDICATORs OF CONTROL.DOCX

Hi All,

As discussed on the call, please see the attached documents from IESO, OPG and Treasury Board.

Thanks,

Scott

Scott Nelms

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Letter to DM_Feb 28 2017.pdf

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Powering Tomorrow.

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February 28, 2017

Deputy Minister Serge Imbrogno
Ontario Ministry of Energy
900 Bay Street
Hearst Block, 4th Floor
Toronto, ON M7A 2E1

Dear Deputy Imbrogno:

Attached are two documents prepared in conjunction with our KPMG advisors. The first outlines the proposed adoption by the IESO of the guidance in *ASC980 Regulated Operations* and the recognition of regulatory assets, as a more appropriate and transparent presentation in our financial statements.

The second is associated with the potential recognition and de-recognition of the regulatory assets associated with the IESO's role under the Global Adjustment Smoothing Account.

The conclusions of the second analysis are based on the structure of the account as the IESO currently understands it, and may vary depending on the final legislative materials.

We are available to address any questions you may have on these matters.

Sincerely,

Bruce B. Campbell

Attach.

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President and CEO
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White Paper - ASC 980.pdf

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White Paper - Adoption of the guidance in ASC 980 Regulated Operations

Independent Electricity System Operator ("IESO" or the "Company") is considering making changes in its accounting policies to reflect the balances of market participants within the IESO-administered markets (see separate technical analysis) and the economic impacts of rate regulation, as the changes would result in a more appropriate presentation of events or transactions in its financial statements.

Issue being considered in this document is: Can the IESO adopt the guidance in ASC 980 *Regulated Operations (US GAAP in FASB)*?

Background and Assumptions

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. IESO is rate regulated by the OEB in accordance with the Electricity Act, 1998 and the Ontario Energy Board ("OEB") Act, 1998 but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
3. The IESO is required to obtain approval from the OEB under s. 25(1) of the Electricity Act, 1998 for the approval of its own expenditures, revenue requirement and fees. The last rate approval was obtained on December 29, 2016[1].
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix A). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

Appropriate Accounting Principle

PS2120.02, "*a change in an accounting policy may be made… if it is considered that the change would result in a more appropriate presentation of events or transactions in the financial statements of the government."*

PS1150.05 "*When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

[1] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/556699/view/Dec_Order_IESO_20161229.PDF

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000."

PS1150.19 "*Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.*"

PS1150.08 "A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:

(a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.

(b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.

(c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources.

(d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline."

PS1150.10 "PSAB considers a source to be consistent with the concepts in paragraph PS 1150.05(b) when the guidance in that source is compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in paragraph PS 1150.05(b)."

PS1000.58 "In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles."

PS3210.03 "*Assets are economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."*

PS3210.04 "Assets have three essential characteristics:

(a) They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows.

(b) The public sector entity can control the economic resource and access to the future economic benefits.

(c) The transaction or event giving rise to the public sector entity's control has already occurred."

Issue: Can the IESO adopt the guidance in ASC 980 *Regulated Operations*?

In accordance with PS2120.02, the IESO can reflect the economic impacts of rate regulation only if it is considered that the change of accounting policy would result in a more appropriate presentation of events or transactions in the financial statements of the government. As mentioned in the Agenda ref. 9A of the IASB meeting of February 2017[2], rate regulated entities have long argued that, without recognizing regulatory assets and regulatory liabilities, the entity's performance is distorted by the rate regulator's intervention in the imposition of performance obligations on the entity and the timing of cash flows from the ratepayers.

[2] http://www.ifrs.org/Meetings/MeetingDocs/IASB/2017/February/AP09-Rate-regulated-Activities.pdf

The recognition of regulatory assets and liabilities would better reflect the economic substance of IESO's operations and enhance the transparency and accountability of its financial reporting. For example, during the period from 2007 to April 2013 the IESO incurred costs relating to the Smart Meter Program amounting to $90.9 million, and these costs were expensed and are included in the accumulated deficit. In the absence of applicable regulatory accounting under PSAS, the IESO was unable to recognize a regulatory asset for this charge, despite receiving a rate order to recover it over the period from May 1, 2013 to October 31, 2018. Should the IESO choose to adopt ASC 980, a regulatory asset for the Smart Metering Charge would be recognized at December 31, 2016 for an amount of approximately $21.6 million, which would represent the remaining unamortized amount that would have been reported if the asset was recognized originally in 2013.

PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consider other sources based upon PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment.

Within AcSB, Accounting Standards for Private Enterprises (ASPE) defines a rate regulated entity but provides no guidance on regulatory assets and liabilities however requires disclosure of such balances if they are recognized. IASB has not completed their project on rate regulated activities and current standards only include a holding standard based upon what was done under previous GAAP. It will be important for the IESO to monitor the IASB's ongoing project on rate regulated activities as this may affect the recognition, measurement, presentation and disclosures of the regulatory assets and liabilities. Both FASB and GASB have guidance on accounting in a regulatory environment. IPSASB does not provide any guidance on accounting by rate regulated entities.

It is important to note that rate regulated entities in Canada that prepare their general purpose financial statements in accordance with US GAAP (e.g. Hydro One and Ontario Power Generation), ASPE (e.g. the three Fortis subsidiaries in Ontario), as well as those rate regulated entities that are eligible to elect to apply the requirements of IFRS 14 and elected to do so when they adopted IFRS (e.g. over 60 LDCs in Ontario), generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles set out ASC 980 *Regulated Operations.*

Statement 62 issued by GASB in December 2010 is effective for financial statements for periods beginning after December 15, 2011. The objective of the Statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the Financial Accounting Standards Board (FASB) Statements and Interpretations issued on or before November 30, 1989, which does not conflict with or contradict GASB pronouncements. Paragraphs 476–500 may be applied to activities reported in business-type activities that have regulated operations that meet all of the three criteria in paragraph 476 as follows:

(a) The regulated business-type activity's rates for regulated services provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

(b) The regulated rates are designed to recover the specific regulated business-type activity's costs of providing the regulated services.

(c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the regulated business-type activity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.

The criteria above and the guidance in paragraphs 476-500 are based on ASC 980 *Regulated Operations*.

It is also important to note that in its statement of financial position, the Ontario Electricity Financial Corporation ("OEFC"), which reports under Canadian public sector accounting standards, recognizes a net unamortized liability balance for power purchase contracts, as detailed in the summary of significant accounting policies:

"The liability for power purchase contracts was originally calculated by discounting estimated losses over the life of the contracts. Under the *Electricity Restructuring Act, 2004*, OEFC began receiving actual contract prices for power from electricity consumers, effective January 1, 2005, and no longer incurs losses on these power purchase contracts. At that time, the Ministry of Finance estimated that the bulk of the liability would be eliminated over 12 years as existing electricity contracts expire. As a result, the bulk of the liability is being amortized to revenue over that period."

Although this liability is not defined as a regulatory liability in the OEFC's financial statements, the argument can be made that it substantively meets the definition under ASC 980 of a regulatory liability, as the OEFC had no further obligation and should have reversed the liability into income. After consultation with the AG at that time, it was decided to amortize the gain over the remaining term of the contracts.

In summary

Rate regulated entities in North America reporting under US GAAP, ASPE, IFRS (entities which have elected to use IFRS 14) and GASB generally all recognize regulatory deferral and variance accounts in accordance with US GAAP accounting principles based on ASC 980 *Regulated Operations* (see Appendix B for the accounting framework used by the Canadian rate regulated entities).

Evaluation of Other Sources of GAAP

When looking to other sources of GAAP, PSAS requires the other sources of GAAP to be evaluated

1. *as to whether they are consistent with accounting policies and disclosure within PSAS,*
2. *as to whether they are consistent with the application of concepts in PS 1000 and*
3. *as to all of the following criteria:*
    - *(a) Source deals with the specific circumstance*
    - *(b) Source is issued by an accounting standard setter*
    - *(c) Source continues to be relevant*
    - *(d) Source uses a consultative process and deliberation when developing policies*

As required by PS 1150.05(b), we need to analyze whether the concepts in the other source (i.e. ASC 980) are compatible with the (i) qualitative characteristics of financial information, (ii) the elements of financial statements, and (iii) the recognition and measurement criteria in PS 1000.

(i) Qualitative Characteristics of Financial Information

FASB	**PSAS 1000**	**Evaluation**
Concepts and objectives are for both business and non-business organizations as well as governmental units (Concept #4.3 to 4.5)	Public, legislators, councilors, investors, analysts, other governments (par. 14)	FASB considers governmental units
Financial reporting should: – Be useful in making resource allocation decisions – Be useful in assessing services and ability to provide services – Be useful in assessing management stewardship and performance – Provide information about economic resources, obligations, net resources and changes in them (Concept # 4.33-.54)	Financial statements should be relevant to the needs of the users and reliable. Relevance is achieved through timeliness, predictability and accountability value. Reliable information has the following characteristics: representational faithfulness, completeness, neutrality, conservatism and verifiability. (par. 28-29)	Similar

(ii) Elements of Financial Statements

FASB	PSAS	Evaluation
Assets		
Probable future economic benefits obtained or controlled by the entity as a result of past transactions or events. (Concept #6.25-.34)	Economic resources controlled by a government as a result of past transactions or event and from which future economic benefits are expected to be obtained. (par. 35)	Essential characteristics similar
Liabilities		
Probable future sacrifices of economic benefits arising from present obligations of the entity to transfer assets or provide services in the future as a result of past transactions or events. (Concept #6.35-.43)	Present obligations to others arising from past transactions or events, the settlement of which is expected to result in the future sacrifice of economic benefits with little or no discretion to avoid settlement. (par. 44)	Essential characteristics similar
Revenues		
Inflows from delivering or producing goods, rendering services or other activities that constitute the entity's central operations. (Concept #6.78-.79)	Increases in economic resources resulting from operations, transactions and events of the accounting period. (par. 46)	Similar
Expenses		
Outflows from delivering or producing goods, rendering services or carrying out other activities that constitute the entity's central operations. (Concept # 6.80-.81)	Decreases in economic resources resulting from operations, transactions and events of the accounting period. (par. 49)	Similar

(iii) Recognition Criteria

FASB	PSAS	Evaluation
To be recognized, an item must meet the definition of an element of the financial statements, must be measurable with sufficient reliability, be relevant and be reliable. (Concept # 5.64)	Item must have an appropriate basis of measurement, a reasonable estimate can be made of the amount and if the item involves obtaining or giving up future economic benefits, it is expected those benefits will be obtained or given up. (par. 55)	Similar

(iii) Measurement Criteria

FASB	PSAS	Evaluation
Measurement basis dependent upon nature of item. Historical cost basis, replacement cost, market value. (Concept # 5.65-.70)	Primarily using historical cost basis. Replacement cost and realizable value are also used, but in limited circumstances. (par. 60)	Similar

Criteria of PS 1150.08

Criteria	Evaluation
Source deals with the specific circumstance	Yes, ASC 980 Regulated Operations
Source is issued by an accounting standard setter	Yes, FASB
Source continues to be relevant	Yes, still used by rate regulated entities
Source uses a consultative process and deliberation when developing policies	Yes, comprehensive consultative process and deliberation

Evaluation whether regulatory assets meet the definition of Assets as per Section PS3210

PS3210 defines assets as *"economic resources controlled by a public sector entity as a result of past transactions or events and from which future economic benefits are expected to be obtained."* (par. 03)

The analysis of the three essential characteristics as defined by PS3210.4 are analyzed in the next table.

Characteristics	Additional guidance	Comments
They embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows. (par. 4(a))	The essence of assets are their future economic benefits. Assets embody future economic benefits that allow public sector entities to achieve their objectives. The future economic benefits embodied in assets involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows or to reduce cash outflows. (par. 11) The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. (par. 13)	The economic benefit embodied in the variance accounts (i.e regulatory asset) is the right to collect the incurred costs from ratepayers in order to settle the liability for the energy already consumed by the ratepayers. The electricity Act, 1998 ("EA") section 25.33(1) states: "*The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,* *a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998; and* *b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract."*
The public sector entity can control the economic resource and access to the future economic benefits. (par. 4(b))	Economic resources can arise from, but are not limited to, the following: government's own legislation (for example, taxes, fines and penalties); (par. 08(c)) A public sector entity controls the economic resource and access to the	The economic resources is the right created by the legislation that the energy costs IESO incurs will result in future cash flows. In the regulatory environments, incurring costs creates an enforceable right to set rates at a level that permits

	future economic benefits when it: a. can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows; b. can deny or regulate access to those benefits by others; and c. is exposed to the risks associated with the economic resource. (par.16)	IESO to recover those costs. The adjustment of future rates is the mechanism the OEB uses to implement the right. Currently, the EA section 25.33(5) states: *"The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section."* The legislation would be amended to permit IESO to collect specifically the deferral of the energy costs and the related interest and administrative costs.
The transaction or event giving rise to the public sector entity's control has already occurred. (par.4(c))	It is the occurrence of a past transaction or event on or before the financial statement date that distinguishes a present economic resource controlled by a public sector entity from an economic resource that may be controlled by a public sector entity in the future. (par. 25) The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities. (par. 26)	The past event giving rise to IESO's control occurs as the energy cost is incurred, as IESO has a right to collect it from the ratepayers.
Conclusion: The right to collect the deferral of the energy costs and the related interest and administrative costs meets the definition of assets.		

When concepts are in conflict with PSAS then PSAS prevails (PS 1150.12). For example, PSAS does not recognize intangible assets (PS 3150.03, .14 and PS1000.58). So if regulatory assets are considered to be intangible assets, they would not be allowed to be recognized through another source of GAAP.

It is worth noting that the economic impacts of rate regulation are not recognized under US GAAP as intangible assets as the FASB has specific guidance to deal with this type of asset. It is also worth noting that the IASB has an ongoing project on rate regulated activities and are currently developing an accounting model based on the principles of IFRS 15 *Revenue from contracts with customers* to provide a principle-based framework for recognizing regulatory assets (see Agenda Ref. 9 for the IASB meeting on February 23, 2017). Furthermore, the Summary Comment Letter Analysis related to the ED/2009/8 on Rate Regulated Activities published by the IASB in July 2009 states on page 2 of 50:

"The International Financial Reporting Interpretations Committee ("IFRIC") observed that it had previously discussed whether a regulatory asset should be recognized in the context of service concession arrangements, either as deferred costs or as an intangible asset to reflect an expectation that the entity will

recover these costs as part of the price charged in future periods. It had concluded that entities applying IFRSs should recognize only assets that qualified for recognition in accordance with the IASB's *Framework for the Preparation and Presentation of Financial Statements* and relevant accounting standards, such as IAS 11 *Construction Contracts*, IAS 18 *Revenue*, IAS 16 *Property, Plant and Equipment* and IAS 38 *Intangible Assets*."

Entities that are not eligible to elect to apply the requirements of IFRS 14 do not recognize regulatory assets because in 2009 the IFRIC determined they did not meet the criteria for recognition of an intangible asset under IAS 38.

Therefore, we can conclude that ASC 980 is NOT in conflict with PS 3150.03, .14 and PS1000.58 with respect to intangible assets.

Conclusion:
FASB is appropriate to use as "*other source of GAAP"*. FASB standard ASC 980 has extensive guidance for rate regulated entities including the recognition of regulatory assets and use of rate regulated accounting by IESO would be consistent with current reporting practices of H1, OPG and OEFC.

Appendix A:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

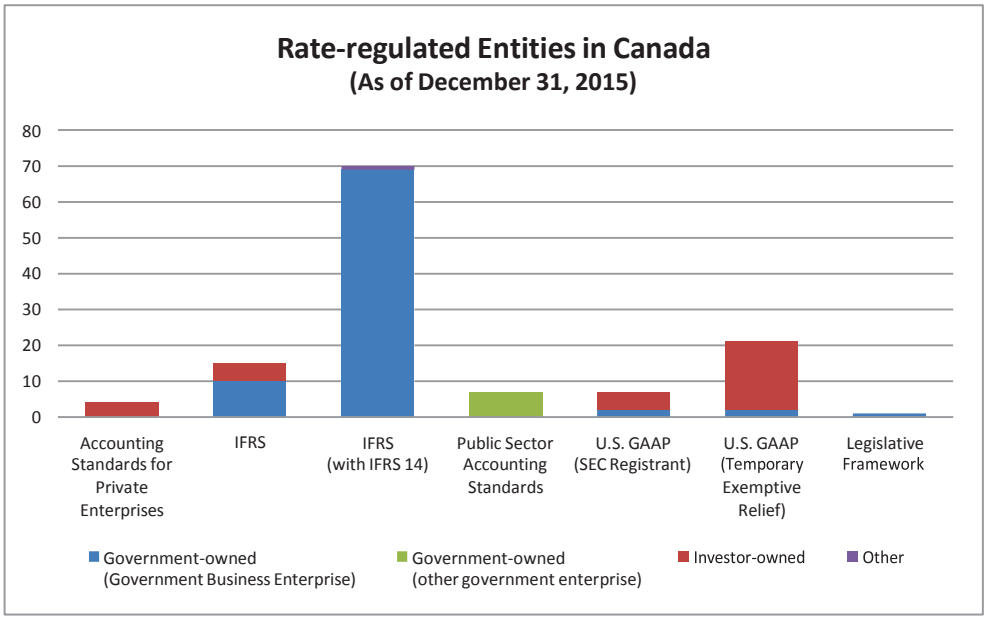
Appendix B:

Extract from the "Accounting Standards Advisory Forum Agenda Ref: 3A dated September 29, 2016" available on the IFRS website

Canadian Rate-regulated Entities

18. The accounting framework landscape for Canadian rate-regulated entities is currently diverse. For annual periods beginning on or after January 1, 2015, rate-regulated entities that are Canadian publicly accountable enterprises are required to apply IFRS. Rate-regulated entities that adopted IFRS for the first time after IFRS 14 *Regulatory Deferral Accounts* was issued continue to recognize these balances. Government Business Enterprises (which operate to generate a profit or on a break-even basis) that are also rate-regulated entities are also directed to apply standards applicable to for-profit entities, and thus apply IFRS. Canadian securities legislation permits dual-listed entities (i.e., Canadian entities also registered with the U.S. Securities and Exchange Commission) to apply U.S. GAAP in the normal course. Temporary exemptive relief is also available from the Canadian Securities Administrators that permits rate-regulated entities that are not dual-listed to apply U.S. GAAP in place of IFRS. If a rate-regulated entity is not a publicly accountable enterprise or a Government Business Enterprise, additional accounting framework options may also include Accounting Standards for Private Enterprises or Public Sector Accounting Standards. A non-GAAP reporting framework is used when legislated by the provincial owner of a government-owned rate-regulated entity.

19. As of December 31, 2015, there were approximately 125 rate-regulated entities in Canada. These entities mainly range in size from small entities owned by municipal governments to large investor-owned entities or entities owned by provincial governments.



Source: Information compiled based on audited financial statements for fiscal year 2015, or information from rate filings that confirmed the accounting framework used by these entities. Due to data collection constraints, the population could be slightly larger.

20. The chart above highlights two key points:

(a) The majority of investor-owned entities have chosen U.S. GAAP over IFRS. A few entities that are not reporting issuers apply Accounting Standards for Private Enterprises. Both U.S. GAAP and Accounting Standards for Private Enterprises permit the recognition of balances arising from rate regulation. Several entities that apply U.S. GAAP have told us this choice was influenced by the need to provide their users with financial statements that accurately reflect the economics of their business. Further, some entities presently using the temporary exemptive relief described in paragraph18 have said they are considering incurring the cost and effort necessary to become a registrant of the U.S. Securities and Exchange Commission in order to have the permanent ability to apply U.S. GAAP. While such a decision could be primarily for business reasons such as the entity expanding its operations into the U.S., it could also be attributed to the continuing uncertainty about the ultimate outcome of the IASB's Rate-regulated Activities project and the approaching expiry date of the securities regulators' exemptive relief.

(b) Public sector entities that are Government Business Enterprises tend to apply IFRS. The majority of these entities is made up of several large provincially-owned utilities, and many small municipally-owned local distribution utilities that do not issue debt or list in the U.S. stock market, and are not subject to Canadian securities legislation. As a result, they cannot apply U.S. GAAP. As shown in the chart, many of these entities adopted IFRS for the first time after the IASB issued IFRS 14, which allowed them to continue their previous accounting practices for rate-regulated activities.

21. Within the pool of government-owned rate-regulated entities, there are entities that do not meet the characteristics of Government Business Enterprises and are required to apply Public Sector Accounting Standards.

22. The data on the different accounting frameworks in Canada is unique. It demonstrates that when given a choice, rate-regulated entities select an accounting framework that captures the effects of rate regulation on their financial position and financial performance in order to communicate more decision-useful information to users.

http://www.ifrs.org/Meetings/MeetingDocs/ASAF/2016/September/1609-ASAF-03A-Rate-regulated-Activities-Canada.pdf

White Paper - GASA.PDF

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White Paper on the Province's proposed Global Adjustment Smoothing Account

Below is a summary of IESO's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account.

Understanding that the finalization of the legal terms, the financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Issues being considered in this document are:

Issue #1: Can the IESO recognize deferral or variance accounts related to the annual Global Adjustment Smoothing Account as a regulatory asset on its statement of financial position?

Issue #2: Can the IESO derecognize the deferral or variance accounts related to the Global Adjustment Smoothing Account upon sale to the OPG Trust**?**

1. Recognition of regulatory assets (deferral and variance accounts)

Background and Assumptions for issue #1

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The IESO's legal status is a not-for-profit, non-taxable, corporation established pursuant to Part II of the *Electricity Act, 1998*. IESO is classified as an Other Governmental Organization and prepares its financial statements in accordance with Canadian public sector accounting standards (PSAB).
2. IESO is rate regulated by the OEB in accordance with the Electricity Act, 1998 and the Ontario Energy Board ("OEB") Act, 1998 but currently does not recognize the economic impacts of rate regulation in its general purpose financial statements.
3. The IESO is required to obtain approval from the OEB under s. 25(1) of the Electricity Act, 1998 for the approval of its own expenditures, revenue requirement and fees. The last rate approval was obtained on December 29, 2016[1].
4. The OEB issued a Decision and Order on March 28, 2013 that permits IESO to recover the MDMR costs (the Smart Metering Charge) (see Appendix A). *(i.e. Costs incurred in the past will be fully recovered through future rates)*
5. Furthermore, in accordance with the *Electricity Act, 1998* and the *OEB Act, 1998*, the IESO has approved variance accounts to record all amounts payable or receivable by it in connection with the amounts paid to generators, the Financial Corporation, distributors and to entities with whom the IESO has a procurement contract. (i.e. costs incurred in the past will be fully recovered through future rates)
6. The province is contemplating deferring the recovery of a portion of the annual Global Adjustment Smoothing Account (comprised primarily of the electricity costs paid to the generators) over a period of 25-30 years, so that costs incurred would be fully recovered through future rates.
7. The *Electricity Act, 1998* and the *OEB Act, 1998* would be amended through legislation to require the deferral of the recovery of the Global Adjustment Smoothing Account and the future recovery in rates charged to customers.

[1] http://www.rds.ontarioenergyboard.ca/webdrawer/webdrawer.dll/webdrawer/rec/556699/view/Dec_Order_IESO 20161229.PDF

8. The OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred cost.

9. The IESO would change its accounting policies to permit the recognition of the economic impacts of rate regulation as from the 2016 financial year. IESO would adopt the guidance of ASC 980 *Regulated Operations* to better reflect the economic substance of its operations and enhance the transparency and accountability of its financial reporting.

Appropriate Accounting Principle for issue #1

ASC 980 Regulated Operations

- 980-10-15-2 *"The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:*

  (a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

  (b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.

  (c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs."

- 980-10-20 Glossary, Definition of incurred costs *"A cost arising from cash paid out or obligation to pay for an acquired asset or service, a loss from any cause that has been sustained and has been or must be paid for."*

- 980-10-05-8 "*Unless an accounting order indicates the way a cost will be handled for rate-making purposes, it causes no economic effects that would justify deviation from the GAAP applicable to business entities in general. The mere issuance of an accounting order not tied to rate treatment does not change an entity's economic resources or obligations. In other words, the economic effect of regulatory decisions—not the mere existence of regulation—is the pervasive factor that determines the application of GAAP.980-340 – Other Assets and Deferred Costs."*

- 980-340-25-1 "*Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:*

  (a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

  (b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

  A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date."

- 980-340-40-1: "*If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings."*

- 980-350-50-1: "*In some cases, a regulator may permit an entity to include a cost that would be charged to expense by an unregulated entity as an allowable cost over a period of time by amortizing that cost for rate-making purposes, but the regulator does not include the unrecovered amount in the rate base. That procedure does not provide a return on investment during the recovery period. If recovery of such major costs is provided without a return on investment during the recovery period, the entity shall disclose the remaining amounts of such assets and the remaining recovery period applicable to them.*"
- 980-340-55-2: "*In some cases, a regulator may approve rates that are intended to recover an incurred cost over an extended period without a return on the unrecovered cost during the recovery period.*"
- 980-340-55-3: "*The regulator's action provides reasonable assurance of the existence of an asset (see paragraph 980-340-25-1). Accordingly, the regulated entity would capitalize the cost and amortize it over the period during which it will be allowed for rate-making purposes. That cost would not be recorded at discounted present value. An exception to this general rule is provided for costs of abandoned plants.*"

Issue #1: Can the IESO recognize deferral or variance accounts related to the annual Global Adjustment Smoothing Account as a regulatory asset on its statement of financial position?

US GAAP includes special accounting provisions that are applicable to entities with activities that are subject to rate regulation (see White Paper - Adoption of the Guidance in ASC 980 Regulated Operations). The result is that rate regulated entities are required to recognize regulatory assets and liabilities provided the following three criteria are met:

Criteria	Comment	Evaluation
The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.	IESO has unrecognized variance accounts related to the MDMR (smart meters), that have been approved by the OEB in accordance with the Electricity Act and the OEB Act (see Appendix A). It is important to note that Hydro One and OPG are both consolidated into the province's books, are both regulated by the OEB and their respective regulatory assets and liabilities are reported in the province's books.	Met
The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.	Currently, the rates approved by the OEB are designed to recover the IESO's costs of providing the regulated services and the pass-through related to the energy purchased from the generators. The contemplated transaction is based on the fact that the OEB would grant generic deferral or variance accounts to capture the difference between the amounts paid to generators and others, and the amounts collected in rates. Furthermore, the interest and ancillary costs related to the contemplated transaction would also be included in future rates charged to customers. In summary, the legislation would create a right to collect the incurred costs.	Met

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers. This criterion requires consideration of anticipated changes in levels of demand or competition during the recovery period for any capitalized costs.”	Since the deferral or variance accounts would be sold to the OPG Trust at least on a monthly basis and cash would be received on the same day, this criteria would be met. This criteria would need to be monitored on a yearly basis to ensure that IESO and the OPG Trust would be able to recover the future deferred amount taking into account the levels of demand or competition during the recovery period.	Met
Conclusion: The three criteria would be met.		

Conclusion: Based on the assumptions mentioned above, IESO should be able to recognize a regulatory asset for the deferral of the annual Global Adjustment Smoothing Account. As mentioned in the ASC 980 guidance above, it is important that an accounting order be issued by the OEB which indicates the way the incurred costs would be handled for rate-making purposes as the OEB's action provides reasonable assurance of the existence of a regulatory asset.

2. Derecognition of regulatory assets (deferral and variance accounts)

Background and Assumptions for issue #2

The facts, circumstances, and assumptions relevant to the specific transactions are as follows:

1. The annual Global Adjustment Smoothing Account that would be deferred in the deferral or variance accounts (the "Asset") would be significant.
2. The IESO does not currently have the financial capability to finance the Asset and is contemplating selling the Asset to a Trust to be set-up by OPG (the "OPG Trust").
3. The OPG Trust would be consolidated by OPG.
4. Proposed terms of the sale agreement between the IESO and the OPG Trust:
   - The sale contract would be structured as an absolute sale, which would assign future economic benefits or cash flows related to the Asset exclusively to the OPG Trust.
   - The arrangement would be structured whereby there is no recourse or obligations remaining of IESO related to the Asset.
   - The arrangement is not considered to be a financing transaction as IESO would have no obligations to the OPG Trust after the Asset is sold to the OPG Trust.
   - IESO would not retain any rights or benefits from the Asset.
   - IESO would not have any rights to interest or penalties on the Asset once it has been transferred to the OPG Trust.
   - The contract would be clear that IESO cannot pledge the Asset as collateral to obtain future cash flows or financing.
   - IESO would continue to collect related cash flows on the OPG Trust's behalf and remit those cash flows to the OPG Trust without material delay. In addition, IESO would not be entitled to reinvest such cash flows, except for investments in cash or cash equivalents during the short settlement period from the collection date to the date of required remittance to the OPG Trust, and interest earned on such cash and cash equivalents is passed to the OPG Trust. The contract would define IESO's role strictly as that of agent, under a pass-through arrangement.
   - Servicing, origination, and arrangement fees, would be collected by IESO in rates charged to ratepayers as part of its market dealings.
   - The Asset would be sold to the OPG Trust at least, on a monthly basis and cash would be received on the same day.

Appropriate Accounting Principles for issue #2

Public Sector Accounting Standard ("PSAS") 3210, *Assets*, defines an asset as "…*economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained*." [par. 3]

.04 *"Assets have three essential characteristics:*

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred."

.22 *"Control of an economic resource and of access to the future economic benefits are essential characteristics of an asset, whereas possession or ownership is not*."

.24 *"A public sector entity may act as trustee when it administers trusts on behalf of the beneficiaries specified in the agreement or statute. As trustee, the public sector entity merely administers the assets, following the terms*

and conditions set out in the agreement. It does not control the asset because it does not have access to the future economic benefits. Those benefits flow to the beneficiaries."

As noted in PS1000 Financial statement concepts:

.37 *"An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:*

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred."

As noted in PS3450, derecognition of a financial liability:

.042 *"A government should remove a financial liability (or part of a financial liability) from its statement of financial position when, and only when, it is extinguished (i.e., when the obligation specified in the contract is discharged or cancelled, or expires)."*

.043 *"A financial liability (or part of a financial liability) is extinguished when the debtor either:*

(a) discharges the liability (or part of it) by paying the creditor, normally with cash, other financial assets, goods or services; or

(b) is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"

.046 "*Payment to a third party, including a trust (sometimes called "in-substance defeasance"), does not, by itself, relieve the debtor of its primary obligation to the creditor in the absence of legal release."*

.047 "*If a debtor pays a third party to assume an obligation and notifies its creditor that the third party has assumed its debt obligation, the debtor does not derecognize the debt obligation, unless the condition in paragraph PS 3450.043(b) is met. If the debtor pays a third party to assume an obligation and obtains a legal release from its creditor, the debtor has extinguished the debt. However, if the debtor agrees to make payments on the debt to the third party or direct to the original creditor, the debtor recognizes a new debt obligation to the third party."*

Issue #2: Can the IESO derecognize the deferral or variance accounts related to the annual Global Adjustment Smoothing Account upon sale to the OPG Trust?

PS3210 does not specifically address the derecognition of a regulatory asset as the concept of a regulatory asset does not exist under PSAS.

As mentioned above, regulatory assets do not meet the definition of intangible asset or financial asset. Specifically, regulatory assets do not meet the definition of financial asset because they are imposed on customers through the tariff (i.e., imposed by the OEB) and do not represent a right to receive payments from another party as a result of a contract.

More generally, PSAS.3210.37 suggests that an asset would no longer be recognized when it fails to meet the definition of an asset.

Based on PS1000.37(b), an item does not qualify as an asset of a government if the item involves future economic benefit, but the government cannot obtain it.

Based on the assumptions mentioned above, the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, including the following:

- the contract would define IESO's role strictly as that of agent, under a pass-through arrangement;
- all cash flows related to the Asset would be transferred without material delay to the OPG Trust;
- rights to interest or penalties on the Asset would be for the benefits of the OPG Trust;
- IESO cannot pledge the Asset; and
- no recourse or obligations remaining of IESO related to the Asset.

IESO should also evaluate whether the sale of the Asset should in fact be considered as a borrowing arrangement. In the absence of detailed guidance on this subject, we can analogize to the guidance in PS3450 *Financial Instruments* for the derecognition of a financial liability. Par. 43 states that *"A financial liability (or part of a financial liability) is extinguished when the debtor is legally released from primary responsibility for the liability (or part of it) either by process of law or by the creditor. (When the debtor has given a guarantee, this condition may still be met.)"* Based on the assumptions mentioned above, since the legal title of the Asset would be transferred to the OPG Trust, as well as, ALL risks and rewards, it can be concluded that the sale of the Asset is not a borrowing arrangement.

Conclusion: Based on the proposed terms of the sale agreement between the IESO and OPG Trust mentioned above, the deferral or variance accounts would be derecognized at the point where the IESO would derive no future economic benefit from it. This would occur where the IESO ultimately transfers the rights, risk and rewards related to those deferral or variance accounts to the OPG Trust. This would occur on the receipt of cash from the OPG Trust.

Appendix A:

Extract from the "DECISION and ORDER issued by the OEB on March 28, 2013" available on the IFRS website

Proceeding on the Ontario Energy Board's own motion to review the options for and ultimately determine the appropriate allocation and recovery of the Smart Metering Charge pursuant to section 19 of the Ontario Energy Board Act, 1998.

THE BOARD ORDERS THAT:

Effective May 1, 2013, the Smart Metering Entity charge to be levied and collected by the Smart Metering Entity from all Distributors identified in the Board's annual Yearbook of Electricity Distributors shall be $0.788 per month for each Residential and General Service <50kW customers for each distributor. The Smart Metering Entity charge shall be in effect from May 1, 2013 to October 31, 2018. The number of Residential and General Service <50kW customers to which the Smart Metering Entity charge will be applied to shall be in accordance with the methodology set forth in the Settlement Agreement attached as Appendix A.

http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2012-0100/dec_order_IESO-SME_20130328.pdf

Global Adjustment Deferral_White Paper_OPG r1a.pdf

February 27, 2017

Mr. Serge Imbrogno
Deputy Minister,
Ministry of Energy
4th Floor, Hearst Block
900 Bay Street
Toronto, Ontario
M7A 2E1

Dear Deputy:

Below is a summary of OPG's preliminary views on the implementation of the Province's proposed Global Adjustment Smoothing Account and financing structure. These views are contingent on the proposed terms and conditions that were sent to the Ministry of Energy on February 21, 2017.

Understanding that the finalization of the legal terms, the Trust indentures, financing structure and other detailed terms will take several months and will involve collaboration between legal counsel, input from capital markets, parties involved and other stakeholders, this letter is intended to provide the guideline and framework which could form the foundation of the plan.

Please do not hesitate to contact me if you have any questions regarding this summary.

Sincerely,

Mr. Ken Hartwick
Chief Financial Officer and Senior Vice President, Finance
Ontario Power Generation
W: 416-592-6985
C: 647-544-6985
ken.hartwick@ opg.com

cc. Jeff Lyash, President and CEO, OPG

Background:

The Province has indicated that it will take steps to reduce electricity bills in the near term. It has identified reductions in the Global Adjustment Charge (GAC) charged to electricity customers as a means to achieve its policy goals. The Province is proposing to temporarily reduce the amount of the GAC charged to electricity customers (primarily RPP-eligible customers). The exact quantum and duration of the program is still not known but based on discussions with the Province GAC charges of approximately $2-5B per year for the next 5-10 years would be deferred and collected over future periods commencing after the deferral period. A combination of senior debt and subordinated debt (mainly sourced by additional equity from the shareholder) would be issued to fund the amount deferred. The financing cost of the debt and other costs of running the program would form part of the amounts recovered from customers over the term of the program.

The Province has requested that OPG administer the GAC deferral, because of OPG's participation in the market, regulatory knowledge and the potential ability to consolidate the activity and accounting with OPG. Given the significant amount of financing required for the GAC deferral, OPG has developed a financing structure (depicted below) to:

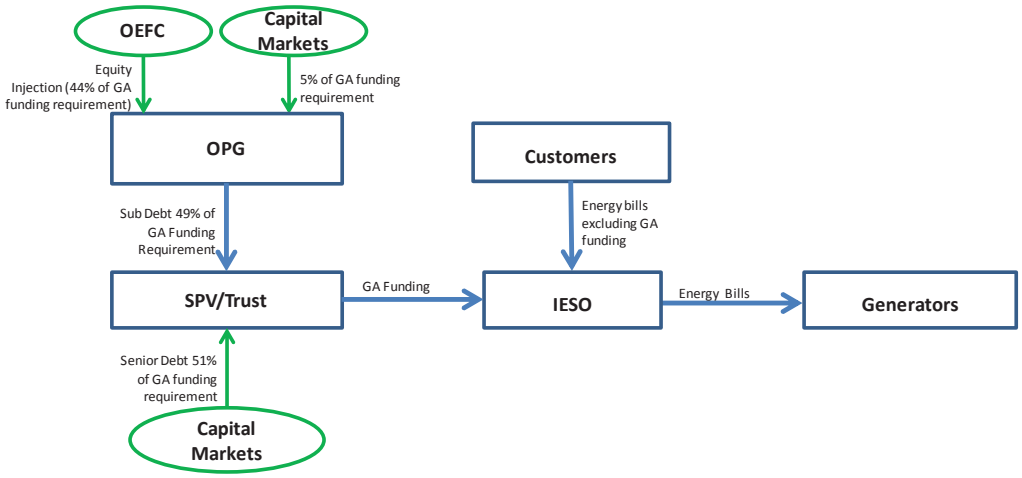
- restrict the risk to OPG;

- maximize the cost-effectiveness of the Trust or the Special Purpose Vehicle ("SPV") financing vehicle; and
- allow for consolidation into OPG financial statements.

The success of this structure is dependent on achieving a number of objectives which are reviewed in the following sections:

A. Ability to Recognize an Asset and Record Revenue
B. Ability to Consolidate the SPV into OPG
C. Ability to Finance
D. External Assessment
E. Risk Summary

All of the percentages shown in the graphic below are indicative and will be highly dependent on the legislation that the Province will enact:



Process:

The IESO will effectively sell the 'right to collect' deferred future revenue from ratepayers (GA Recovery Right asset) to the SPV in return for cash proceeds. In order for the SPV to purchase this asset the SPV will obtain the financing from two key sources: 51% directly from capital markets and 49% as subordinated debt from OPG. OPG will obtain 44% of this financing as an equity injection from the Province and 5% from capital markets.

A. Ability to Recognize an Asset and Record Revenue

Accounting Requirements under International Financial Reporting Standards (IFRS)

1) It is our understanding that the IESO and KPMG have concluded that the sale of this 'right to collect' future revenue (or regulatory asset) is not a financing transaction and will not be recorded as a financial liability. Based on that conclusion, the right to collect will be accounted for as an intangible asset in the SPV.

2) In order to the SPV to record this right as an intangible asset, the right must meet the following conditions:
   - The intangible asset must be separable and arise from a contractual or legal right (i.e. mandated by the Legislation and SPV Indenture Agreement).
   - The SPV must have the control and power to obtain future economic benefits from the intangible asset.
   - The SPV must be able to demonstrate that the intangible asset is purchased at fair value.

3) In order for the SPV to recognize appropriate revenue to offset any ongoing costs, the Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis. This may result in additional amounts to be deferred to achieve the desired customer impact. Payment of revenue to the SPV is also important to service the interest expenses of the debt.

B. Ability to Consolidate the SPV into OPG under IFRS

OPG 'Control' of the SPV - Accounting Requirements

1) In order to meet the accounting definition of 'control', accounting guidance must be considered. There are no bright lines to determine whether OPG has exposure, or rights, to variable returns from its involvement with the SPV, or whether it has the ability to affect the returns of the SPV through its power over the SPV. Rather, all facts and circumstances are considered when assessing whether an entity has control over another entity. Based on the relevant accounting guidance under IFRS, OPG has proposed terms necessary to demonstrate that OPG has control over the SPV. OPG's external auditors, Ernst & Young, has provided their concurrence that based on the information provided to them to date that the following conditions should permit consolidation of the SPV by OPG.

Directive:

1. The SPV must be undertaken by OPG as a business initiative on its merits. A Shareholder Directive is to be limited to direct OPG to investigate the option of establishing a SPV vehicle to administer, finance and operate the Global Adjustment plan. The control, risk and rewards of that SPV will determine its consolidation into OPG as a business enterprise.

SPV:

2. The SPV should not operate in a predetermined way such that OPG does not have decision-making authority over the SPV's ongoing activities after its formation (i.e. should not operate on 'autopilot').
3. OPG must have the ability to appoint and remove the Trustee (or Board of Trustees), with no veto right by the Province. No party shall have the ability to remove OPG from its role and authority in the SPV.
4. The Province cannot have the right to veto OPG's decisions about the relevant activities of the SPV. OPG must have the power over the relevant activities of the SPV and be compensated. The relevant activities of the SPV include (but are not limited to) the evaluation and decisions on financing alternatives, duration, and the strategy to minimize financing costs. OPG must have the power to establish operating and capital budgets of the SPV.
5. OPG must have the power to determine or change operating and financing policies of the SPV, which will affect the variability of risks and returns.
6. The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
    - The SPV
    - Any of OPG's investments in the most subordinated debt of the Trust
7. OPG must own greater than 50% of the most subordinated debt and targeted to be no less than 5%[1] of the total debt of the SPV. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources. A quantitative analysis should be performed at a later date to corroborate the appropriateness of the 5% threshold to support that the 5% subordinated debt investment is sufficient to absorb most of the expected variability in the SPV.
8. OPG must have the ability to earn variable returns by exercising its authority, which shall be accomplished as follows:

[1] While the rest of the letter refers to a 10% investment in the most junior subordinated debt with OPG owning 5%, it should be noted that OPG should own more than 50% of the most subordinate debt. For simplicity, the degree to which OPG's ownership beyond 50% is not shown in this letter.

a. The cash flow from the restructured asset shall include interest determined based on a relevant benchmark that is appropriate relative to the restructured asset, plus an appropriate margin consistent with the relevant market and other risks
b. OPG shall have the authority to determine the financing strategy, which will vary the financing costs with the objective of enabling the SPV to achieve a more favourable return compared to the return from the restructured asset
c. The SPV shall establish classes of liabilities (senior, subordinated and the most subordinated). The classes would allow the SPV to delineate financing of lower risk investment and investment that would bear higher residual risk. The delineation would limit OPG's self-funded investment to a reasonable level in order to allow OPG to remain a self-sustaining entity.
d. OPG shall, through its ownership of the most subordinated liability, be able to capture and retain the pricing difference between cost of financing and benchmark for interest on the restructured asset, or any residual risk of restructured asset. The targeted return of the subordinated liability should be reflective of the underlying risks and compensate holders for active management that would be required.
e. OPG should participate in the detailed design of the above and the SPV documentation to ensure that it has substantive power and variability, which will allow OPG's Board of Directors to evaluate the opportunity as a business initiative instead of through a shareholder directive.

Nothwithstanding the above, under certain Defined Forced Majeure for emergency events (e.g. unlikely credit market event or disruption where it is not possible to borrow from the market at a reasonable rate), the OEFC may provide bridge financing beyond the designated percentage for a defined period. The relevant terms should ensure that this temporary measure does not detract from the rights of OPG to direct all of the relevant activities of the SPV. Additionally, OPG should not be protected from risk of loss by the OEFC with respect to its subordinated investment, nor should it lose its right to derive the residual returns should such bridge financing be required.

Legislation

9. The Legislation must require interest, carrying and administrative costs to be paid to the SPV on a monthly basis, so that the SPV is able to recognize appropriate revenue to offset any ongoing costs.
10. The Legislation must dictate the manner in which the restructured asset would be determined, collected, and the period of collection, so that the determination of the restructured asset will not be subject to the Province's decisions on an ongoing basis, but determined based on a formula. Alternatively, the Legislation may allow for an adjustment to the pre-determined deferral formula based on specific parameters that would limit the adjustment to the restructured asset. Adjustments beyond the specific parameters would require approval by the Board of Trustees.
11. The Legislation must be written to avoid legal or constitutional challenges and be irrevocable to reduce the cost of borrowing and with a specific formula which determines the deferral amount. As irrevocability would be difficult under Canadian law one mitigation would be to provide a Provincial guarantee which only applies with cancellation or amendment of the legislation.
12. The spirit of the above terms should be reflected in the SPV Indenture Agreement as well as Legislation, wherever possible.

2) The Trust is expected to be financed as follows:
   - 51% senior secured debt from external markets
   - 39% senior subordinated debt from OPG (via Province equity injection into OPG)

- 10% junior subordinated debt from OPG (5% from external markets and 5% from Province equity injection into OPG).

When assessing control, an investor shall consider the nature of its relationship with other parties and whether those parties are acting on the investor's behalf (i.e. they are 'de facto agents'). If OPG is assessed to be a 'de facto agent' of the Province, it will compromise the ability for OPG to consolidate the Trust. The split above is to meet the following conditions to ensure that OPG is not considered a 'de facto agent' of the Province:

- The Province or its agencies must not directly or indirectly fund (through debt or equity) more than 50% of the following:
  - The Trust
  - Any of OPG's investments in the most subordinated debt of the Trust
- OPG must own greater than 50% of the most subordinated debt and targeted to own no less than 5% of the total debt of the Trust. Such ownership must be financed entirely by OPG through operating cash flows or external debt, without assistance from Provincial sources.

3) The Province will need to conclude on whether OPG still meets the definition of a Government Business Enterprise as defined under Public Sector Accounting Board standards in order to obtain the preferred consolidation treatment after the transaction. We also recommend that the Province to undertake the analysis deemed necessary to confirm the accounting treatment in its consolidated Public Accounts, including if the recognition of the intangible asset would result in an offsetting liability in the Public Accounts.

C. Ability to Finance

Property Right or Right to Collect
Legislative Requirements for Financing
The GA Recovery Right must be structured to encompass the following elements:

- Right to recover from and bill Ontario electricity customers for (1) the principal amount of GA that is being deferred, (2) all interest and other financing costs incurred in respect of the deferral of the GA, (3) all fees, expenses and other administrative costs associated with such financing;
- Repayment/amortization schedule as agreed by the IESO and any purchaser of such GA Recovery Right (or pursuant to a pre-defined schedule/formula that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis);
- Repayment/amortization schedule must include a true up mechanism to ensure all costs associated with the deferral can be recovered from customers;
- IESO may dispose of the GA Recovery Right, provided that any such disposition shall be a true sale and absolute transfer to the purchaser of the IESO's right, title and interest in and to the GA Recovery Right;
- Purchaser will have the right to require the IESO (or any successor) to collect the principal amount of GA Recovery Right, together with interest, financing and administration costs, on the agreed repayment/amortization schedule;
- Right must be irrevocable and, if amended by future governments, debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment;
- GA Recovery Right will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity; and
- Make certain amendments to the Electricity Act to allow OPG to implement the SPV financing structure (e.g. allowing OPG to create subsidiaries and holding companies, and to have a beneficial interest in the SPV, etc). This would provide flexibility to accommodate possible variations to the financing structure that may be desirable over time.

Detailed legislative requirements are specified in the attachments as follows:

Attachment 1 Legislative requirements to allow deferral of global adjustment amounts to be financeable

Attachment 2 Statutory amendments

The proposed financing structure for the SPV is:

	Risk Profile	Source	% of Total Funding Requirements
Tranche A Senior Debt	The least risky	Capital Markets	51%
Tranche B Sub Debt	In between A&C	OPG via OEFC	39%
Tranche C Sub Debt)	The most risky	OPG via OEFC	5%
		OPG via Capital Markets	5%

SPV structure is used to accomplish the following:

- SPV holds right to charge customers for the benefit of debt holders;
- Allows the financing vehicle to be ring-fenced from OPG as an SPV structure is set up as generally single purpose entities with no other operations that could add risk to the SPV, dilute debt holder rights, allow parties from other operations to claim rights to the future recovery from customers or allow these other parties to initiate bankruptcy proceedings;
- Enables SPV to potentially get a higher credit rating than OPG;
- Supports consolidation with OPG provided accounting requirements are satisfied;

This approach supports a number of objectives of the GA Recovery Right:

- 51% external senior debt supports separation of the SPV from the Province
- 5% junior subordinated debt establishes OPG's "at risk" equity which supports separation of the SPV from the Province
- Subordinated debt provides flexibility to the financing structure and additional credit support to external debt holders
- Subordinated debt sourced from OPG (mainly funded by equity injection from the Province) minimizes impact on OPG credit metrics reducing risk of an OPG rating downgrade that could result in the SPV being consolidated directly with the Province as the SPV would be considered an arm of the Province.

Recent transactions used as precedents are:

Duke Energy Florida Project Finance LLC
June 2016
5 series of bonds totalling USD$1.3B
Weighted average life from 2 to 19 years with interest rates from 1.2% to 3.1%
Credit rating AAA

Utility Debt Securitization Authority
Sponsored by Long Island Power Authority
March 2016
Amount issued USD$0.6B
Weighted average life of 12 years and weighted average yield of 2.7%

August 2016
Amount issued USD$0.5B
Weighted average life of 7 years and weighted average yield of 2.0%

Credit rating AAA

Cumulative outstanding (including previous issuances): USD$4.2B

D. External Assessment

Shakerhill Partners, an external advisor, identified the following items in an assessment of the structure and financeability of the structure:

- The structure is financeable however there are a number of significant risks to the structure:
  - Canadian and Ontario law does not provide the same protection to property right as exists in the US federal and state constitutions to limit the ability of governments to adversely impair contracts to the detriment of the holder;
  - Legislation could mitigate some of the risks – deferred recovery asset to be "uncapped", regular semi-annual true up to ensure recovery, Province provides sufficient committed liquidity to the IESO so that temporary shortfall in recovery does not affect payments to SPV, term of the deferral recovery substantially exceeds the longest maturity of debt of the SPV and that true-up mechanism take account of potential for currency, interest rate and duration mis-match between the debt of the SPV and the recovery mechanism;
  - Size of the program may be too large for Canadian securitization market requiring access to the US securitization market;
- Final maturity of debt should not exceed 30 years from inception of the program
- True up mechanism should be designed such that the forecast of recovery is less than 10% of the customer bill under downside scenarios to limit growth of the deferral balance as a higher portion of the customer bill increases the political risk to debt holders which could result in a lower credit rating and potential impact on financeability
- Securitized debt products are specialized and price at a premium to other fixed rate instruments however a successful program supported by a strong credit rating this premium could shrink over time to a minor spread over Provincial debt
- OPG's credit rating should be maintained provided sufficient equity is injected to maintain credit metrics
- While the structure is not expected to impact the Province there are risks that the program could negatively impact the rating agencies view of the Province's financial management.

E. Risk Summary

i. Consolidation

- Elements of the proposed structure were established to support consolidation of the SPV into OPG. These items may not be sufficient to establish OPG as risk owner of the SPV and the SPV may need to be consolidated directly with the Province.

ii. Financeability

- The legislation establishing the structure and the property right for recovering the financing and associated costs may not be adequate for financing purposes resulting in more expensive financing or an inability to obtain the required external financing.

iii. Cost of Financing

- Future governments may enact legislation that changes the right of the SPV to recover amounts from customers.
- The right to recover amounts from future customers must be irrevocable and subject to full recovery from the government in the event that future governments reduce or eliminate the recovery. A legal structure that is weaker than the precedent US transactions increases the risk to debt holders and the cost of financing.
- Interest rates on bonds in the securitization market are higher than equivalent rated bonds. Rate for a AAA securitization credit is about 50 bps higher than GOC (rated AAA) for a 5 year term. This difference is attributable to the specialized structure of the bond, smaller investor pool for this bond, smaller size of the market and higher perceived risks of the bond.
- Any regulator involvement must not be seen to modify any terms of debt issued or the property right securing the debt as this would increase risk to debt holders.

- It may not be possible to issue debt to match the terms of the deferred asset so shorter term debt would be used which raises risk to re-finance the maturing debt as the market may no longer be interested in this product. As well, underlying reference interest rates may be higher and the market may require a higher spread to invest in this product.
- With the GA Recovery Right program continuing for 10 years, debt issued over this period is subject to changes in both the underlying reference interest rates and appetite of the market for this product.

iv. OPG Credit Rating

- Minimizing the impact of significant additional debt on OPG's credit rating is dependent on higher EBITDA arising from earned income on the GA Recovery Right in excess of external debt. Ability of the SPV to record revenue reflecting the growth in asset value.
- Potential OPG credit rating downgrade if legislative structure is not adequate to support long term recoverability, inability to record revenue from growth in asset value or agencies view equity injection as debt.
- OPG credit rating downgrade could result in loss of GBE status or result in SPV being consolidated directly with the Province.

Attachment 1

LEGISLATIVE REQUIREMENTS TO ALLOW DEFERRAL OF GLOBAL ADJUSTMENT AMOUNTS TO BE FINANCEABLE

The IESO currently has a right to collect GA monthly from ratepayers through provisions in the *Electricity Act, 1998*. It is proposed that collection of a certain portion of the monthly GA be deferred for collection in the future, and that the right to recover the deferred GA from ratepayers be used as a basis for structured financing/securitization.

The current proposal is for a trust to be created as a financing vehicle (the "**Trust**") in connection the deferred GA. The Trust will finance the deferral of the GA by purchasing the right to recover such deferred GA from the IESO for the principal amount of the GA being deferred. For example, if the amount of GA that is being deferred is $200 million in a given month, the Trust will purchase from the IESO the right to future recovery of the deferred GA and the associated financing costs (including interest and transaction costs) for $200 million in cash.

The Trust is expected to finance these purchases from the IESO through a combination of senior secured financing raised in the capital markets and subordinated financing from OPG (the funding for which will mostly be from equity injections from the OEFC/Province).

For accounting purposes, OPG will need to have the ability to direct the activities of the Trust, through a services agreement and/or through the Trust's constating document.

Based on securitized financing raised by utilities in the US (backed by utility cost recovery orders) and the current regulatory framework in Ontario, the legislation in Ontario would need to be amended to provide the following, at a minimum:

1. The IESO will be empowered to create an asset (the "**Regulatory Asset**") consisting of all right, title and interest in and to:

   (a) right to recover from and bill Ontario electricity ratepayers for:

   (i) the principal amount of GA that is being deferred for collection;
   (ii) all interest and other financing costs incurred in respect of the deferral of the GA (whether through senior debt raised in the public markets or subordinated debt raised from OPG or others); and
   (iii) (subject to the comments in paragraph 5 below in respect of OPG's internal administrative costs only) all fees, expenses and other administrative costs associated with such financing, including up-front and ongoing financing costs and any indemnity payments;

all on such repayment/amortization schedule as agreed by the IESO and any purchaser of such right (or pursuant to a pre-defined schedule/formula in the legislation that covers all of the purchaser's principal, interest and ongoing financing costs on a monthly basis); and

(b) all revenues, collections, claims, rights to payments, money or proceeds arising from the rights and interests set out in paragraph (a) above, regardless of whether such revenues, collections, claims, rights to payments, money or proceeds are imposed, billed, received, collected or maintained together with or commingled with other revenues, collections, rights to payments, payments, money or proceeds.

2. The IESO may dispose of the Regulatory Assets created from time to time on such terms as the IESO determines in accordance with the terms of directives to be issued to the IESO from time to time by the Minister, provided that any such disposition shall be a true sale and absolute transfer of the IESO's right, title and interest in and to a Regulatory Asset to the purchaser of the Regulatory Asset.

3. The Regulatory Assets will not be subject to any set-off, counterclaim or other defence by the IESO or any successor or affiliated entity thereof.

4. The legislation will need to recognize the Regulatory Assets as amounts that may be recovered by the IESO (e.g. it could be designated as a "GA Deferral" and would be included in the amounts collectible by the IESO through the GA collection mechanism, and would include interest and financing costs).

5. The purchaser of the Regulatory Asset will have the right to require the IESO (or any successor) to collect the principal amount of GA deferred, together with interest, financing and administration costs, on the agreed repayment/amortization schedule. **[NTD: In the LIPA securitization rate order, if the entity that is authorized to collect rates to service the bonds ends up defaulting, there is the ability to request a court to order "sequestration" and payments of amounts owing to the owner of the Regulatory Asset. Consider whether to include a similar right here. Alternatively, consider whether a security interest over the moneys collected by the IESO could be provided to the purchaser.]**

OEB would be provided with oversight over the internal administrative costs collected by the Financing Trust. This could be accomplished by (a) providing the purchaser of the Regulatory Asset with the right to require

the IESO or a successor to collect only the principal amount of GA together with interest and financing costs and third party fees and expenses, and (b) requiring the IESO to collect amounts through the global adjustment and make payments to the purchaser of the Regulatory Asset with respect to the internal administrative costs incurred by the purchaser in connection with the purchase and management of the Regulatory Asset and the Financing Trust, in accordance with the order of the OEB then in effect. Under this mechanism, the OEB would be required to review the purchaser's internal administrative costs through a streamlined process and issue such orders in accordance with rules to be prescribed under a new regulation under the OEB Act, which would clearly limit the OEB's scope of review and could establish the basis for the purchaser to receive an appropriate fee for its services.

6. In the event that any action is taken or permitted by the Province or any regulatory authority that limits, alters, or impairs the value of a Regulatory Asset or reduces the ability of the IESO or the purchaser of the Regulatory Asset to collect or recover the costs associated therewith, the owner of the Regulatory Asset and the holders of any bonds or other securities issued to finance the purchase of the Regulatory Asset, will have a right of action against the Province for any damages suffered as a result of such amendment.

STATUTORY AMENDMENTS

The following is preliminary and is based on our current understanding of the proposed structure and objectives. For example, we have assumed that the structure will not entail the insertion of a new Holdco between OPG and the Province. As these aspects are refined, some of the suggested amendments described below may not be needed and other aspects that we are not aware of may need to be considered. Accordingly, these suggested amendments are provided for discussion purposes and are subject to change. We would welcome the opportunity to work with OPG and the Ministry on refining the scope and substance of required legislative and regulatory amendments.

A. Amendments to Implement Structure

Certain *Electricity Act, 1998* amendments would be needed to implement the anticipated structure (which we understand, as noted above, would not include a Holdco), as follows:

- **Section 53.1(1):** Amend to permit owning and operating generation facilities through subsidiaries (not only directly through OPG). In addition, amend to permit OPG to administer, manage, loan moneys to and have a beneficial interest in, if applicable, Financing Trust.

- **Section 53.2:** Amend to permit the Minister to acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, OPG or any subsidiaries. This is to accommodate possible variations to the financing structure that may be desirable over time.

- **Section 53.■ (new):** New statutory section to permit the Minister to enter into arrangements relating to an exercise of powers under 53.2.

- **Section 53.■ (new)**: New statutory section providing that creditors of Financing Trust have no recourse to the assets of OPG or any of its subsidiaries (other than Financing Trust, if applicable). In addition, consideration should be given as to whether the Act should be amended so that the Financing Trust cannot be wound up or liquidated.

B. Miscellaneous Corporate Items to Address

- **OPG Articles:** Amend the OPG's articles to remove the private company restrictions.

- **MOA with Province:** Consider whether any amendments to OPG's MOA with the Province are required to contemplate the Financing Trust.

C. Amendments Under Electricity Act to Implement GA Smoothing

Based on our understanding that the global adjustment smoothing mechanism is intended to benefit residential and small business customers only and that the Minister will be responsible for determining how much global adjustment smoothing is to be applied in a given month, if any, amendments to the *Electricity Act, 1998* and Ontario Regulation 429/04 (Adjustments Under Section 25.33 of the Act) would be needed to implement the mechanism, as follows:

(i) Electricity Act:

- **Section ■ (New):** Establish a new power for the Minister to make directives to the IESO in relation to the global adjustment smoothing mechanism and, particularly, for purposes of establishing global adjustment smoothing amounts from time to time (expected to be monthly). To the extent possible, the directive power should be drafted so as to limit the ability for a future Minister to require the IESO to do anything that would materially and adversely affect the Financing Trust or its lenders. **[NTD: While our understanding is that the Minister would direct this, we note from other materials we have seen that OPG may instead be recommending a formula approach. It is not clear what the formula would look like, where it would be set out or how it would be applied and by whom]**

- **Paragraph 25.33(1):** This section says that IESO shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of market participants reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require IESO to ensure that, over time, payments by prescribed classes of market participants also reflect amounts paid to Financing Trust. **[NTD: Not certain this is needed if only to benefit residential and small business consumers, who are not market participants. May be needed in reference to payments from distributors and retailers]**

- **Paragraph 25.33(2):** This section says that distributors and retailers shall make adjustments in accordance with the regulations to ensure that, over time, payments by prescribed classes of consumers reflect amounts paid to OPG, OEFC and distributors, as well as amounts paid to entities with whom IESO has a procurement contract. Add new subsection (c) so as to require distributors and retailers to ensure that, over time, payments by prescribed classes of consumers also reflect amounts paid to Financing Trust.

- **Note**: As described below, the regulation will need to include new requirements for the IESO to record the global adjustment smoothing amounts in one or more variance accounts and to use those amounts to offset amounts otherwise recorded in the variance accounts under Section 25.33(3) of the Act. For context, we note:

    - Section 25.33(3) says that adjustments under (1) or (2) relating to electricity consumed by consumers whose rates are determined by

the OEB under s. 79.16 of the OEB Act (i.e. RPP Customers) shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the IESO.

- Section 25.33(4) says IESO, distributors and retailers shall make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in (3), i.e. RPP Customers.

- Section 25.33(5) says that IESO shall establish and maintain such variance accounts as may be needed to record all amounts payable or receivable by it under 25.33.

(ii) O. Reg. 429/04 (Adjustments Under Section 25.33 of the Act):

- **Section 1(1):** Consider adding definitions for "Financing Trust" and "global adjustment smoothing amount" or such other terms as may be preferred.

- **Section 1.2(1) (New):** Add section providing that, for the purposes of this Regulation, the global adjustment smoothing amount for a month is the amount determined by the IESO in accordance with a directive from the Minister under section ■ of the Electricity Act in respect of the month. **[NTD: See above note re use of Minister directives]**

- **Section 1.2(2) (New):** Consider adding a section providing that the IESO shall publish the global adjustment smoothing amount for a month by no later than the 10th business day of the following month [to align with general publication requirements for global adjustment under s. 1.1(2)].

- **Section 10(1):** Amend formula for calculating Class B GA rate by subtracting the global adjustment smoothing amount for a month from "M", which is the total amount of the global adjustment for the month. The global adjustment smoothing amount could be designated as "X", such that the formula would be (M-X-N)/(P-Q). Define "X" as the global adjustment smoothing amount for the month as determined by the IESO in accordance with the Minister's directive under section ■ of the Electricity Act for the month. **[NTD: See above note re use of Minister directives]**

- **Section 10.1 (New):** Add new section to deal with adjustments under subsection 25.33(3) of the Act, i.e. in respect of RPP consumers. This section should require the IESO to establish, within the variance account(s) it maintains pursuant to subsection 25.33(3) of the Act, one or more subaccounts in which it shall record the global adjustment smoothing amounts applicable to the classes of consumers described in subsection 25.33(3) of the Act. This section must also specify that the IESO shall apply the amounts recorded in the subaccounts against the balances in the variance accounts for purposes of section 79.16(3) of the OEB Act.

  - **Note:** This is a key aspect because, when the OEB determines RPP rates, it must take into account the balances in the variance accounts established by the IESO under s. 25.33 of the Electricity Act and make adjustments with a view to eliminating the balances within 12 months. This proposed new section 10.1 causes the IESO to reduce (in the near term) the variance account balances by the global adjustment smoothing amounts, as provided by Financing Trust, thereby enabling the OEB to determine RPP rates that, despite being lower for RPP consumers in the near term, still eliminate the relevant variance account balances within 12 months.

- **Paragraph 11(2)2.ii:** Amend the formula for calculating the allocation of global adjustment for a month to a licensed distributor that is a market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x (R+S-T)]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 11(2)3:** Amend the formula for calculating the allocation of global adjustment for a month to each Class B market participant by subtracting the global adjustment smoothing amount for a month from "M", which has the same meaning as under section 10(1). The global adjustment smoothing amount could be designated as "X", such that the formula would be [(M-X-N) x U]/(P-Q). Define "X" as suggested under section 10(1).

- **Paragraph 16(7)4:** Consider amending the description of "Global Adjustment" that is required to be included on certain invoices so as to inform consumers that their portion of the global adjustment for the month (i) may have been reduced by the application of a global adjustment smoothing amount from the Financing Trust, or (ii) may include amounts payable to the Financing Trust in respect of global adjustment smoothing amounts previously applied.

- **Section 20(1):** This section establishes an obligation for the Ontario Electricity Financial Corporation and every licensed distributor that is a market participant to give the IESO such information as the IESO may require for the purposes of the Regulation in the form specified by the IESO and before the expiry of the period specified by the IESO. Consider amending to extend this obligation to the Financing Trust.

- **Section 20(6):** This section provides that on request by the OEB, the IESO, a licensed distributor, an embedded generator, a retailer or the OEFC shall give the OEB such information relating to this Regulation as the OEB may require, in the form and within the period specified by the OEB. Consider amending to extend this obligation to the Financing Trust.

D. Amendments Under OEB Act to Implement Cost Recovery for Financing Trust

Amendments to the *Ontario Energy Board Act*, including amendments to O. Reg. 95/05 (Classes of Consumers and Determination of Rates) and the introduction of a new regulation, would be needed to implement a cost recovery process for the Financing Trust in relation to the global adjustment smoothing mechanism, potentially with limited OEB oversight, as follows:

(i) Ontario Energy Board Act:

- **Section 78(3.3):** This provision establishes an obligation for the OEB, when determining rates for the retailing of electricity, to take into account balances in variance accounts established under section 25.33 of the Electricity Act and to make adjustments "with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct." Consider whether any amendments are needed, and confirm this works with the framework being proposed.

- **Section 78.7 (New):** We understand that the Province may want the OEB to have an oversight role. One possible approach would be to establish a new statutory section establishing that the IESO shall make payments to the Financing Trust with respect to the internal administrative costs incurred by the Financing Trust in connection with the purchase and management of the Regulatory Asset and the Financing Trust. Such payments by the IESO would need to be made in accordance with the order of the OEB then in effect, which orders shall be made by the OEB in accordance with rules prescribed under a new regulation.

    - The new regulation would need to be clear that the OEB does not have jurisdiction to consider the principal amount or any interest, financing costs, third party fees or expenses. Rather, OEB's role would be limited to considering the internal administrative costs of the Financing Trust and ensuring the Financing Trust receives an appropriate fee for its services, all of which would be recovered by the Financing Trust from the IESO, which would collect those amounts in the global adjustment. Note that, if this approach is accepted, the IESO and distributors and retailers would need the authority to collect such amounts as part of the GA and IESO would need the authority to pay such amounts to the Financing Trust. As such, additional amendments would be needed under O. Reg. 429/04.

- **Note:** Section 79.16 of the OEB Act does not require changes, but the significance of this provision should be understood.

    - Section 79.16 gives the OEB responsibility for determining electricity commodity prices for eligible consumers. Eligibility is determined under Reg. 95/05 (Classes of Consumers and Determination of Rates), which is also known as the Regulated Price Plan (RPP) Regulation.
    - Section 4(2) of the RPP Regulation defines RPP-eligible consumers as low volume consumers (i.e. those who annually use less than 150,000 kWh

or such other amount as prescribed), consumers with demand of 50 kW or less, residential consumers that have accounts with distributors, consumers who annually use 150,000 to 250,000 kW of electricity, and consumers who have accounts with distributors if in the farming business.

- Paragraph 6(1)3 of the RPP Regulation provides that "In determining the rates (for RPP-eligible consumers), the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs."
- The Ontario Energy Board has developed a Regulated Price Plan Manual (revised February 16, 2016) to describe the processes and methodologies it uses for determining electricity commodity prices that are charged to RPP consumers pursuant to Section 79.16 of the OEB Act and paragraph 6(1)3 of the RPP Regulation.

(ii) O. Reg. 95/05 (Classes of Consumers and Determination of Rates)

- **Paragraph 6(1)3:** Amend so as to require the Board, when forecasting the cost of electricity to be consumed by the consumers to whom the rates apply, to take into consideration not only the adjustments required under section 25.33 of the Electricity Act but also the application or prior application of global adjustment smoothing amounts determined by the IESO in accordance with Minister directives under section ■ of the Electricity Act, and to ensure that the RPP rates reflect those amounts. **[NTD: See above note re use of Minister directives]**

(iii) New Regulation (Payments to the Financing Trust)

- If the OEB is to be given the role of reviewing and approving the recovery of OPG's internal administrative costs for the Financing Trust under the potential section 78.7 (see above), then this regulation should describe the process and criteria pursuant through which the OEB would determine the amounts that the IESO would be required to collect through the global adjustment, in accordance with section 25.33 of the Electricity Act, and pay to the Financing Trust in respect of the provision of global adjustment smoothing amounts. This part of the regulation should establish:

    - any reporting requirements from the Financing Trust and/or the IESO to the OEB in connection with the global adjustment smoothing mechanism;
    - the frequency of the OEB making determinations under this part of the regulation;
    - the process through which the OEB shall make these determinations, which should be a streamlined administrative process rather than a public hearing process or, if a hearing is needed, then the scope of the proceeding should be clearly and narrowly constrained so as to deter intervenor involvement, lengthy proceedings and reduce/eliminate risk to recovery by Financing Trust;

- the basis for the OEB's determinations as to the payments that shall be made to the Financing Trust, which should specify that:
  - the Financing Trust shall recover its prudently incurred internal administrative costs on a forecast basis each year;
  - the Financing Trust shall receive an appropriate fee each year (with some guidance as to what would be appropriate); and
  - the approved payment amounts shall be collected by the IESO through the global adjustment and paid to the Financing Trust in accordance with the order of the OEB then in effect. Note that O. Reg. 429/04 would likely need amendments to permit IESO (and distributors and retailers) to collect these amounts through the global adjustment.

Global Adjustment Deferral - White Paper - Terms to MOE Feb 21_2017.pdf

GA Smoothing – OPG Accounting Considerations

- An SPV/Trust is a stand-alone entity able to conduct business separately under a Trust agreement

The conditions required for OPG to consolidate the SPV/Trust are outlined in the following table

Issue	Response
1. Decision Making	• OPG must have decision making authority on the operation of the SPV/Trust (without a veto right by the Province), including naming of trustees, establishing operating plans and budgets, setting or changing financing policies. • The SPV/Trust while operating within the legislation, must be controlled by OPG to operate freely and to alter terms and conditions not specified in the legislation to ensure recovery of the deferred amounts
2. Business Risk	• The SPV/Trust must have variability of returns as a normal business enterprise would, including such things as interest charged on deferred amounts, decisions on how to finance these deferred amounts, the ability to make / lose and keep any spread from financing
3. Funding	• The Province cannot directly or indirectly fund more than 50% of SPV/Trust or any investment in the SPV/Trust • OPG must own at least 50% of the most exposed equity /sub-debt in the SPV/Trust
4. Directive	• Directive that is issued should not be prescriptive or direct OPG to set up this business. The directive should only be “guiding” i.e. to allow OPG to evaluate options and put forward to the OPG Board a recommended plan for Shareholder approval

GA Smoothing – OPG Accounting Considerations - continued

Issue	Response
5. Other required Attributes:	The legislation that supports the formation of the SPV/Trust must have the following attributes: • Must require interest, carrying and administrative costs be paid to the Trust to allow for Revenue recognition • The amount to be deferred must either be specified or be calculated based on a specific formula that is not subject to ongoing decision making by the Province. **The Province cannot have the ability to override this formula** • Legislation should be written to avoid the possibility of being revoked with wording to ensure the SPV/Trust and its debt holders would have their capital guaranteed and paid for directly by the Province if such a situation were to happen • The spirit of the legislation should be reflected in the Trust Indenture Agreement

GA Financing Structure Requirements

KEY ELEMENTS REQUIRED TO ENSURE THE DEFERRAL OF GA CHARGES CAN BE FINANCED:

Creation of Strong Property Rights

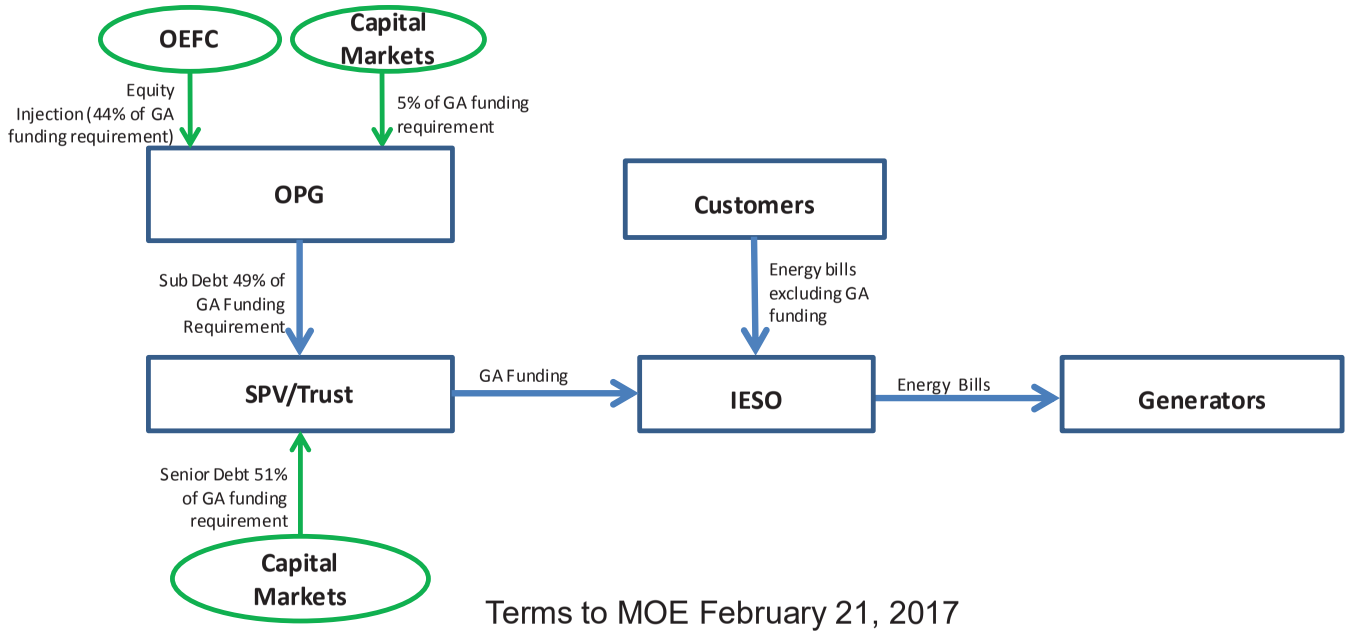
- Legislation enshrines the ability of the IESO to create a Right to charge customers in the future for the Global Adjustment (GA) deferred today including principal amount deferred, interest and other financing costs on the amount deferred and fees, expenses and other administrative costs.
- The Right can be sold to an appropriate Trust or Special Purpose Vehicle (SPV) to obtain funds to pay amounts due to generators under contracts or regulation. These SPVs are generally single purpose entities with no other operations that could add risk to the entity, dilute debt holder rights, allow parties from other operations to claim rights to the future recovery from customers or allow these other parties to initiate bankruptcy proceedings.
- Right must be irrevocable and if the Right is amended by future governments the debt holders have the right of action against the government to recover the amount outstanding including interest, fees, expenses and any damages resulting from the amendment.
- Right must specify the recovery period or the mechanism for setting the recovery rate including true up of the rate to ensure all amounts are recovered

Economic Factors

- Limits on the recovery amount (principal, interest, fees and expenses) charged to customers in future periods must have compensating elements such as longer recovery period to ensure the full amount deferred plus interest, financing and other administration costs is recovered from customers.
- Need to balance customer relief with debt holder risk. Longer recovery periods and larger deferred balances increase risk to the debt holder of future government intervention.
- The amount required by the SPV to purchase and service the Right will be funded 51% from debt holders, 5% from OPG through capital markets and 44% from OPG via equity injection to OPG from the Province. The funding from OPG will be loaned to the SPV as subordinated debt.

GA Financing Structure Requirements - continued

- SPV will be used to raise the GA financing and ring fence OPG from its legal obligations
- SPV will be structured to allow for GBE accounting consolidation into OPG
- Given that SPV will be consolidated into OPG for accounting purposes, the significant amount of debt required to fund the GA deferral will have a severe impact on OPG's credit rating. If 100% of the requirement is funded by debt OPG would be downgraded.
- To manage this exposure and minimize the cost of funding. The required funding would be split into 2 buckets:
    1. 56% from capital markets, and
    2. The remainder provided by the Province via equity injection, which would be loaned to SPV as subordinated debt.
- The use of equity to fund a portion of the GA deferral also allows for an improvement in both Net Income and EBITDA as incremental revenue is captured by the increase in the value of the deferral which would offset the fiscal impact of the borrowing at Province level.
- Credit rating metrics are generally maintained within established limits.



Terms to MOE February 21, 2017

PSAB INDICATORs OF CONTROL.pdf

INDICATORs OF CONTROL
Government has the power to unilaterally appoint or remove a majority of the members of the governing body of the organization
Government has ongoing access to the assets of the organization, has the ability to direct the ongoing use of those assets, or has ongoing responsibility for losses
Government holds the majority of the voting shares or a "golden share" that confers the power to govern the financial and operating policies of the organization
Government has the unilateral power to dissolve the organization and thereby access its assets and become responsible for its obligations

Other indicators that may provide evidence of control exist when the government has the power to:

Provide significant input into the appointment of members of the governing body of the organization by appointing a majority of those members from a list of nominees provided by others or being otherwise involved in the appointment or removal of a significant number of members
Appoint or remove the CEO or other key personnel
Establish or amend the mission or mandate of the organization
Approve the business plans or budgets for the organization and require amendments, either on a net or line-by-line basis
Establish borrowing or investment limits or restrict the organization's investments
Restrict the revenue-generating capacity of the organization, notably the sources of revenue
Establish or amend the policies that the organization uses to manage, such as those relating to accounting, personnel, compensation, collective bargaining or deployment of resources

Legislative Drafting Call Requested Friday March 3.rtf

From: Waddell, Colleen (MOF) []
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Subject: Legislative Drafting Call Requested Friday March 3
Date: Thursday, March 02, 2017 19:27:56

Hello Everyone,

Sorry that this email is coming late this evening. I understand we need to get this phone call booked for tomorrow - can you please let me know if 1:30 pm works.

I will be placing a hold in your calendars.

Thank you

Colleen

Letter to IESO Chair and Board of Directors.pdf.rtf

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Subject: Letter to IESO Chair and Board of Directors.pdf
Date: Friday, June 30, 2017 17:51:37
Attachment 1: Letter to IESO Chair and Board of Directors.pdf

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LeeAnne,

FYI.

Nadine

Letter to IESO Chair and Board of Directors.pdf

Office of the Auditor General of Ontario
Bureau de la vérificatrice générale de l'Ontario

June 22, 2017

Mr. Timothy O'Neill
Chair, Board of Directors
Independent Electricity System Operator
1600-120 Adelaide Street West
Toronto, ON M5H 1T1

Dear Mr. O'Neill and Board Members:

Thank you for taking the time to meet with us on June 14, 2017 so that we could outline our significant concern regarding IESO's adoption of US GAAP – *FASB Accounting Standards Codification (ASC) 980 – Regulated Operations* to record rate regulated deferral accounts in its December 31, 2016 financial statements.

As mentioned at our meeting, I am sending this letter to outline, in Attachment 1, my Office's technical position regarding the adoption of rate regulated accounting in a government organization's financial statements that is using Public Sector Accounting Standards (PSAS) and other contextual information. We do not agree that rate regulated accounting is permitted under PSAS. Our position is supported by many experts from whom we obtained advice in the application of PSAS in Canada.

Based on our research, the IESO will be the only government organization in Canada to have recorded regulatory assets on its PSAS based financial statements. This creates a significant Canadian precedent for financial statements prepared under the PSAS Conceptual Framework.

The attachment to this letter outlines where we disagree with the information presented in IESO's White Paper titled, "*Adoption of the guidance in ASC 980 Regulated Operations*" and identifies where the White Paper did not address key issues that should have been presented to the IESO Board when making its decision to approve the adoption of the use of rate regulated accounting in a PSAS set of financial statements.

Based on the technical arguments provided in the attachment, the strength of support that we have for our position and existing practices for similar organizations in other jurisdictions across Canada, I strongly encourage the Board to reconsider your decision.

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In my capacity as Auditor General of Ontario, I am writing to formally recommend that the Board review this new information with IESO's management and amend and reissue IESO's December 31, 2016 financial statements without the restatement and adoption of rate regulated accounting. I understand and recognize that the preparation and issuance of these financial statements are the responsibility of IESO's management and its Board and this is your decision to make.

My staff and I welcome the opportunity to meet with you again to further discuss the attached document or any related matters.

Please feel free to contact me at 416-327-1326 if you have any questions regarding the contents of this letter or attachment or require further information. After your consideration of this new information, please notify me of your decision prior to Friday, July 21, 2017.

Yours sincerely,

Bonnie Lysyk
Auditor General

c. Bruce Campbell, President and Chief Executive Officer, IESO
Peter Gregg, Incoming President and Chief Executive Officer, IESO
Kim Marshall, Vice-President, Corporate Services and CFO, IESO

Adoption of Rate Regulated Accounting in IESO's financial statements

Background

As an organization controlled by the Province, IESO must apply the Public Sector Accounting (PSA) Handbook in the preparation of its financial statements. In the introduction to the PSA Handbook, the Public Sector Accounting Standards (PSAS) gives IESO the option, as an "other government organization" (OGO), to use the accounting provisions in the PSA Handbook or the accounting provisions of Part I of the CPA Canada Handbook – International Financial Reporting Standards (IFRS). IESO adopted PSAS as its basis of accounting.

In its December 31, 2016 financial statements IESO adopted rate regulated accounting for the first time. IESO cited the generally accepted accounting principles (GAAP) Hierarchy in section 1150 of the PSA Handbook in its decision to adopt the provisions in the United States (US) Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 980, *Regulated Operations*.

IESO outlined its reasons for adopting ASC 980 in its White Paper titled "*Adoption of the guidance in ASC 980 Regulated Operations*" (the "White Paper").

Facts

- The IESO's legal status is a non-taxable, not-for-profit, corporation established pursuant to Part II of the Electricity Act, 1998.
- IESO has been classified as an Other Governmental Organization (OGO) as defined by paragraph .08 of the *Introduction to Public Sector Accounting Standards* in PSAS.
- Appendix A to the *Introduction to Public Sector Accounting Standards* outlines that an OGO has the choice to adopt either PSAS or IFRS for the reporting of its financial results.
- IESO has adopted and prepares its financial statements in accordance with PSAS.
- PSAS does not explicitly permit the recognition, measurement, presentation or disclosure of rate-regulated activities.
- US GAAP has retained a rate-regulated accounting standard for a number of years (formally known as SFAS 71, now ASC 980 – *Regulated Operations*)
- The International Accounting Standards Board (IASB) issued a new interim standard: IFRS 14, *Regulatory Deferral Accounts* in January 2014.

IESO's White Paper

IESO's White Paper discusses the issue of whether the IESO can adopt the guidance in ASC 980 *Regulated Operations (*US GAAP issued by FASB*)*. There are some points that the White Paper does not properly or adequately address including: whether rate regulated deferral accounts meet the definition of an asset under PSAS; how IESO has applied the explicit exemption outlined in US GAAP ASC 980 to not follow GAAP when adopting rate regulated accounting (an exemption that is not contained in PSAS); and whether IFRS is a more relevant source of GAAP to first consult according to PSAS's GAAP Hierarchy, prior to looking to ASC 980.

We have detailed the following points below:

- Rate regulated deferral accounts do not meet the definition of an asset under PSAS.
- IESO has improperly adopted an exemption to not follow GAAP under ASC 980 that is not in PSAS.
- IESO should have consulted IFRS prior to ASC 980 when applying the GAAP Hierarchy.

Regulatory deferral accounts do not meet the definition of an asset under PSAS

The definition of an asset is outlined in PS 1000, *Financial Statement Concepts* (often referred to as the PSAS Conceptual Framework):

.35 ***Assets*** *are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.*

.36 Assets have three essential characteristics:

(a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;

(b) the public sector entity can control the economic resource and access to the future economic benefits; and

(c) the transaction or event giving rise to the public sector entity's control has already occurred.

.37 An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

(a) no future economic benefit;

(b) future economic benefit, but the government cannot obtain it; or

(c) future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred.

Under PS 1000.36, an asset must have all three characteristics of the definition of an asset to be recognized as an asset. With respect to rate regulated deferral accounts:

- PS 1000.36 (a) - The deferral of today's costs and its future recovery from ratepayers would be considered an economic resource for which IESO will benefit from in the future due to the right to charge higher fees. (**Meets Criterion**) The IESO White Paper agrees with this assessment.

- PS 1000.36 (b) - IESO does not yet have the ability to control the benefit outlined under PS 1000.36 (a). The contractual right to the future revenues is dependent on both the

continuation of regulatory approval from the OEB to collect the higher fees in the future (i.e. OEB must ensure that costs continue to be "just and reasonable") and the provision of electricity to ratepayers in the future at higher rates (i.e. OEB must ensure that the future higher fees continue to be charged to the appropriate set of ratepayers who benefited from the original costs). The OEB controls the right to recover the costs in the future not the IESO, as IESO's White Paper suggests. (**Does Not Meet Criterion**) This is contrary to the IESO management's interpretation of this characteristic —IESO contends that that IESO established control at the time that the OEB made its original decision regarding the Smart Meter database costs.

- PS 1000.36 (c) - The transaction or event that gives control of the benefit to IESO is the consumption of electricity by ratepayers in the future, for which higher rates can be charged (not IESO incurring the original costs as IESO's White Paper suggests). This transaction will not occur until future years. That is, the transaction that will give rise to the IESO having control over the benefit will not occur until the year that the costs incurred are actually recovered through higher future hydro rates. (**Does Not Meet Criterion**) This is contrary to the IESO's interpretation of this characteristic— IESO contends that the transaction giving IESO control over the benefit was the OEB's original decision regarding the Smart Meter database costs.

As rate regulated deferral accounts do not meet all three characteristics of an asset under PSAS, they do not meet the definition of an asset.

In order to adopt rate regulated accounting under PSAS or any set of accounting standards, an exemption from following the generally accepted accounting principles must be allowed by the accounting standard setter. PSAS contains no exemption to allow entities to record rate regulated deferral accounts.

Application of the Exemption by IESO to not follow GAAP

In its White Paper supporting the adoption of ASC 980, IESO noted that:

"PSAS does not address accounting concepts in a rate regulated environment. Since there is no guidance in PSAS regarding the recognition and measurement of regulatory assets and liabilities, IESO may consult other sources based upon the direction of PSAS 1150.05 in the GAAP hierarchy to determine appropriate accounting policies in a rate regulated environment."

IESO's White Paper outlines that the PSA Handbook does not explicitly state that the recording of deferral accounts is inappropriate. In response, we have analyzed the application of the GAAP Hierarchy by IESO.

PS 1150 *Generally Accepted Accounting Principles* – Application of the GAAP Hierarchy

The PSA Handbook outlines the following process for applying other sources of GAAP when PSAS does not explicitly address with the accounting and reporting of transactions or events encountered by the public sector reporting entity in PS 1150. Extracts from PS 1150 regarding other sources GAAP are presented below:

.05 *When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:*

(a) the primary sources of GAAP; and

(b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000. [APRIL 2005]

.08 *A public sector reporting entity consults sources other than primary sources of GAAP to assist in selecting accounting policies and disclosures only when these sources comply with paragraph PS 1150.05. The public sector reporting entity evaluates sources in selecting the appropriate accounting policies and disclosures based on all of the following criteria:*

(a) The specificity of the source — A source that deals with the specific circumstances is likely to be more relevant than one from which the public sector reporting entity must analogize.

(b) The authority of the issuer or author — A source issued by an accounting standard setter in its own jurisdiction is likely to be more relevant than a source issued by others in the same jurisdiction.

(c) The continued relevance of the source — The passage of time may diminish the relevance of certain sources.

(d) The development process for the source — A source developed after extensive consultation and debate is likely to be more relevant than a source developed without such discipline.

Other sources

.18 *Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.*

.19 *Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.*

.20 *When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.*

.21 *In exercising professional judgment, a public sector reporting entity might wish to consult exposure drafts and other documents approved by the Board for public comment when no primary source of GAAP applies to the particular situation. The requirements of any existing accounting pronouncement that would be affected by the proposals in draft material remain in force until the effective date of the superseding material. Since the proposals in draft material are subject to revision, public sector reporting entities need to consider the consequences of any changes that may be made to the proposals as they are finalized. A document at a more advanced stage of the consultation process supersedes earlier versions.*

.22 *CPA Canada research reports and studies may also be consulted to the extent that they comply with paragraph PS 1150.05. In addition, organizations other than the Board may issue guidance indicating how primary sources of GAAP may be applied in particular circumstances. Since the guidance in these sources has not received Board approval, the views of the Board may differ. Therefore, caution needs to be exercised in using these sources.*

.23 *Accounting textbooks, journals, studies and articles that take the Canadian public sector environment into account are consulted in preference to those that do not.*

.24 *Sometimes, a practice has been established that does not result from written material. The relevance of such a practice is demonstrated by its compliance with paragraph PS 1150.05 and not by its general use.*

FASB's ASC 980 is contained within US GAAP under the section of standards with industry specific guidance. The definitions of an asset in the PSAS and FASB Conceptual Frameworks are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in FASB's Conceptual Framework.

As noted above, in order for IESO (an OGO following PSAS) to look to the principles of ASC 980 for guidance in developing an accounting policy to recognize deferral accounts, the fundamental principles underlying the recognition of such assets would have to be consistent with all PSAS primary sources of GAAP and with the PSAS Conceptual Framework outlined in PS 1000.

However, FASB's ASC 980-10-05-7 outlines that the provisions of ASC 980 can be followed for entities that meet the criteria to apply rate regulated accounting even if the accounting requirements under ASC 980 do not conform to GAAP (i.e. under US GAAP, rate regulated deferral accounts can be recorded even if they don't meet the definition of an asset). These entities' financial statements can still be said to be a fair presentation of financial position and results under US GAAP. However, PSAS specifically states that exceptions from GAAP are not permitted to be described as GAAP (see PS 1150.13).

This exemption from following GAAP when adopting the provisions under ASC 980 is crucial to the adoption of rate regulated accounting because, as noted above, rate regulated deferral accounts do not meet the definition of an asset under PSAS. PSAS does not contain the explicit exception that is included in ASC 980 that would be required to adopt the rate regulated accounting provisions outlined in ASC 980. Accordingly, as the specific guidance of FASB is not consistent with the general recognition criteria of assets in PSAS's Conceptual Framework, applying the guidance outlined in ASC 980 is not permitted.

IESO's White Paper does not outline the rationale for IESO adopting the ASC 980 GAAP exemption where there is no such exemption in the PSA Handbook. As the paper does not address the application of this exemption under US GAAP, we find it necessary to point out that the Board's approval to adopt rate regulated accounting in IESO's financial statements would include their approval to apply this GAAP exemption when recording rate regulated assets, even though no such exemption exists in PSAS.

As the rationale for applying the exemption in ASC980-10-05-7 by IESO was not outlined in IESO's White Paper, we inquired about this justification and were told the following. IESO could adopt the exemption to not follow GAAP based on industry practice that was in place under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards.* Part V was the primary source of GAAP for public reporting entities in Canada just prior to the adoption of IFRS as GAAP in January 2010 for public reporting entities, including other government organizations, by the Accounting Standards Board (AcSB).

We were further told that in the past, rate regulated entities reporting under Part V typically applied the exemption under ASC 980 to depart from GAAP and recorded regulatory deferral accounts because, similar to PSAS, Part V did not address the accounting for rate regulated activities —and now IESO was following the same approach based on this past industry practice.

According to the GAAP hierarchy, PS 1150.24 states that when a practice has been established that does not result from written material (i.e. industry practice), the relevance of such a practice is demonstrated by its compliance with paragraph 1150.05 (i.e. the primary sources of GAAP and the PSAS Conceptual Framework outlined in PS 1000) and not by its general use. Applying the exemption under ASC 980-10-05-7 is not in compliance with the GAAP Hierarchy (PS 1150.05) as it is an exemption from following GAAP and the PSAS Conceptual Framework.

Upon further review of Part V, we note that, unlike PSAS that does not specifically address accounting for rate regulated deferrals, the Part V standards referred to rate regulation in the Generally Accepted Accounting Principles section, five other sections of the standards[1], and in an accounting guideline that specifically addressed disclosure requirements. It is useful to point out that Part V only allowed rate regulated accounting in certain circumstances. These were explicit exemptions from Part V's framework.

Part V is no longer a primary source of GAAP; therefore, so industry practice under Part V is no longer relevant. IESO currently reports its results under PSAS. It is not appropriate for IESO to apply the exemption to depart from GAAP under ASC 980 to adopt rate regulated accounting. In addition, IESO did not apply rate regulated accounting provisions when IESO previously reported under Part V, prior to transitioning to PSAS.

An argument has also been put forth that IESO is a singularly unique organization in that it has regulated activities and reports under PSAS. In September 2016, the staff of the Canadian Accounting Standards Board (AcSB) prepared a paper, that was included in Appendix B to IESO's White Paper, for discussion at AcSB's Accounting Standards Advisory Forum. In paragraph 19 of this paper, a chart was presented that noted that they had found approximately 7-8 rate regulated entities that report under PSAS. Through discussion with AcSB staff, we determined that the entities referred to in the paper were either Territory energy companies or municipal electric utilities. We examined the publicly available financial statements for these entities (some reported their results through municipal financial statements). We confirmed that none of the entities that are reporting under PSAS actually recognized any rate regulated deferral accounts on their financial statements. Based on our research, IESO is the first organization in Canada reporting under PSAS to determine that the adoption of rate regulated accounting under PSAS is appropriate.

[1] Part V standards referred to rate regulated enterprises in Section 1100 Generally Accepted Accounting Principles, 1300 Differential Reporting, 3061 Property, Plant and Equipment, 3465 Income Taxes, 3475 Disposal of Long-Lived Assets and Discontinued Operations, and 3862, 3863 Financial Instruments – Presentation and Disclosure.

Factors indicating that IFRS should be consulted prior to referring ASC 980 under PSAS's GAAP Hierarchy (PS 1150)

Some factors include:

- As an "other government organization", IESO has the option of adopting PSAS or IFRS for publicly reporting its financial results under the *Introduction to Public Sector Accounting Standards*, meaning that PSAB formally acknowledges that IFRS as an acceptable reporting framework for certain public sector entities;
- IFRS has been adopted with the authority of the Canadian Accounting Standards Board (AcSB) in the CPA Handbook (a source of GAAP specifically mentioned in PS 1150.19); FASB is not specifically referred to in the GAAP Hierarchy);
- Similar to PSAS, IFRS has been adopted by an accounting standard setter in Canada as opposed to FASB that has been issued by an accounting standard setter in the United States (other sources of GAAP under the GAAP hierarchy are more relevant when they are issued in the same jurisdiction, i.e. Canada);
- IASB follows a similar process for developing and issuing new standards as PSAB (i.e. engaging stakeholders in extensive consultation and debate (as outlined in PS1150.08 (d)); and
- IASB has specifically addressed the question as to whether the provisions of ASC 980 could be applied by an entity that reports their financial results under IFRS using the IFRS GAAP Hierarchy standards which are outlined in International Accounting Standard 8, *IAS 8 – Accounting Policies, Changes in Accounting Estimates and Errors.*

IASB has specifically addressed whether an entity that is reporting under IFRS could apply the rate regulated accounting provisions of SFAS 71 (currently ASC 980) under the IFRS GAAP hierarchy. In June 2005, the IFRS Interpretations Committee (IFRIC) was posed with the question of whether an entity applying IFRS could apply SFAS 71 to apply US GAAP rate regulated accounting by way of applying its GAAP hierarchy outlined under IAS 8 (note: IFRS contains "GAAP hierarchy" requirements under IAS 8.10-12 consistent with those in PS 1150 outlined above). The IFRIC determined that the recognition and measurement criteria between IFRS and SFAS 71 were not consistent. Therefore, the Committee decided that entities applying IFRS could not apply SFAS 71, and rather could only recognize assets and liabilities to the extent they met IFRS recognition requirements.

PSAS and IFRS have consistent definitions for the various financial statement concepts within their conceptual frameworks. As noted above under PS 1150.05 (b), a public sector reporting entity should adopt accounting policies and disclosures that are consistent with the application of the concepts described in PS 1000, Financial Statement Concepts,.

Under the IFRS Conceptual Framework for Financial Reporting assets are resources controlled by the entity as a result of past events from which future economic benefits are expected to flow to the entity. Assets are recognized when it is probable that the future economic benefits will flow to the entity and that the asset has a cost or value that can be measured reliably.

Under PSAS Financial Statement Concepts (PS 1000.36), assets embody future economic benefits, controlled by an entity, as a result of past transactions or events. PS 1000.55 sets out the general recognition criteria as requiring a reasonable estimate of the amount involved and for it to be expected that future benefits will be obtained.

Regulatory deferral accounts do not meet the general definitions and recognition criteria under either PSAS or IFRS. The two reporting frameworks have consistent general definitions and recognition criteria for regulatory deferral accounts. It is therefore reasonable to conclude that, similar to the determination by IFRIC concerning the establishment of regulatory deferral accounts under IFRS based on ASC 980, an entity applying PSAS would not be permitted to apply rate regulated accounting in the absence of a standard specifically allowing for this accounting treatment.

Further to the IFRIC discussion in 2005, in January of 2008, the question of rate regulated accounting was again posed to IFRIC. IFRIC noted that the topic had been previously addressed and that there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements. This supported the conclusion that rate regulated accounting could not be applied under the existing IFRS standards. However, at that time, the IFRIC did note that the use of rate regulated accounting is widespread in jurisdictions not applying IFRS. The IASB therefore undertook a project to determine whether to establish a standard which would specifically provide criteria to allow recognition of regulatory deferral accounts, otherwise not recognizable under IFRS.

Since the establishment of the IASB's project to discuss the appropriateness of recognizing regulatory deferral accounts under IFRS, an interim standard, IFRS 14, was issued to address rate regulated accounting for first time adopters of IFRS. IFRS 14 does not actually contain recognition or measurement guidance for regulatory deferral accounts. Instead, it is a provisional standard, which only instructs first time adopters to continue following their previous accounting policies for recognition and measurement of regulatory deferral accounts. IFRS 14 did not change the conceptual framework of IFRS to generally allow for the recording of regulatory deferral accounts that would make the IFRIC discussions in 2005 and 2008 on the topic less relevant per PS1150.08 (b). IFRS 14 is an interim standard, in placewhile the IASB's project on rate regulated activities progresses, provided to allow first time adopters of IFRS a narrow exemption to other IFRS recognition criteria to encourage such entities to adopt IFRS without need to eliminate past practice, .

In the basis for conclusions on IFRS 14, IFRS 14.BC30 noted that the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being de-recognized upon transition to IFRS. IFRS 14 allowed a "grandfathering" of an entity's previous GAAP policies for first time adopters of IFRS, but did not indicate that such accounts meet the IFRS asset recognition criteria. The IASB's project on rate regulated activities is currently at a preliminary discussion paper stage and it is unclear at this point what the eventual outcome will be. IFRS 14 was issued in April 2014 with an effective date of fiscal periods beginning on or after January 1, 2016 with earlier adoption permitted. The introduction to Part I of the CPA Handbook Accounting required publicly accountable

entities subject to rate regulation and following AcG-19 under Part V to transition to IFRS by annual periods beginning on or after January 1, 2015.

An entity, such as IESO, whose previous GAAP did not allow the recognition of rate-regulated assets and liabilities, or that had not adopted a rate regulated asset policy under its previous GAAP, would not be allowed to recognize them on first time application of IFRS. This essentially means that since IESO had not previously recognized regulatory deferral accounts under PSAS, it would also not be able to recognize them upon adoption of IFRS, even if it now chooses to adopt IFRS as its financial reporting framework as permitted under the *Introduction to Public Sector Accounting Standards*.

Evidence that PSAS Addresses Deferrals

More recently, PSAB has addressed deferrals in a more general sense as part of their project on *Concepts Underlying Financial Performance* in 2015. This project, which is currently still in progress, sought input from stakeholders regarding potential changes to the conceptual framework of PSAS. In Consultation Paper 2 and Consultation Paper 3 of this project, PSAB's Conceptual Framework Task Force asked whether stakeholders supported a revenue and expense view which was deferral based, as opposed to the asset and liability based framework currently used in PSAS. The question around a deferral based approach addressed whether it was appropriate to reflect revenues and expenses in periods "to which they relate" through use of deferral accounts rather than recognizing assets and liabilities only when the current definition of an asset or liability is met. The fact the Conceptual Framework Task Force presented this "deferral" model as a deviation from the current PSAS reporting model which demonstrates that it is the Task Force's view that under the current reporting model assets and liabilities should only be recognized when the definition and recognition criteria of an asset and liability are met. In other words, the current model does not contemplate the creation of deferral accounts to smooth results over time.

Ontario Fair Hydro Plan

IESO's White paper indicated that "the recognition of regulatory assets would better reflect the economic substance of IESO's operations and enhance the transparency and accountability of its financial reporting." Per our discussions with you on June 14, 2017, you noted that the proposed *Ontario Fair Hydro Plan Act, 2017* (the "Act") was also a catalyst for the decision to investigate the adoption of rate regulated accounting by IESO. We understand that the Board and its Audit Committee analyzed the decision to adopt rate regulated accounting on its own merits for IESO relating to the Smart Meter database costs as of December 31, 2016. However, we would like to present the following additional information to the Board regarding the legislated deferral account that is being considered under the Act.

The accounting provisions under FASB's ASC 980 do not apply to the "deferral" that is being contemplated under the Act.

FASB's Paragraph 980-10-15-7 (a) specifically outlines transactions that are not within the scope of ASC 980:

"15-7 The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

> a) Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2: are met with respect to that contract, the guidance in this Topic shall apply."

As noted in the 2017 budget speech, the *2017 Ontario Budget – A Stronger, Healthier Ontario*, and in other public speeches by the government introducing the Ontario Fair Hydro Plan, the government is proposing to institute government price controls (25% reduction for a 4-year period) due to rapidly increasing hydro rates. As noted above, ASC 980 does not apply to accounting for transactions that arise as a result of price controls imposed by government.

Based on our review of the financial transactions proposed under the Act, the Act will legislate a regulatory deferral account to help smooth the high costs of contracts included in the Global Adjustment Account for the purchase of power generated (including contracts for wind, solar, and natural gas generated power) from third-party power generators by IESO on behalf of ratepayers. The terms and conditions within these contracts being considered for cost smoothing were established through negotiations with the third-party power generators and were not subject to rate regulation by the Ontario Energy Board (OEB). As noted above, ASC 980 does not apply to accounting for contracts whose terms and conditions were not subject to rate regulation.

In addition, the accounting provisions outlined in ASC paragraph 980-10-15-2 apply in general to the operations and activities of power generators themselves and not the activities of an organization, such as IESO, who is purchasing the power on behalf of ratepayers.

It has been presented that the Act will facilitate the establishment of an irrevocable right to collect money from future ratepayers once the OEB deliberates on the appropriateness of costs to be deferred and the right has been sold to the financing entity outlined in the Act (proposed to be an OPG administered trust). However, in the absence of being able to set up this right to collect money as a rate regulated deferral account, this right would be classified as an intangible asset under PSAS. Intangible assets cannot be recognized as assets according to PS 1000.58.

As a result of not being able to record the legislated deferral account, the portion of the payments to the generators for which LDCs are collecting 25% less from ratepayers would be charged to the

operating expenses of IESO. This cash shortfall/expense would have to be funded to make IESO's financial result whole. Under the legislated accounting under the Act, this shortfall would be made up by the sale of the legislated right to recover the shortfall from OPG Trust. This treatment would create a gain in IESO's income statement representing the amounts received from OPG Trust for a right that has no book value recorded in IESO's financial statements. This gain would offset the payment shortfall/ expense. However, from the Province's Consolidated Financial Statements perspective, this gain would be eliminated because it was generated as a result of a transaction with another government-controlled entity within the government reporting entity. PS 2500 – *Basic Principles of Consolidation* paragraph PS 2500.15 states, "Inter-governmental unit gains and losses arising on the sale or transfer of assets and liabilities remaining within the government reporting entity should be eliminated." This would also be the case if IESO was a government business enterprise. PS 3070 - *Investments in Government Enterprises* paragraph .30 states, "Inter-organizational gains and losses are, however, eliminated on assets remaining within the government reporting entity at the financial statement date."

Further in substance, the legislated transaction would be more akin to a financing transaction than an asset sale. In this case, instead of recording a gain on the sale of the legislated right to recovery, IESO would record a due to OPG Trust liability account to offset the cash shortfall. Under the Fair Hydro Plan, the legislated transaction would lead to the liability and expense impact of the 25% cash shortfall to be reflected in the Province's Consolidated Financial Statements.

As such, the adoption of rate regulated accounting by IESO would not facilitate the structured accounting treatment proposed in the Ontario Fair Hydro Plan to record the effects of the 25% hydro rate reduction without affecting the net debt of the Province.

Market Account Transactions

IESO has introduced market accounts into its December 31, 2016 financial statements. Per note 2 e) to these financial statements:

> *"The IESO records the market accounts assets, liabilities and amounts due to and from market participants held on behalf of the IESO-administered markets in its statements of financial position. The IESO-administered markets is a balancing system, and as such, the net position of market accounts will settle to a $nil balance in accordance with market rules."*

Note 3 to these financial statements:

> *"In addition, as of January 1, 2016, the IESO changed its accounting policy regarding the recognition of market accounts assets and liabilities on the statement of financial position...*
>
> *There is no impact on the accumulated deficit or revenues and expenses as IESO is not party to these transactions as per the market rules."*

In form, these accounts are a representation of the flow of funds between the ratepayers via the distributors and the power generators. The basis for including the market accounts on these financial statements for the first time is unclear from reading the memorandum to the IESO Board dated March 13, 2017 regarding the change in accounting policy. Previous analysis by PricewaterhouseCoopers in 2003 and IESO management in 2015 concluded that the financial statements should not include the financial transactions of market participants with the IESO-administered markets. This was because the market accounts did not meet the definition of assets and liabilities under PSAS in relation to IESO. The Board should ensure that individual balances that are included as assets and liabilities in the market accounts meet the definition of assets and liabilities under PS1000.35-.37 and PS 1000.44-.45 respectively if there are to be included on IESO's financial statements.

In addition to the status quo (i.e. not including market accounts), there are three scenarios that should be considered in regards to these market accounts on IESO's financial statements:

1. IESO is acting as trustee over the distribution of the funds from the distributors to the generators
2. IESO is acting as a cash conduit or a flow-through vehicle regarding the distribution of funds from the distributors to the generators
3. IESO is responsible for the amounts and they should treated as revenues and operating expenses

We consider the accounting implications of these alternatives below.

1. IESO acting as a trustee

If these amounts have been considered to be a trust per the Market Rules, PS 1300 - *Government Reporting Entity* notes that trusts that are administered by a government or government organization are excluded from the government reporting entity and the assets and activities of the trust are excluded from the government's reporting entity.

Extract PS 1300 – Government Reporting Entity

TRUSTS UNDER ADMINISTRATION

.40 *Trusts administered by a government or government organization should be excluded from the government reporting entity.* [JUNE 1996]

.41 Trusts are defined as property that has been conveyed or assigned to a trustee to be administered as directed by agreement or statute. In a trust relationship, the trustee holds title to property for the benefit of, and stands in a fiduciary relationship to, the beneficiary.

.42 To meet the definition in paragraph PS 1300.41, the property conveyed or assigned to the government or government organization acting as a trustee, must be provided to fulfill a particular objective of the donor of the property conveyed or assigned. The government or government organization would merely administer the terms and conditions embodied in the agreement and has no unilateral authority to change the conditions set out in the trust indenture. For this reason, the assets and activities of the trust are excluded from the government's reporting entity.

.44 *Government financial statements should disclose, in a note or schedule, a description of trusts under administration by a government or government organization, and a summary of trust balances. [JUNE 1996]*

However, in order for IESO to meet the definition of a trustee, it can only administer the property conveyed or assigned in accordance with the terms and conditions embodied in the agreement. The agreement would reflect the particular objective of the donor. In this case, the donor would be the local distribution companies. And the beneficiary would be the power generators. IESO would not have any unilateral authority to change the conditions set out in the trust indenture.

From this perspective, there is no trust indenture from the donor, i.e., the local distribution companies directing how the funds would be used for the benefit of the power generators.

Further, IESO manages the contracts of the power generators and is not merely an administrator. As noted in note 1 a) of its 2016 financial statements (selected excerpt):

> *"The objects of the IESO as contained in the Electricity Act, 1998, and Ontario Regulation 288/14 are as follows:*
> - *to engage in activities related to contracting for the procurement of electricity supply, electricity capacity and conservation resources"*

2. IESO acting as a flow-through vehicle

If these amounts are considered to be a flow-through arrangement per the Market Rules, both PS 3410, *Government Transfers* and PS 3510, *Tax Revenue* note that flow-through amounts should not be shown as revenue and expense (balance sheet only). It would appear that given the accounting policy change in 2016, and note 3 to the financial statements, IESO considers these market accounts as reflecting a flow-through arrangement. In accordance with the PSA Handbook, a flow-through arrangement does not affect the net assets of an organization.

Extract PS 3410 - Government Transfers

.06 Government transfers do not include:

(a) taxes or other money collected by one government on behalf of another government or organization, including local government requisitions; and

(b) flow-through arrangements where a government (read government organization) agrees to act merely as an intermediary to administer funds on behalf of another party and has no decisions regarding the use of the money.

Taxes or other money collected by one government on behalf of another and subsequently disbursed to that other government are not government transfers. Similarly when funds are received as a result of an administrative flow-through arrangement in which a recipient government serves only as a cash conduit (i.e., it has no direct financial involvement in the program or decision making capability in relation to the program) the receipt and disbursement of cash would not be recognized as transfers in that recipient's financial statements.

Extract PS 3510, Tax Revenue

.12 A government may impose a tax on behalf of another government or other public sector entity (for example, a school board or transits that is outside the reporting entity) pursuant to an existing agreement or legislation in place at the financial statement date that is purely a flow-through arrangement. Such a flow-through arrangement might arise as a result of a community charter that requires the province to exercise its taxing authority to impose a tax on behalf of a municipality when deemed appropriate by the municipality. Evidence that such a flow-through arrangement exists would require:

(a) details in the terms of the agreement or relevant legislation mandating that the proceeds of the tax be passed directly from the government imposing the tax on behalf of others to the other government or public sector entity named in the agreement or legislation; and

(b) that the government imposing the tax on behalf of others act merely as an intermediary to impose the tax on behalf of another government or public sector entity and have no existing ability to make decisions regarding the use of the funds or unilaterally cease the flow-through.

In such flow-through arrangements, the government imposing the tax on behalf of others would not recognize tax revenue in accordance with paragraph PS 3510.08. A government may impose a tax on behalf of another government or public sector entity without also collecting that tax on behalf of the other government or entity.

.14 Amounts collected as an agent of the government or other third parties will not give rise to an increase in net assets or revenue of the agent.

In accordance with the PSA Handbook, assets and liabilities can be reported on the statement of financial position without recording revenues and expenses provided the amounts meet the test of being a flow-through arrangement.

In a flow-through arrangement, IESO has no direct involvement in the program or decision making capability in relation to the program. IESO is responsible for procuring supply, capacity and conservation measures as noted above.

3. IESO is responsible for amounts included the Market Accounts

If IESO was responsible for transactions included in the Market Accounts, these transactions would have to run through IESO's statement of operations.

Use of Market Accounts to Record the Transactions proposed by the Ontario Fair Hydro Plan

Regardless of whether the Board and management conclude that IESO can continue to apply a FASB exemption to not follow GAAP and adopt the provisions of ASC 980 in financial statements prepared in accordance with PSAS after considering the information that we have presented above, it would be inappropriate to record rate regulated deferral balances in the market accounts. By definition as flow through amounts, IESO is not party to the transactions within the market accounts. IESO is a conduit/agent for the settlement of the market transactions. The activities reflected in the market accounts are not rate regulated activities of the IESO; as such, they would not be subject to the provisions of ASC 980 within IESO's financial statements.

In the absence of rate regulated accounting, the right to recover balances subject to rate regulation would be considered an intangible asset and would be expressly prohibited from being recorded as an asset by the IESO under PS 1000.58. These balances would otherwise be reported as revenues or

expenses without rate regulated accounting on IESO's financial statements. In this case if rate regulated balances are being accounted for as flow through arrangements, they would have to be recorded on IESO's statement of operations and therefore not be permitted to be recorded within the market accounts.

Market accounts should always be in balance (assets must equal liabilities). In our view, the market accounts were recorded in the December 31, 2016 statements, in part, to put in place a mechanism to enable the recording of the regulatory deferral account proposed as part of the Ontario Fair Hydro Plan within the market accounts. This would be needed to record the IESO cash shortfall resulting from the 25% reduction of collection from the LDCs as a regulatory deferral account to balance the market accounts. If this accounting was permitted, this amount would not appear on IESO's operational portion of their financial statements. Since rate regulated accounting is not appropriate for the legislated deferral account proposed by the Ontario Fair Hydro Plan, this accounting through the market accounts would not be permitted as the assets and liabilities would be out of balance.

Market accounts HBN - August 23 2017 v1.pdf

From:	Veinot, Cindy (TBS)
To:	Kim Marshall
Cc:	Donaldson, Mark (TBS); Hosick, Sarah (TBS)
Subject:	Market accounts HBN - August 23 2017 v1
Date:	August 24, 2017 7:09:00 PM
Attachments:	Market accounts HBN - August 23 2017 v1.doc

Hi Kim – Attached is a house book note for the market accounts – there is one question for you in there re: describing IESO's role with the LDCs (I took the description for the role with the generators from KPMG's memo, but didn't see a similar one for LDCs).

Also – Bharat is going to reach out to Susan or yourself re: why the amounts owed to the generators in 2014 in the OPA f/s (less than $500M) are so much lower than the balances at the end of March 2017 ($1.6 billion) – are we comparing apples to oranges?

Thanks,

Market accounts HBN - August 23 2017 v1_1.pdf

Confidential **Drafted: August 23, 2017**

FAIR HYDRO PLAN ACCOUNTING (GLOBAL ADJUSTMENT REFINANCING)

ISSUE: Why did the Auditor General qualify her opinion on the 2016-17 consolidated financial statements for including the market accounts of IESO in the consolidated financial statements?

CONTEXT: The Auditor General included the following qualification in her opinion on the 2016-17 consolidated financial statements:

> As described in Note 16c to these consolidated financial statements, the IESO changed its accounting policy and applied it retroactively to recognize market account assets and liabilities. The market accounts track mainly buy and sell transactions between market participants (electricity power generators and power distributors). These market accounts, as recorded on the Province of Ontario's consolidated financial statements are not assets and liabilities of the Province of Ontario. The Government has no access or discretion to use the market account assets for their own benefit, nor does the Government have an obligation to settle the market account liabilities in the event of default by market participants. As a result, Other Assets and Other Liabilities are both overstated by $1.652 billion (2016- $1.443 billion). There is no effect on the Consolidated Statement of Operations.

KEY MESSAGES:

- IESO financial statements are prepared in accordance with Public Sector Accounting Standards (PSAS) and audited by a public accounting firm. IESO received an unqualified audit opinion on their December 31, 2016 financial statements that included the market accounts.
- IESO revisited its accounting for the market accounts in 2016 to determine what accounting policy was more transparent to the users of the financial statements.

- In completing its research, IESO analyzed the accounting used by the other independent system operators in North America, of which one is in Alberta and the balance (7) are in the United States. Seven of eight of these entities (excluding IESO) recognize the assets and liabilities of the market participants on a gross basis (i.e. they recognize their market accounts in their financial statements as IESO now does.) While none of these other entities prepare their financial statements in accordance with PSAS, the definitions of an asset and liability are very similar between PSAS and the accounting frameworks used by the North American ISOs (US GAAP and GASB).

- 2016 is not the first year that amounts due to power generators have been included in the financial statements.

    - IESO is the amalgamation of the former IESO and the Ontario Power Authority (OPA).

    - OPA, when it was a standalone entity, prepared its financial statements in accordance with Public Sector Accounting Standards, and recognized on its financial statements, the amounts due to the power generators and the amounts due from the IESO. These financial statements were audited by a public accounting firm, and an unqualified opinion was issued. The inclusion of the amounts due to the power generators was not raised as a concern by the current auditor general in 2013-14 or 2014-15 or by previous auditors general in the years since the OPA was established in fiscal 2004-2005.

    - OPA and IESO were amalgamated during 2015-16 and 2015-16 was the only year that balances related to a portion of the market accounts were not included in the province's consolidated financial statements.

- IESO is the contractual counterparty to the legal agreements with market participants – both power generators and local distribution companies. IESO has the responsibility for procuring supply, capacity and conservation measures, all of

which are managed through the contracting with the generators. While IESO does not take ownership or control of the power generated prior to delivery to the ultimate consumers, it is nonetheless a party to the contracts, with an obligation to settle the market by paying the power generators and collecting from the local distribution entities, supporting recognition of the assets and liabilities.

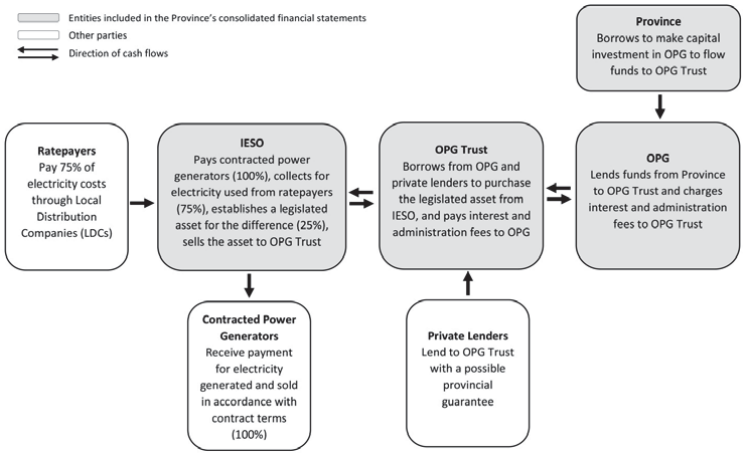
Commented [VC(1]: Need a similar sentence for the LDCs

Prepared by: Cindy Veinot, ADM and Provincial Controller, Office of the Provincial Controller

Appendix

Proposed Legislated Transaction Structure

Prepared by the Office of the Auditor General of Ontario



just confirming (from Friday’s discussion).rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: just confirming (from Friday's discussion)
Date: Monday, July 31, 2017 15:01:26

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Hi Lee Anne.

Just sending a note to confirm if we’ve landed classification as a financial asset for the FHP assets of IESO? The highlighted sections below seem to represent the nature of the balanc

just confirming (from Friday’s discussion).rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
Subject: just confirming (from Friday's discussion)
Date: Monday, July 31, 2017 15:01:26

Hi Lee Anne.

Just sending a note to confirm if we've landed classification as a financial asset for the FHP assets of IESO? The highlighted sections below seem to represent the nature of the balances. Your thoughts?

Thanks.

Nadine

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

a) Cash

b) a realizable asset that is convertible to cash;

c) a contractual right to receive cash or another financial asset from another party;

d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;

e) an equity instrument of another entity;

f) an investment in a government business enterprise or government business partnership;

g) a financial claim on an outside organization or individual; or

h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.

RE_ EXTERNAL - Re_ RM_Potential Structure - Feb 13.pptx.rtf

From: CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]
To: 'Picard, Michel' [mpicard@kpmg.ca]; Kim Marshall [Kim.Marshall@ieso.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: RE: EXTERNAL - Re: RM_Potential Structure - Feb 13.pptx
Date: Tuesday, February 14, 2017 09:25:03

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I am still working the conditions required for OPG to consolidate the Trust. One of the ingredients needed is external debt financing, we may need to soften the financing option to allow for external

RE_ EXTERNAL Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro.rtf

From: Hanslep, Malle (MOF) []
To: Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; McKinlay, Tom (ENERGY) [Tom.McKinlay@ontario.ca]; Montgomery, Kaitlin (MOF) [Kaitlin.Montgomery@ontario.ca]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Karpowicz, Eva (MOF) [Eva.Karpowicz2@ontario.ca]
Subject: RE: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro
Date: Thursday, July 06, 2017 09:51:50
Attachment 1: image001.jpg

Hi all,

Are there any other draft agreements that are available for review by the Province that would provide more precision respecting the context in which this provincial support is to operate. For example, the Master Sales and Servicing Agreement? Torys' comment mentions the "MTSA" – which agreement is this? Is there a draft trust indenture? Torys also asks about what is meant by the "Approval Requirement" and it is difficult to answer these questions without having a fuller picture of the various agreements.

Thank you.

Malle Hanslep

Deputy Director

Ministry of the Attorney General

Ministry of Finance Legal Services Branch

Telephone: 416-325-1457

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From: Nelms, Scott (MOF)
Sent: July 5, 2017 5:49 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Hume, Steen (ENERGY); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); Montgomery, Kaitlin (MOF); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Cc: Karpowicz, Eva (MOF)
Subject: RE: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Good suggestion from Gadi – we should probably touch base internally in advance of meeting with OPG. I wonder if we could try for a quick 30 min phone call either tomorrow or Friday.

I will reach out to OPG to set something up for next week.

From: Nelms, Scott (MOF)
Sent: July 5, 2017 2:44 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Steen Hume (ENERGY) (Steen.Hume@ontario.ca); Mayman, Gadi (OFA) (Gadi.Mayman@ofina.on.ca); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); Montgomery, Kaitlin (MOF); ASHBOURNE, STEPHEN
Subject: FW: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Hi,

Please see the following comments from OPG / Torys on the guarantees.

I wonder if we are now at a point we should suggest sitting down with OPG on this perhaps early next week.

Thanks,

Scott

From: LEE John -TREASURY [mailto:john.s.lee@opg.com]
Sent: June 30, 2017 3:12 PM
To: Nelms, Scott (MOF)
Cc: WONG Leslie -LAWDIV; RYFA Ken -TREASURY; HAHN PARKER Janet -TREASURY
Subject: FW: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Scott:

Further to our discussion on the outstanding issues, please find below the comments from the Dealers on the "Markup" of the Provincial Protection and Assurance term sheet.

As noted below, the next step should be to get the appropriate parties from the Province to sit down with the dealers and OPG to go over the points and agree on a basis to move forward.

We should try to do that sometime next week. Let us know what times work on the Province side and we will coordinate with the Dealers & counsels.

John

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Friday, June 30, 2017 12:24 PM

To: LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV
Cc: Ramchandani, Rima; Hill, Krista; Feldman, Michael; Emes, Aaron; Mansoori, Nina
Subject: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

*** Exercise caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. ***

John/Les/Ken,

Please find below an issues list on the Province's comments on the Provincial Protection and Assurances Term Sheet (formerly the Provincial Support Agreement). This list reflects input from the dealers, Oslers and Torys. Please let us know if you have any additional comments or questions. If not, will you be reaching out to the Province to schedule a meeting next week (with the dealers, OPG, the Province and their counsels) to discuss these points? The dealers and their counsel don't see value in exchanging further drafts of the term sheet until they have had an opportunity to meet with the Province. We agree with this approach and are happy to assist in coordinating a meeting for next week. It would also be helpful to hear the Province's rationale and concerns for making some of these changes. Please let us know.

Many thanks,

Nina

1. The Servicing Guarantee:

(a) It is written in favour of only the financing entity. However, in the MTSA, we are asking for covenants directly in favour of Indenture Trustee. The Indenture Trustee/specified creditors should have the direct benefit of the guarantee rather than relying on an indirect security interest in the servicing guarantee.

(b) It should be clarified that the servicing obligations of the electricity vendors are covered.

(c) If the guarantee is unenforceable, we should fall back to an indemnity, not a “functionally equivalent direct covenant” which is an uncertain concept.

(d) We don’t want an exclusion for economic loss. That may cover whatever losses the specified creditors do suffer.

2. Change of Law.

(a) This should be written as a guarantee not an indemnity.

(b) It should be directly in favour of the Indenture Trustee/specified creditors and it should cover all the “finance amount” and not just funding obligations.

(c) We do not want the guarantee to be provided by another entity which is in turn guaranteed by Ontario. It should come directly from Ontario.

(d) There should be no “materiality” threshold for a claim. If obligations are not paid in full, then there should be a claim.

(e) The choice to assume or accelerate should be at the option of the holders, not the guarantor.

(f) If accelerated, then the 1% premium should be payable. This is a voluntary termination by the Province.

3. Undertaking Regarding Mismatches (market disruption)

(a) At best this structure defers the discussion of protection for a market disruption. At worst, it is impractical that take-out financing needs to be arranged in advance of each warehouse financing. We should rely on a definition of market disruption.

4. Approvals.

(a) Province to clarify what is contemplated under the heading “Approval Requirement”. Is Province proposing to approve any obligation incurred by the Financing Entity?

(b) Approval under Section 28 of the *Financial Administration Act* to be attained (in case the OFHPA is declared void in its entirety).

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

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Toronto, Ontario M5K 1N2 Canada | www.torys.com

http://www.torys.com/

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image001.pdf

TORYS
LLP

RE_ EXTERNAL Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro.rtf

From: Montgomery, Kaitlin (MOF) []
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; McKinlay, Tom (ENERGY) [Tom.McKinlay@ontario.ca]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Karpowicz, Eva (MOF) [Eva.Karpowicz2@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]
Subject: RE: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro
Date: Monday, July 10, 2017 09:58:21
Attachment 1: image001.jpg

Hi Everyone,

Following up on our Thursday discussion I'd like to set up a call with OPG this week – could 10am on Wednesday work? Should anyone from TD be included in this discussion as well?

Thanks,

Kaitlin

From: Nelms, Scott (MOF)
Sent: July 5, 2017 5:49 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Hume, Steen (ENERGY); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); Montgomery, Kaitlin (MOF); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Cc: Karpowicz, Eva (MOF)
Subject: RE: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Good suggestion from Gadi – we should probably touch base internally in advance of meeting with OPG. I wonder if we could try for a quick 30 min phone call either tomorrow or Friday.

I will reach out to OPG to set something up for next week.

From: Nelms, Scott (MOF)
Sent: July 5, 2017 2:44 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Steen Hume (ENERGY) (Steen.Hume@ontario.ca); Mayman, Gadi (OFA) (Gadi.Mayman@ofina.on.ca); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); Montgomery, Kaitlin (MOF); ASHBOURNE, STEPHEN
Subject: FW: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Hi,

Please see the following comments from OPG / Torys on the guarantees.

I wonder if we are now at a point we should suggest sitting down with OPG on this perhaps early next week.

Thanks,

Scott

From: LEE John -TREASURY [mailto:john.s.lee@opg.com]
Sent: June 30, 2017 3:12 PM
To: Nelms, Scott (MOF)
Cc: WONG Leslie -LAWDIV; RYFA Ken -TREASURY; HAHN PARKER Janet -TREASURY
Subject: FW: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Scott:

Further to our discussion on the outstanding issues, please find below the comments from the Dealers on the “Markup” of the Provincial Protection and Assurance term sheet.

As noted below, the next step should be to get the appropriate parties from the Province to sit down with the dealers and OPG to go over the points and agree on a basis to move forward.

We should try to do that sometime next week. Let us know what times work on the Province side and we will coordinate with the Dealers & counsels.

John

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Friday, June 30, 2017 12:24 PM
To: LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV
Cc: Ramchandani, Rima; Hill, Krista; Feldman, Michael; Emes, Aaron; Mansoori, Nina
Subject: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

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John/Les/Ken,

Please find below an issues list on the Province’s comments on the Provincial Protection and Assurances Term Sheet (formerly the Provincial Support Agreement). This list reflects input from the dealers, Oslers and Torys. Please let us know if you have any additional comments or questions. If not, will you be reaching out to the Province to schedule a meeting next week (with the dealers, OPG, the Province and their counsels) to discuss these points? The dealers and their counsel don’t see value in exchanging further drafts of the term sheet until they have had an opportunity to meet

with the Province. We agree with this approach and are happy to assist in coordinating a meeting for next week. It would also be helpful to hear the Province's rationale and concerns for making some of these changes. Please let us know.

Many thanks,

Nina

1. The Servicing Guarantee:

(a) It is written in favour of only the financing entity. However, in the MTSA, we are asking for covenants directly in favour of Indenture Trustee. The Indenture Trustee/specified creditors should have the direct benefit of the guarantee rather than relying on an indirect security interest in the servicing guarantee.

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3. Undertaking Regarding Mismatches (market disruption)

(a) At best this structure defers the discussion of protection for a market disruption. At worst, it is impractical that take-out financing needs to be arranged in advance of each warehouse financing. We should rely on a definition of market disruption.

4. Approvals.

(a) Province to clarify what is contemplated under the heading “Approval Requirement”. Is Province proposing to approve any obligation incurred by the Financing Entity?

(b) Approval under Section 28 of the *Financial Administration Act* to be attained (in case the OFHPA is declared void in its entirety).

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image001.pdf

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RE_ EXTERNAL Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro.rtf

From: Montgomery, Kaitlin (MOF) []
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; McKinlay, Tom (ENERGY) [Tom.McKinlay@ontario.ca]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: Karpowicz, Eva (MOF) [Eva.Karpowicz2@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]
Subject: RE: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro
Date: Monday, July 10, 2017 09:58:21
Attachment 1: image001.jpg

Hi Everyone,

Following up on our Thursday discussion I'd like to set up a call with OPG this week – could 10am on Wednesday work? Should anyone from TD be included in this discussion as well?

Thanks,

Kaitlin

From: Nelms, Scott (MOF)
Sent: July 5, 2017 5:49 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Hume, Steen (ENERGY); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); Montgomery, Kaitlin (MOF); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Cc: Karpowicz, Eva (MOF)
Subject: RE: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Good suggestion from Gadi – we should probably touch base internally in advance of meeting with OPG. I wonder if we could try for a quick 30 min phone call either tomorrow or Friday.

I will reach out to OPG to set something up for next week.

From: Nelms, Scott (MOF)
Sent: July 5, 2017 2:44 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Steen Hume (ENERGY) (Steen.Hume@ontario.ca); Mayman, Gadi (OFA) (Gadi.Mayman@ofina.on.ca); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); Montgomery, Kaitlin (MOF); ASHBOURNE, STEPHEN
Subject: FW: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

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Subject: FW: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

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Sent: Friday, June 30, 2017 12:24 PM
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Cc: Ramchandani, Rima; Hill, Krista; Feldman, Michael; Emes, Aaron; Mansoori, Nina
Subject: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

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John/Les/Ken,

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RE_ EXTERNAL Delivery of Reference Documentation to Province.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]
CC: Jack, Shannon (TBS) [Shannon.Jack@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province
Date: Friday, January 05, 2018 11:32:54

Fine for me too. Thanks.

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com
Dir: 416-863-3086

-----Original Message-----
From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]
Sent: Friday, January 05, 2018 10:28 AM
To: Kandeepan, Ken (OFA); Manning, Mike (OFA); Thouin, Alena (ENERGY); Whitfield, Tobias P. (MOF); ASHBOURNE, STEPHEN; Strathy, Anna (OFA); Kwan, Ronald (OFA); Christie, Tim (ENERGY)
Cc: Jack, Shannon (TBS); Veinot, Cindy (TBS)
Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

Hi,

3 pm is good for me.

-----Original Message-----
From: Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
Sent: January-05-18 10:18 AM
To: Manning, Mike (OFA); Thouin, Alena (ENERGY); Whitfield, Tobias P. (MOF); Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; Strathy, Anna (OFA); Kwan, Ronald (OFA); Christie, Tim (ENERGY)
Cc: Jack, Shannon (TBS); Veinot, Cindy (TBS)
Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

As I discussed with Malle, Cindy's participation on this call will be quite value-added, she is available at 3PM if that works for everyone else. If so can someone pls send out a tele conference invite.

Thanks

Ken k

-----Original Message-----
From: Mike Manning
Sent: Friday, January 05, 2018 10:08 AM
To: 'Thouin, Alena (ENERGY)' <Alena.Thouin@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>
Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

Around as well.
Mike

-----Original Message-----
From: Thouin, Alena (ENERGY) [mailto:Alena.Thouin@ontario.ca]
Sent: Friday, January 05, 2018 10:03 AM
To: Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Mike Manning <Mike.Manning@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>
Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

I am available as well.

After 11:30

Adding our Energy policy counterparts.

Alena Thouin

Deputy Director, Legal Services Branch

Ministries of Energy / Infrastructure / Economic Development & Growth /

Research, Innovation & Science / Accessibility

56 Wellesley St. W. 18th Floor, Toronto, ON M7A 2E7

Tel: 416-325-1834 Email: alena.thouin@ontario.ca

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-----Original Message-----

From: Whitfield, Tobias P. (MOF)

Sent: January 5, 2018 9:35 AM

To: Hanslep, Malle (MOF); ASHBOURNE, STEPHEN; Manning, Mike (OFA); Kandeepan, Ken (OFA); Strathy, Anna (OFA); Kwan, Ronald (OFA)

Cc: Thouin, Alena (ENERGY)

Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

I am available any time this morning.

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

-----Original Message-----

From: Hanslep, Malle (MOF)

Sent: January 5, 2018 9:32 AM

To: ASHBOURNE, STEPHEN; Manning, Mike (OFA); Kandeepan, Ken (OFA); Strathy, Anna (OFA); Kwan, Ronald (OFA)

Cc: Thouin, Alena (ENERGY); Whitfield, Tobias P. (MOF)

Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

All, Should we have a call to discuss the approach here? I am also available this morning. Maybe someone from Energy policy on it as well. Perhaps Alena can advise.

-----Original Message-----

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

Sent: January-05-18 9:29 AM

To: Hanslep, Malle (MOF); Manning, Mike (OFA); Kandeepan, Ken (OFA); Strathy, Anna (OFA); Kwan, Ronald (OFA)

Cc: Thouin, Alena (ENERGY); Whitfield, Tobias P. (MOF)

Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

Thanks for the update, Malle.

I'm not sure how this materiality discussion will relate to the Province commenting on the OM. The base form of the OM was not envisioned as of December 20th, and so it is unclear to me that the material effect discussion is relevant for that purpose.

I have been expecting that the Province would be quite involved in the production of the OM, and not just for information purposes.

To illustrate the sorts of items I would anticipate being relevant to the Province in reviewing the OM, I attach a partial mark-up of the Nov 17th OM (the only one we ever saw) to show how (among other things) the narratives included at that time were not aligned with the legislation. The partial mark-up is a comparison to the version circulated by Alena that included James Rehob's comments. Also, as you know, the Change of Law terms were substantially settled after November 17th, and so those portions of the OM will also be quite different.

Generally, the sorts of things I think the Province may be concerned about in reviewing the OM will include:

(a) ensuring that the description of the Protection Agreement is accurate and does not overstate the Province's obligations,

(b) ensuring that the limitations contemplated in s. 40 of OFHPA and s.19 of the General Regulation have been observed,

(c) eliminating any implied/moral undertakings by the Province to bondholders,

(d) scrutinizing any "risk factors", particularly as they might relate to the context in which Protection Events may arise,

(e) confirming any disclosures regarding the Province's (Ministers') roles, including in setting the "fair allocation amount", accepting the "Financing Plan" provided to the Minister of Energy, etc.,

(f) ensuring that any description of the Crown, Crown immunity, the OFHPA, the regulations made under it, the OIC, the authority of the LGIC, the provisions of the Electricity Act and related regulations and processes, the Financing Plan, the electricity market regulatory infrastructure and other relevant legal principles and contexts are all properly and accurately described (recognizing the risk that any statement may be attributed to the Province based on its close proximity to the program, and could become consequential in any future legal process that seeks to interpret the statute),

(g) scrutinizing disclosures that could later become evidence in any legal proceeding that would challenge the validity of the OFHPA and related laws,

(h) confirming any “electricity market” disclosures that could impact on underlying considerations, such as the potential for and impact of off-grid migration and by-pass risks, and

(i) the propriety of disclosures regarding matters that could impact on the pricing or rating of the issued bonds.

(This list was previously included in my November 22nd due diligence note to the Province's lawyer team.)

In addition, the Province will need to confirm how James Rehob's earlier comments have been reflected in the OM.

Given all this and the offering timing described by Torys, I think it makes sense to insist on getting the OM now and confirming with OPG that the Province will be taking a careful look at the document, which will take some time (at least 5 business days), and so that could impact the overall timing.

I will be tied up from 930 to 1030, but then free until 1145.

Regards, Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

Blake, Cassels & Graydon LLP

199 Bay Street, Suite 4000, Toronto ON M5L 1A9

Tel: 416-863-2400 Fax: 416-863-2653

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GCWjnt9dPZPev23OfdA9HRBBXC1iSHeMNNCjt5RM&s=A4FRvIHct8h_iA1PKpb1pLHhMNORZ6vRN15XI6hpI5k&e= |
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https://urldefense.proofpoint.com/v2/url?u=http-3A__www.blakes.com_English_Resources_Bulletins_Pages_unsubscribe.aspx&d=DwIGaQ&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=gV-xgZHI0tggSwOPXBdMOr4DyITzOyaIKJLqH9Oy-40&m=-QrGCWjnt9dPZPev23OfdA9HRBBXC1iSHeMNNCjt5RM&s=ko9V22NeKbnEMcpBFuzSVtWwSSvVOZxxjYVBohQiPhk&e=

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-----Original Message-----

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]

Sent: Friday, January 05, 2018 8:49 AM

To: Manning, Mike (OFA); Kandeepan, Ken (OFA); Strathy, Anna (OFA); Kwan, Ronald (OFA)

Cc: Thouin, Alena (ENERGY); Whitfield, Tobias P. (MOF); ASHBOURNE, STEPHEN

Subject: FW: EXTERNAL – Delivery of Reference Documentation to Province

As you know prior to the warehouse closing we were sent informally drafts of the reference documents as they developed. Since Dec 20th we have received no further drafts of these documents. I don't understand whether it is OPG's plan that they send final transactions documents today (10 days before) and then the Province has the right to object based on the parameters of "material effect" as defined in the Process Agreement. A draft of the investor presentation was circulated to the Province and some comments were being collected yesterday by Energy and the OFA.

"“Material Effect” means a material adverse effect on the obligations or the rights of the Province under the Limited Guarantee, the Change of Law Protection Agreement or this Agreement that relates to, and in each case, differs in any material respect from the terms or conditions applicable to any other Transaction Document that forms part of the Reference Documentation at the relevant time, the following: (i) the timing of or circumstances under which related payments would or may become due or accrue (including as a result of any default, acceleration, termination, wind-up, liquidation or realization) that, in each case, is inconsistent with the Fair Allocation Amount; (ii) the appointment, obligations or duties of OPG as the

Manager; (iii) the existence, powers or authority of the Financing Entity or the Financing Entity Trustee; (iv) the obligations of the Indenture Trustee to or in respect of the Province as a Specified Creditor; (v) the payment provisions and associated priorities set forth in the Trust Indenture; (vi) compliance by the FSM with the then applicable Financing Plan; (vii) compliance by the FSM or the Financing Entity with the Act or the General Regulation; or (viii) the Province's rights of subrogation or assignment (including pursuant to Sections 1.05, 2.01 or 5.01 of the Change of Law Protection Agreement) or its interests as a subrogee or an assignee, that would arise as a result of performing the Limited Guarantee in respect of the applicable Primary Obligation."

Thanks,

Malle

-----Original Message-----

From: Hanslep, Malle (MOF)

Sent: January-05-18 8:40 AM

To: Ramchandani, Rima; Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA); Thouin, Alena (ENERGY); McLean, David (MOF); Strathy, Anna (OFA); Tekle, Jonathan (MOF); Kwan, Ronald (OFA); Hume, Steen (ENERGY); Christie, Tim (ENERGY)

Cc: LEE John -TREASURY; 'WONG Leslie -LAWDIV'; 'RYFA Ken -TREASURY'; 'LADAK Lubna -TREASURY'; 'LAURETA LAPIRA May -TREASURY'; Mansoori, Nina; Saulnier, Brett; Ramchandani, Rima

Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

Hi Rima,

I have a further question for clarification and perhaps it would make sense to have a call this morning. As you know we have not seen any further drafts of these documents since before the warehouse closing. Have all of these transaction documents now been done in final form? What is their status?

Thanks,

Malle

-----Original Message-----

From: Hanslep, Malle (MOF)

Sent: January-04-18 4:11 PM

To: Ramchandani, Rima; Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA); Thouin, Alena (ENERGY); McLean, David (MOF); Strathy, Anna (OFA); Tekle, Jonathan (MOF); Kwan, Ronald (OFA); Hume, Steen (ENERGY); Christie, Tim (ENERGY)

Cc: LEE John -TREASURY; 'WONG Leslie -LAWDIV'; 'RYFA Ken -TREASURY'; 'LADAK Lubna -TREASURY'; 'LAURETA LAPIRA May -TREASURY'; Mansoori, Nina; Saulnier, Brett; Ramchandani, Rima

Subject: Re: EXTERNAL – Delivery of Reference Documentation to Province

Hi Rima

Thanks for the update. I think it would be helpful if you included Toby, Alena and myself on the email where you attach the documents in order to save time. Also it would be helpful if you include track changes versions as you suggest.

Thanks

Malle

Sent from my BlackBerry 10 smartphone on the Rogers network.

Original Message

From: Ramchandani, Rima

Sent: Thursday, January 4, 2018 15:17

To: Manning, Mike (OFA); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA); Thouin, Alena (ENERGY); Hanslep, Malle (MOF); McLean, David (MOF); Strathy, Anna (OFA); Tekle, Jonathan (MOF); Kwan, Ronald (OFA); Hume, Steen (ENERGY); Christie, Tim (ENERGY)

Cc: LEE John -TREASURY; 'WONG Leslie -LAWDIV'; 'RYFA Ken -TREASURY'; 'LADAK Lubna -TREASURY'; 'LAURETA LAPIRA May -TREASURY'; Mansoori, Nina; Saulnier, Brett; Ramchandani, Rima

Subject: RE: EXTERNAL – Delivery of Reference Documentation to Province

Hi Malle, Alena and Toby, Happy New Year to all of you. John forwarded the email below and attached

and asked that I connect with you and provide an update. I have included the business folks on this email to make sure we are all on the same page. As John notes below, we had been working towards being in a position to commence marketing for the term deal on January 15th but if marketing is pushed to January 22 or later, then a waiver of the 10 business day requirement should not be necessary. I will let our respective clients advise us on that point and we can come back to the logistics/process for obtaining a waiver should we need one.

We are planning on delivering the following additional reference documentation to the Province tomorrow:

(1) Supplemental Indenture for the Series 2018-1 Term Notes

(2) Supplemental Indenture for the Series 2018-1 Subordinated Term Notes

(3) Supplemental Indenture for the Series 2018-1 Junior Subordinated Term Notes

(4) Agency Agreement

(5) Offering Memorandum (including the investor presentation attached as an exhibit to the OM)

(6) Term Sheet supplementing the Offering Memorandum

As you may recall, under the change of law process agreement, all deliveries are required to be made by mail, fax or delivered by hand to each of the Ministers and Deputy Ministers of the MOF and the MOE. To comply with the agreement, we plan on hand delivering the above documents to each of the Ministers and Deputy Ministers tomorrow. We can also email all of these documents to all of you and anyone else you would like us to send these to (in addition to Scott Thompson, Gadi Mayman, Anna Strathy, David McLean, Jonathan Tekle, Mike Manning and Ken Kandeepan -- as requested in Ken's email below). I believe that earlier drafts of all of the term supplemental indentures and the agency agreement were previously circulated to you -- for ease of reference, please let us know if it would be helpful for us to include blacklines to the last versions we sent to you in the email.

Let us know if you agree with the above approach, and feel free to reach out if you have any questions or would like to discuss.

Malle, you had also asked about delivery of the documents from the warehouse closing -- closing books are in progress and we expect to have those ready for circulation next week. Again, in order to comply with the change of law process agreement, the electronic closing books will be delivered to the Ministers and Deputy Ministers of each of the MOF and MOE, but we are happy to also send a copy to others on your instruction.

Thanks,

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

Torys LLP

79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada | www.torys.com

-----Original Message-----

From: LEE John -TREASURY

Sent: Thursday, January 04, 2018 12:18 PM

To: 'Ken Kandeepan' <Ken.Kandeepan@ofina.on.ca>

Cc: WONG Leslie -LAWDIV <leslie.wong@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; David McLean (MOF) <David.McLean@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>

Subject: RE: EXTERNAL – RE: Waiver Process

Ken/Steen:

We are operating under the assumption that it was the Province desire to execute the term deal as early as possible in 2018 which would involve a launch on the 15th. If the preference is now to adhere to the 10 business day requirement and not waive it we are happy to do so and commence marketing later in the month on the 22nd.

Please advise and we will adjust the work plan accordingly.

John

-----Original Message-----

From: Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]

Sent: Thursday, January 04, 2018 9:36 AM

To: LEE John -TREASURY <john.s.lee@opg.com>

Cc: WONG Leslie -LAWDIV <leslie.wong@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; David McLean (MOF) <David.McLean@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Jonathan Tekle (CAB) <Jonathan.Tekle@ontario.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>; Steen Hume (CAB) <Steen.Hume@ontario.ca>; Tim Christie (ENERGY) <Tim.Christie@ontario.ca>

Subject: EXTERNAL – RE: Waiver Process

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Hi John

I spoke to our DM's office and Scott's email is Scott.Thompson@ontario.ca, As required by the Process Agreement between the Province and OPG, pls forward the documents pertaining to the upcoming term deal by email to Scott with a cc to the following:

Gadi Mayman, Anna Strathy, David McLean (cc'ed above), Jonathan Tekle (also cc'ed above), Mike and myself.

Given that the Process Agreement requires OPG to also provide the same documents to MOE, I am cc'ing Steen and Tim so that they can inform their DM's Office as well.

With regard to the waiver, pls see Malle's comments below, it would also be useful if OPG were to provide

a rationale as to why waiving the 10 business days requirement which may allow for term debt issuance in mid-January by the Trust is more beneficial than issuance either later in the same month or early February.

Thanks

Ken k

-----Original Message-----

From: Hanslep, Malle (MOF) [mailto:Malle.Hanslep@ontario.ca]

Sent: Wednesday, January 03, 2018 8:45 PM

To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; LEE John -TREASURY <john.s.lee@opg.com>

Cc: WONG Leslie -LAWDIV <leslie.wong@opg.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; Mike Manning <Mike.Manning@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>

Subject: Re: Waiver Process

It would be very helpful if OPG and Torys could provide to us a timetable and schedule for delivery of reference documents that are being prepared and when do we expect to get them and when is the proposed issuance. On that basis we can review the timing and determine whether a waiver will be necessary and if it is how it might be processed. Unfortunately we haven't received any updates or draft documents since the closing of the warehouse deal. Also is there a plan for distributing to the Province the documents from the warehouse closing?

Thanks

Malle

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Ken Kandeepan

Sent: Wednesday, January 3, 2018 20:04

To: LEE John -TREASURY

Cc: WONG Leslie -LAWDIV; LADAK Lubna -TREASURY; LAURETA LAPIRA May -TREASURY; RYFA

Ken -TREASURY; Manning, Mike (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Strathy, Anna (OFA)

Subject: Re: Waiver Process

Thanks, didn't realize that all waivers have to be signed by the respective ministers, which as you know is difficult on an operational basis.

I am cc'ing our legal counsel to see if they have any suggestions.

Ken k

On Jan 3, 2018, at 5:57 PM, LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>> wrote:

Ken:

Given the importance of the Protection agreement and the desire to follow it to the "letter" ……see Torys comments below. Have you made provisions on the Province side to operationalize the delegation of waivers and amendments to facilitate the request. If not then the debt issuance date will get pushed out by the full 10 days.

Please advise.

John

From: Ramchandani, Rima [mailto:rramchandani@torys.com]

Sent: Wednesday, January 03, 2018 5:38 PM

To: LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>

Cc: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; LADAK Lubna -TREASURY <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com<mailto:may.lapira@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; GO Matthew -TREASURY <matthew.go@opg.com<mailto:matthew.go@opg.com>>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com<mailto:j.hahnparker@opg.com>>

Subject: RE: EXTERNAL – RE: Diligence Questions

I should add that the waiver of the 10 BD requirement needs to be executed in writing by the Province (which means we will need signatures from each Minister). Will that be achievable? If not, perhaps we can proceed on the basis of an email waiver with the waiver signed by the Ministers to follow as soon as possible. Sorry but it is going to be a pain in the butt navigating through this agreement … hopefully the Province will realize that and agree to make some amendments!

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

From: Ramchandani, Rima

Sent: January-03-18 5:32 PM

To: 'LEE John -TREASURY' <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>

Cc: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; LADAK Lubna -TREASURY <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com<mailto:may.lapira@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; GO Matthew -TREASURY <matthew.go@opg.com<mailto:matthew.go@opg.com>>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com<mailto:j.hahnparker@opg.com>>

Subject: RE: EXTERNAL – RE: Diligence Questions

OK. I assume the DM of Finance will sign off on behalf of the Minister of Finance. But what about the Minister of Energy? The agreement requires notices to both Ministers on behalf of the Province and I recall on the warehouse closing, we had to wait for a representative from each Ministry to sign off.

Rima

Rima Ramchandani

P. 416.865.7666

From: LEE John -TREASURY [mailto:john.s.lee@opg.com]

Sent: January-03-18 5:24 PM

To: Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>

Cc: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; LADAK Lubna -TREASURY <lubna.ladak@opg.com<mailto:lubna.ladak@opg.com>>; LAURETA LAPIRA May -TREASURY <may.lapira@opg.com<mailto:may.lapira@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; GO Matthew -TREASURY <matthew.go@opg.com<mailto:matthew.go@opg.com>>; HAHN PARKER Janet -TREASURY <j.hahnparker@opg.com<mailto:j.hahnparker@opg.com>>

Subject: RE: EXTERNAL – RE: Diligence Questions

I was speaking to Ken Kandeepan on the process this afternoon and he indicated to me that we should send the documents and the waiver request to the Deputy Minister of Finance with a cc. Gadi. Ken was going to send along the contact info for the DM of Finance and also alert their Office of the inbound email so they would not be surprised.

John

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RE_ EXTERNAL Fair Hydro -- Protection Event Definition.rtf

From: Veinot, Cindy (TBS) []
To: Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]
Subject: RE: EXTERNAL – Fair Hydro -- Protection Event Definition
Date: Friday, December 01, 2017 10:56:31
Attachment 1: image001.jpg

---

thx

From: Anna Strathy [mailto:Anna.Strathy@ofina.on.ca]
Sent: December 1, 2017 9:54 AM
To: Veinot, Cindy (TBS)
Subject: FW: EXTERNAL – Fair Hydro -- Protection Event Definition

I understand Tory's sent some additional comments to OPG on Wednesday night, which Joh Lee forwarded to Mike this morning. Perhaps this is another document that could come up on the call today.

From: Mike Manning
Sent: Friday, December 01, 2017 9:20 AM
To: Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>; ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Anna Strathy <Anna.Strathy@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ronald Kwan <Ronald.Kwan@ofina.on.ca>
Subject: FW: EXTERNAL – Fair Hydro -- Protection Event Definition

For discussion.

Thanks, Mike

From: LEE John -TREASURY [mailto:john.s.lee@opg.com]
Sent: Friday, December 01, 2017 9:09 AM
To: Mike Manning <Mike.Manning@ofina.on.ca>
Cc: WONG Leslie -LAWDIV <leslie.wong@opg.com>; LADAK Lubna -TREASURY

<lubna.ladak@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
Subject: FW: EXTERNAL – Fair Hydro -- Protection Event Definition

Mike:

See some thoughts from Tory's. If you believe it has some traction we should discuss how best to run this by the dealers as this has not been floated by them.

John

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: Wednesday, November 29, 2017 10:31 PM
To: LEE John -TREASURY <john.s.lee@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>
Cc: Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Saulnier, Brett <bsaulnier@torys.com>; Ramchandani, Rima <rramchandani@torys.com>
Subject: EXTERNAL – Fair Hydro -- Protection Event Definition

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John and Les, further to our discussion earlier today about the change of law protection agreement and the rating agency/dealer/Osler request to delete the word "materially" from the change of law triggering events – attached is a revised draft of the definition of a Protection Event that removes the word materially while addressing the Province's concern that they don't want a change in some unrelated law or reg to trigger the guarantee (we just moved down some of the general change in law triggers so they only trigger the guarantee if the change actually results in the FE not having sufficient funds to pay obligations when due (so if conservation legislation was passed, that would only trigger a protection event if that law prevented the FE from collecting enough CEA amounts to pay its obligations when due).

As we mentioned on our call, if you want to float an alternative to try and bridge the gap

on this point, you could send this to the Province and let them raise it with Osler/the dealers/the rating agencies in their revised draft of the change of law protection agreement as a compromise position. However, as we discussed, I think if some sort of compromise is going to be suggested, it is best coming directly from the Province.

Let us know if you have any questions.

Rima

The following files have been attached to this mail by Workshare Compare...

#24564826v2_TorysAtWork_ - Protection Event Definition.DOCX (WORDX)
Blackline_24564826v1 - 24564826v2.pdf (Adobe Acrobat File)

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

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Toronto, Ontario M5K
1N2 Canada | www.torys.com[na01.safelinks.protection.outlook.com]

[na01.safelinks.protection.outlook.com]

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image001.pdf

TORYS
LLP

RE_ EXTERNAL RE_ Change of Law Protection Agreement and Change of Law Process Agreement.rtf

From:	Donaldson, Mark (TBS) []
To:	Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
CC:	John Psinas [John.Psinas@ofina.on.ca]
Subject:	RE: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement
Date:	Thursday, November 09, 2017 09:33:16

Thanks, Ken.

From: Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
Sent: November 9, 2017 7:26 AM
To: Veinot, Cindy (TBS); Donaldson, Mark (TBS)
Cc: John Psinas
Subject: Fwd: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement

Hi Cindy and Mark

Pls see attached, we are meeting with Gadi this morning to go through the changes from OPG.

Much appreciated if you can do the same from the perspective of any potential impact to the Province's accounting and reporting and of course any other issues.

Thanks

Ken k

Begin forwarded message:

> **From:** LEE John -TREASURY <john.s.lee@opg.com>
> **Date:** November 9, 2017 at 2:52:50 AM EST
> **To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
> **Cc:** RYFA Ken -TREASURY <ken.ryfa@opg.com>, LADAK Lubna -TREASURY

<lubna.ladak@opg.com>, MAUTI John -FIN & C CTRL <john.mauti@opg.com>, "LAURETA LAPIRA May -TREASURY" <may.lapira@opg.com>, LIU Sheen -TREASURY <sheen.liu@opg.com>
Subject: Fwd: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement

As requested

Sent with BlackBerry Work (www.blackberry.com)

From: "Sebastiano, Rocco" <RSebastiano@osler.com>
Sent: Nov 9, 2017 2:12 AM
To: "Ramchandani, Rima" <rramchandani@torys.com>; "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>; JON.VINER@blakes.com; JA.PRESTAGE@blakes.com; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
Cc: "Feldman, Michael" <mfeldman@torys.com>; "Mansoori, Nina" <nmansoori@torys.com>; "Saulnier, Brett" <bsaulnier@torys.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; "Milligan, Peter" <PMilligan@osler.com>; "Fullerton, Rick" <RFullerton@osler.com>; "'Persaud, Donnie - Debt Capital Markets'" <Donnie.Persaud@cibc.com>; "Adalja, Sunil" <Sunil.Adalja@cibc.com>; "Maciel, Andrew" <Andrew.Maciel@cibc.com>; "'Benaiah, Ian'" <ian.benaiah@rbccm.com>; "'Khan, Nur (nur.khan@rbccm.com)'" <nur.khan@rbccm.com>; "'brent.r.taylor@rbccm.com'" <brent.r.taylor@rbccm.com>; "Niehaus, Katrina" <Katrina.Niehaus@gs.com>; "Delaney, Brian" <Brian.Delaney@gs.com>; "Conner, Robbin" <Robbin.Conner@gs.com>
Subject: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement

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Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have.

The initial drafts of these two agreement have not been provided to the rating agencies for their review and therefore, further revisions may be required following

their review and comment once drafts have been provided to them to review.

Regards, Rocco?????
[cid:image001.gif@01D358FE.53C31E30]

Rocco Sebastiano
Partner

416.862.5859

DIRECT

416.862.6666

FACSIMILE

rsebastiano@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: November-02-17 9:02 PM
To: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; Hill, Krista <khill@torys.com<mailto:khill@torys.com>>
Cc: Hanslep, Malle (MOF)

(Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>; tom.mckinlay@ontario.ca<mailto:tom.mckinlay@ontario.ca>; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; VINER, JON <JON.VINER@blakes.com<mailto:JON.VINER@blakes.com>>; PRESTAGE, JA <JA.PRESTAGE@blakes.com<mailto:JA.PRESTAGE@blakes.com>>
Subject: Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

We propose that a consolidated mark-up be prepared that reflects all of the issues that you or those others may have, and ideally reflects input from the rating agencies. Once that mark-up is available, we propose that a meeting of interested parties be held to resolve any outstanding issues.

In the meantime, please feel free to call Malle, Toby, Tom, Alena or me if you have questions or concerns.

Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086

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[cid:imageb23443.GIF@edc8812c.40a5c483]

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Unsubscribe<https://urldefense.proofpoint.com/v2/url?u=https-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.blakes.com-252FEnglish-252FResources-252FBulletins-252FPages-252Funsubscribe.aspx-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257Cabe6ff3131a64b7ae4dd08d52741018d-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636458083400295201-26sdata-3D6WT0PKhI84GuqOSyGxmFRE1haJjLELvz6-252BmkYpltRqQ-253D-26reserved-3D0&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=sDTjf9tVmfT9K92u269doOHn6NwIN5Soa0mhVrZmimM&m=TB284enhW9TDXv41kUcZXv1iZ93rrcPG-0qBrxckFeY&s=iGioGXs1OfZRyLUJEd0FhiGIefVpY8uX8t4lmU5wkvU&e= >

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RE_ EXTERNAL RE_ Change of Law Protection Agreement and Change of Law Process Agreement.rtf

From: Donaldson, Mark (TBS) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement
Date: Thursday, November 09, 2017 16:33:52

Hi Cindy,

Had a quick chat with Ken … maybe we can connect after Agenda Review?

From: Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
Sent: November 9, 2017 7:26 AM
To: Veinot, Cindy (TBS); Donaldson, Mark (TBS)
Cc: John Psinas
Subject: Fwd: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement

Hi Cindy and Mark

Pls see attached, we are meeting with Gadi this morning to go through the changes from OPG.

Much appreciated if you can do the same from the perspective of any potential impact to the Province's accounting and reporting and of course any other issues.

Thanks

Ken k

Begin forwarded message:

> **From:** LEE John -TREASURY <john.s.lee@opg.com>
> **Date:** November 9, 2017 at 2:52:50 AM EST
> **To:** Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>

Cc: RYFA Ken -TREASURY <ken.ryfa@opg.com>, LADAK Lubna -TREASURY <lubna.ladak@opg.com>, MAUTI John -FIN & C CTRL <john.mauti@opg.com>, "LAURETA LAPIRA May -TREASURY" <may.lapira@opg.com>, LIU Sheen -TREASURY <sheen.liu@opg.com>
Subject: Fwd: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement

As requested

Sent with BlackBerry Work (www.blackberry.com)

From: "Sebastiano, Rocco" <RSebastiano@osler.com>
Sent: Nov 9, 2017 2:12 AM
To: "Ramchandani, Rima" <rramchandani@torys.com>; "ASHBOURNE, STEPHEN" <STEPHEN.ASHBOURNE@blakes.com>; JON.VINER@blakes.com; JA.PRESTAGE@blakes.com; Malle.Hanslep@ontario.ca; Tobias.Whitfield@ontario.ca; tom.mckinlay@ontario.ca; Alena.Thouin@ontario.ca
Cc: "Feldman, Michael" <mfeldman@torys.com>; "Mansoori, Nina" <nmansoori@torys.com>; "Saulnier, Brett" <bsaulnier@torys.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; "Milligan, Peter" <PMilligan@osler.com>; "Fullerton, Rick" <RFullerton@osler.com>; "'Persaud, Donnie - Debt Capital Markets'" <Donnie.Persaud@cibc.com>; "Adalja, Sunil" <Sunil.Adalja@cibc.com>; "Maciel, Andrew" <Andrew.Maciel@cibc.com>; "'Benaiah, Ian'" <ian.benaiah@rbccm.com>; "'Khan, Nur (nur.khan@rbccm.com)'" <nur.khan@rbccm.com>; "'brent.r.taylor@rbccm.com'" <brent.r.taylor@rbccm.com>; "Niehaus, Katrina" <Katrina.Niehaus@gs.com>; "Delaney, Brian" <Brian.Delaney@gs.com>; "Conner, Robbin" <Robbin.Conner@gs.com>
Subject: EXTERNAL – RE: Change of Law Protection Agreement and Change of Law Process Agreement

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Please find enclosed revised drafts of the Change of Law Protection Agreement and the Change of Law Process Agreement. I have also enclosed redlines to the drafts which Stephen circulated on November 2nd. The revised drafts and comments contained in these two agreements are a consolidation of comments from Osler and Torys. Please note that we have not had an opportunity to discuss all of the revisions and comments contained in these revised drafts with OPG and the Dealers and therefore, are subject to any further comments which the Dealers and OPG may have.

The initial drafts of these two agreement have not been provided to the rating

agencies for their review and therefore, further revisions may be required following their review and comment once drafts have been provided to them to review.

Regards, Rocco?????
[cid:image001.gif@01D358FE.53C31E30]

Rocco Sebastiano
Partner

416.862.5859

DIRECT

416.862.6666

FACSIMILE

rsebastiano@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: November-02-17 9:02 PM
To: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; Hill, Krista <khill@torys.com<mailto:khill@torys.com>>

Cc: Hanslep, Malle (MOF) (Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>) <Malle.Hanslep@ontario.ca<mailto:Malle.Hanslep@ontario.ca>>; Whitfield, Tobias P. (MOF) (Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>) <Tobias.Whitfield@ontario.ca<mailto:Tobias.Whitfield@ontario.ca>>; tom.mckinlay@ontario.ca<mailto:tom.mckinlay@ontario.ca>; Thouin, Alena (ENERGY) (Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>) <Alena.Thouin@ontario.ca<mailto:Alena.Thouin@ontario.ca>>; VINER, JON <JON.VINER@blakes.com<mailto:JON.VINER@blakes.com>>; PRESTAGE, JA <JA.PRESTAGE@blakes.com<mailto:JA.PRESTAGE@blakes.com>>
Subject: Change of Law Protection Agreement and Change of Law Process Agreement

Rima, Krista, Nina and Michael,

Here are drafts of the Change of Law Protection Agreement and Change of Law Process Agreement. Please note that while various people at the Province have provided considerable thought and input into these drafts, they remain subject to on-going review, comment and consideration (including where indicated in the drafts) by the Province, and of course remain subject to ultimate consideration and approval by the Ministers. This circulation is for discussion purposes only. Please feel free to circulate these drafts to OPG, E&Y, Osler and the Dealers, reflecting that understanding.

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Regards, Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>
Dir: 416-863-3086

_____

[cid:imageb23443.GIF@edc8812c.40a5c483]

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Unsubscribe<https://urldefense.proofpoint.com/v2/url?u=https-3A__na01.safelinks.protection.outlook.com_-3Furl-3Dhttp-253A-252F-252Fwww.blakes.com-252FEnglish-252FResources-252FBulletins-252FPages-252Funsubscribe.aspx-26data-3D02-257C01-257Cjohn.s.lee-2540opg.com-257Cabe6ff3131a64b7ae4dd08d52741018d-257C962f21cf93ea449f99bf402e2b2987b2-257C0-257C0-257C636458083400295201-26sdata-3D6WT0PKhI84GuqOSyGxmFRE1haJjLELvz6-252BmkYpltRqQ-253D-26reserved-3D0&d=DwIF-g&c=qG_YucLTZOaBAapRaQkKEgrMWFFI0Cr1_eykjn9FtiQ&r=sDTjf9tVmfT9K92u269doOHn6NwIN5Soa0mhVrZmimM&m=TB284enhW9TDXv41kUcZXv1iZ93rrcPG-0qBrxckFeY&s=iGioGXs1OfZRyLUJEd0FhiGIefVpY8uX8t4lmU5wkvU&e= >

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RE_ EXTERNAL RE_ Fair Hydro -- Change of Law Assumption Agreement.rtf

From: WONG Leslie -LAWDIV [leslie.wong@opg.com]
To: Mansoori, Nina [nmansoori@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; LEE John -TREASURY [john.s.lee@opg.com]
CC: RYFA Ken -TREASURY [ken.ryfa@opg.com]; Ramchandani, Rima [rramchandani@torys.com]; Feldman, Michael [mfeldman@torys.com]; Olusoga, Yinka [yolusoga@torys.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Devine, James (OFA) [James.Devine@ofina.on.ca]; Yep, Carlos (OFA) [Carlos.Yep@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Cengarle, John (MOF) [John.Cengarle@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; Katona, Keley (MOF) [Keley.Katona@ontario.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Hirani, Anis (OFA) [Anis.Hirani@ofina.on.ca]; Kim, John (OFA) [John.Kim@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; 'STEPHEN.ASHBOURNE@blakes.com' [STEPHEN.ASHBOURNE@blakes.com]; LADAK Lubna -TREASURY [lubna.ladak@opg.com]
Subject: RE: EXTERNAL – RE: Fair Hydro -- Change of Law Assumption Agreement
Date: Wednesday, October 11, 2017 10:59:32
Attachment 1: image001.jpg

Dear Toby,

Just checking to see if you have had a chance to review our comments and whether the Province had any questions. We expect that the change of law protection agreement will be a topic of discussion at the Thursday morning rate-mitigation meeting and wanted to identify/address any questions from the Province beforehand if possible. Appreciate if you could let us know.

Regards,

Les

Leslie Wong

Senior Counsel

Ontario Power Generation Inc.
700 University Avenue, H18 G26.1, Toronto, ON M5G 1X6

T: (416) 592-3110 **|** E: leslie.wong@opg.com

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Friday, October 06, 2017 5:58 PM
To: 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Olusoga, Yinka <yolusoga@torys.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; LADAK Lubna -TREASURY <lubna.ladak@opg.com>
Subject: EXTERNAL – RE: Fair Hydro -- Change of Law Assumption Agreement

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Toby,

Thank you for your draft proposal; we have set out below our conceptual comments and concerns on it. Please note that the points below remain subject to the continuing review of OPG. Please also note that we have not yet sought the dealers' views on the proposal. We think it is premature to do so until we settle these points amongst

ourselves and a revised draft of the proposal is circulated reflecting our agreement.

As further discussed below, your proposal deviates in some key ways from what we proposed in our email of September 19 (attached) and raises the accounting and operational issues we tried to avoid in the September 19th proposal. Given the need to settle the Protection Agreement as soon as possible, we'd appreciate if we could discuss these points early next week.

Best Regards,

Nina

Accounting Issues:

E&Y has concerns from an accounting perspective with the level of Provincial oversight and input on certain parts of the process, namely:

-that OPG will likely have to go back to the Province on each incurrence of debt and they will have to do so prior to that incurrence

-that OPG must certify and provide a lot of detailed reporting with respect to each incurrence of debt
-the level of frequency of reporting in general (not just the certifications/information noted above but also the contemplated annual forecasts and quarterly updates of those forecasts)

-the negative pledge with respect to the exercise of certain options on the debt

-the fact that OPG must give notice to the Province when incurring funding obligations that are expressly excluded from the Protection Agreement

Taken as a whole, we understand that E&Y sees all of this as the Province exerting a level of control on the debt that no typical guarantor would have. Please also advise if the Province's accountants have reviewed the proposal.

Practical Issues:

- The procedural steps to bind the Province are lengthy and complicated. From our perspective, as drafted, OPG will likely have to seek Provincial approval on each debt issuance (which weakens the accounting as discussed above). The dealers and their counsel will have a reaction to the proposed adherence conditions but query whether there is value in setting out the adherence conditions in the Protection Agreement itself. Setting aside the mechanics of how we get there, the dealers want comfort that the incurrence of obligations by the financing entity will be covered by the Protection Agreement. We would propose that the mechanics of any approval process (once we settle the terms of that process) be the subject of a separate procedures agreement or memo from the Province to OPG, whereby the Province delegates to OPG the ability to bind the Province under the Protection Agreement with respect to an incurrence of obligations so long as the adherence conditions in the procedures agreement or memo have been met. The Protection Agreement would then simply state that, upon OPG certifying to the indenture trustee that the adherence conditions have been satisfied under the procedures agreement/memo, the Province will be deemed to be bound under the Protection Agreement with respect to the specific obligations incurred at the time of the certification.
- In addition to the accounting concerns, the level of detail and frequency of reporting required present timing and operational issues. For example, as part of the adherence conditions, you are asking for details on the interest rate. However, pricing will in part be driven off whether that specific incurrence will have the benefits of the Protection Agreement.

Drafting Issues:

- Please refer to the existing terminology of the Act to ensure there is certainty on the obligations covered under the Protection Agreement. We think the best way for you to approach this would be to refer to all finance amounts and then expressly carve out what you are proposing not be covered.
- We'd like to understand the reason OPG's management fees have been excluded. We assume you do not intend for OPG's reimbursement costs (costs incurred by OPG on behalf of the Financing Entity) to be excluded? Please advise why taxes are being excluded?
- There are a few references to "exceed the maximum amount specified therefor in the applicable governing document". Please advise what is being contemplated here.
- We have a number of other drafting comments which we'll revisit once we've settled on the conceptual points above and have reviewed a revised draft of the document.

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

From: Whitfield, Tobias P. (MOF) [mailto:Tobias.Whitfield@ontario.ca]
Sent: September-27-17 4:21 PM
To: Ramchandani, Rima <rramchandani@torys.com>; Feldman, Michael <mfeldman@torys.com>; Mansoori, Nina <nmansoori@torys.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>
Cc: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Nelms, Scott (MOF) <Scott.Nelms@ontario.ca>; Devine, James (OFA) <James.Devine@ofina.on.ca>; Yep, Carlos (OFA) <Carlos.Yep@ofina.on.ca>; Strathy, Anna (OFA) <Anna.Strathy@ofina.on.ca>; Cengarle, John (MOF) <John.Cengarle@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Katona, Keley (MOF) <Keley.Katona@ontario.ca>; He, Gavin (OFA) <Gavin.He@ofina.on.ca>; Hirani, Anis (OFA) <Anis.Hirani@ofina.on.ca>; Kim, John (OFA) <John.Kim@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; Thouin, Alena (ENERGY) <Alena.Thouin@ontario.ca>; McKinlay, Tom (MAG) <Tom.McKinlay@ontario.ca>; 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Rima,

Further to our earlier conversations, please find attached our proposed process for confirmation of application of the Protection Agreement.

We would be happy to discuss further when you have had a chance to review.

Best

Toby

Tobias Whitfield

Counsel, Legal Services Branch

Ministry of Finance

tobias.whitfield@ontario.ca

Phone: 416-325-1456

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: September 25, 2017 12:21 PM
To: 'STEPHEN.ASHBOURNE@blakes.com'; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Thouin, Alena (ENERGY)
Cc: LEE John -TREASURY; RYFA Ken -TREASURY; 'WONG Leslie -LAWDIV'; Feldman, Michael; Mansoori, Nina
Subject: RE: Fair Hydro -- Change of Law Assumption Agreement

Good morning all, just following up on our email below. Please let us know when we should expect your feedback.

Many thanks,

Rima

Rima Ramchandani

P. 416.865.7666 | F. 416.865.7380 | 1.800.505.8679

79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com

https://na01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.torys.com&data=02%7C01%7Cleslie.wong%40opg.com%7Cc2d1058df1a14f16261308d50d055e25%7C962f21cf93ea449f99bf402e2b2987b2%7C0%7C0%7C636429239069134417&sdata=Zg5s3uvWMO5mrlouhgUPH4X8Wl2LoTKllZXonNgrGt8%3D&reserved=0

From: Ramchandani, Rima
Sent: September-19-17 9:55 PM
To: 'STEPHEN.ASHBOURNE@blakes.com' <STEPHEN.ASHBOURNE@blakes.com>; Hanslep, Malle (MOF) <Malle.Hanslep@ontario.ca>; 'Whitfield, Tobias P. (MOF)' <Tobias.Whitfield@ontario.ca>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; 'WONG Leslie -LAWDIV' <leslie.wong@opg.com>; Feldman, Michael <mfeldman@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Mansoori, Nina <nmansoori@torys.com>
Subject: Fair Hydro -- Change of Law Assumption Agreement

Steve, Malle and Toby, further to our meeting the other day, set out below for your review is a proposal on the Provincial approval process under the Change of Law Assumption Agreement. Once we have your feedback on this, we will need to share it with Osler and the accountants and as John mentioned, we are under some time pressure to bring this to a resolution prior to the upcoming June 29 OPG Board meeting. We look forward to your comments, and feel free to reach out if you have any questions. -- Rima

Obligor Approval

The Change of Law Assumption Agreement will apply to all Specified Claims relating to Funding Obligations that are incurred by an Eligible Financing Entity in accordance with the Obligor's approval process. The definition of Specified Claims to be mutually agreed by all parties.

In order for a Financing Entity to become designated as an Eligible Financing Entity by the Obligor, prior to the initial issuance of Funding Obligations by such Financing Entity, the Obligor will be provided with copies of the following documents (collectively the "Program Documents") for review:

(i) the constating documents of such Financing Entity;

(ii) the management agreement between the Financing Entity and OPG;

(iii) the master transfer and servicing agreement between the Financing Entity and the IESO;

(iv) the master trust indenture governing the issuance of Funding Obligations by the Financing Entity;

(v) a form of supplemental indenture governing the issuance of bonds, issuable in series, by the Financing Entity;

(vi) a form of note purchase agreement or credit agreement governing the issuance of short term Funding Obligations by the Financing Entity;

(vii) a form of schedule to an ISDA Master Agreement governing derivative transactions that may be entered into the Financing Entity from time to time; and

(viii) such other documents as may be requested by the Obligor.

Once a Financing Entity is designated by the Obligor as an Eligible Financing Entity, it will not be necessary for the Obligor to approve the documentation related to specific issuances of Funding Obligations; however, OPG will be expected to notify the Obligor of any new material program documentation or any material amendments to existing program documentation before such new documentation or amendments become effective. The failure of OPG to provide any such notice will not invalidate the application of the Change of Law Assumption Agreement to any Specified Claims.

It will not be necessary for the Obligor to approve each new issuance of Funding Obligations provided that such Funding Obligations are issued in accordance with following:

(1) The Funding Obligations are issued in accordance with agreements that contain: (a) covenants of the Eligible Financing Entity that are no more onerous in any material respect and (b) events of default that are consistent in all material respects, respectively, with the covenants of the Eligible Financing Entity and events of default contained in the draft Program Documents.

(2) At least [30 days] prior to the initial issuance of Funding Obligations by an Eligible Financing Entity, OPG will provide the Obligor with a forecast of the principal amount and expected term of the Funding Obligations that OPG expects such Eligible Financing Entity to issue in accordance with the Financing Plan in the next two years (a “Two Year Forecast”). The execution of the Change of Law Assumption Agreement in respect of such Eligible Financing Entity shall constitute the Obligor’s approval of the issuance of Funding Obligations by such Eligible Financing Entity in accordance with the Two Year Forecast.

(3) OPG shall provide the Obligor with an updated Two Year Forecast between 9 and 12 months prior to the expiry of each current Two Year Forecast.

(4) Unless the Obligor provides OPG with a written notice no later than 3 months prior to the date following receipt of the current Two Year Forecast that the Change of Law Assumption Agreement will be inapplicable with respect to new Funding Obligations incurred following the expiry of the current Two Year Forecast, the Obligor will be deemed to approve the application of the Change of Law Assumption Agreement to all Funding Obligations incurred up to the expiry of the new Two Year Forecast.

At the time of issuance of Funding Obligations by an Eligible Financing Entity, the Financing Entity will provide (i) any required certifications to the underwriters/agents that such Funding Obligations are covered by the Change of Law Assumption Agreement; and (ii) notice to the Obligor of the material terms of the Funding Obligations issued, together with electronic copies of the final executed Program Documents.

P. 416.865.7666

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image001.pdf

TORYS
LLP

RE_ EXTERNAL □RE_ OPG analysis re_ FHP and AROs.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: EXTERNAL – RE: OPG analysis re: FHP and AROs
Date: Friday, September 22, 2017 15:02:39

This message has been archived. View the original item
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201710248868000~201709221902460000~Z~B158E42CCBAC124AAC198D37AA483A21
View the original item

Hi Mark,

We have reviewed the term sheet and don’t have any comments. It seems sufficiently compartmentalized to material changes instituted by the government. However, we would like to unde

RE_ EXTERNAL □RE_ OPG analysis re_ FHP and AROs.rtf

From: Donaldson, Mark (TBS) []
To: leeanne.probert@ca.ey.com [leeanne.probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: EXTERNAL – RE: OPG analysis re: FHP and AROs
Date: Thursday, September 21, 2017 09:21:23
Attachment 1: Term Sheet - Provincial Protection Agreement - Sept 18 - Blackline.pdf
Attachment 2: FHP Memo - Draft V5 17-Aug-2017_cv.docx

Hi Lee Anne,

Cindy and I had an opportunity to do a review of the memo, and some comments have been updated. We've also included the draft protection agreement (a.k.a. term sheet) for the debt financing. We are not able to have our call on Friday morning, but if you have any comments, if you could let us know by Friday, that would be helpful as we are taking this item to Treasury Board on Monday.

We can discuss in more detail at our scheduled in-person meeting as well.

Happy to discuss,

Mark

416-325-8027

From: Donaldson, Mark (TBS)
Sent: August 29, 2017 7:59 PM
To: leeanne.probert@ca.ey.com
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: FW: EXTERNAL – RE: OPG analysis re: FHP and AROs

Hi Lee Anne,

Please find attached the memo received from OPG.

Attached is a very draft analysis on just the principal repayments of the intangible.

Cheers,

Mark

Sent with BlackBerry Work
(www.blackberry.com)

From: Veinot, Cindy (TBS)
Sent: August 18, 2017 9:03 AM
To: 'JORDA Jenny -FIN & C CTRL'; MAUTI John -FIN & C CTRL
Cc: Donaldson, Mark (TBS); Hosick, Sarah (TBS)
Subject: OPG analysis re: FHP and AROs

Hi Jenny and John,

We are pulling together our overall analysis of the FHP from the Province's consolidated perspective (working with advisors from EY on this) and we want to include an analysis of OPG's issues re: treatment of the asset as an intangible and consolidation of the trust. Is there an analysis re: the intangible that you can share with us and have you updated your analysis re: the consolidation of the trust (the last version we saw speaks to what needs to be in place vs. what is in place)?

Thanks,

Cindy

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Term Sheet - Provincial Protection Agreement - Sept 18 - Blackline.pdf

Provincial Protections and Assurances

Indicative Term Sheet

Ontario Fair Hydro Plan Act, 2017

*This indicative term sheet (the "**Term Sheet**") relates to transactions contemplated to be undertaken under the Ontario Fair Hydro Plan Act, 2017 (the "**Act**") and the regulations made thereunder (the "**Regulation**"). This Term Sheet is to be held confidential. Unless otherwise specified, defined terms used herein have the meanings ascribed to them in the Act. The provincial protection and assurance arrangements contemplated in this Term Sheet will include such terms and conditions as the Minister of Energy and the Minister of Finance determine to be appropriate. This Term Sheet is not intended to create any obligations or be binding.*

Change of Law Protection Agreement:	A Change of Law Protection Agreement will be among the Obligor, a Financing Entity and an Indenture Trustee, acting for and on behalf of the Beneficiaries in accordance with a Trust Indenture.
Obligor:	The Province of Ontario, by the Minister of Energy and the Minister of Finance acting together.
Indenture Trustee:	An indenture trustee, acting for itself and on behalf of other persons entitled under an applicable Trust Indenture.
Beneficiaries:	The Indenture Trustee, acting for itself and on behalf of other persons entitled under Specified Claims.
Specified Claims:	Payment obligations of the Financing Entity that are secured under the Trust Indenture and that are approved as contemplated below under Obligor Approval.
Protection Events:	Any of the following would constitute a Protection Event: (A) (1) the Legislature repeals (and does not replace on an equivalent basis) or amends the Act or any portion thereof; (2) the Legislature enacts or amends any other statute; (3) the Lieutenant Governor in Council repeals (and does not replace on an equivalent basis) or amends the Regulation made under the Act or any portion thereof; or (4) the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council

	makes or amends any "regulation" (as defined in Part III of the *Legislation Act, 2006*); (5) there is a change in the organization or structure of the IESO or Ontario's electricity market undertaken at the initiative of the Province or an entity controlled by the Province, in each case, that [materially][1] and adversely affects (a) the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims, or (b) the Change of Law Protection Agreement or any of the agreements under which Specified Claims arise, other than if the Indenture Trustee has confirmed in writing that the affect under such agreements is otherwise acceptable; or (B) a court of competent jurisdiction [in a final and non-appealable judgement][2] determines that all or a portion of the Act or the Regulation is *ultra vires* or invalid in a way that [materially][3] and adversely affects the ability of the Financing Entity to receive amounts on its investment interest so that it can pay Specified Claims.
Obligation to Pay Specified Claims:	Upon the occurrence of a Protection Event, the Indenture Trustee will have the right to require the Obligor to pay the Specified Claims owing by the Financing Entity when they become due and payable (without acceleration). The exercise of such right by the Indenture Trustee in accordance with the Trust Indenture shall constitute the only remedy available under the Change of Law Protection Agreement. Under no circumstances shall the Obligor be obligated to pay or indemnify a Beneficiary for consequential, special or punitive damages, or for economic loss or loss of profits.
Subrogation:	Upon paying a Specified Claim to a Beneficiary, the Obligor as guarantor shall have rights of subrogation, including becoming entitled to all of the applicable Beneficiary's rights and interests under and in respect of the Specified Claim, including the security interest in each related investment interest and related property of the Financing Entity.

[1] Under consideration to assess the marketability implications of materiality threshold.

[2] Under consideration to assess the marketability implications of this phrase.

[3] See footnote 1, above.

Optional Assumption:	At any time following the occurrence of a Protection Event, the Obligor shall be entitled (but not obligated) to assume the Financing Entity's obligations in respect of Specified Claims as obligor and debtor. The Financing Entity (including through the Financial Services Manager) will ensure that Specified Claims permit such an assumption by the Obligor without any penalty or make-whole payment (or, in the case of any contract for the provision of on-going services to the Financing Entity, the satisfaction and termination of the Specified Claims without any acceleration of future fees, profits or other like amounts), or any requirement for further consent, approval or agreement.
Term:	The Change of Law Protection Agreement will continue for as long as any Specified Claim remains outstanding.
Obligor Approval:	The process by which a Specified Claim will become subject to the Change of Law Protection Agreement will be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity.
FIPPA:	The Change of Law Protection Agreement will acknowledge that the Obligor will be bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Obligor, or any agent or representative of the Obligor in connection with the Change of Law Protection Agreement, may be subject to disclosure in accordance with the act or as otherwise required by law.
Representations and Warranties:	To be determined by the Minister of Finance and Minister of Energy in negotiation with the Financing Entity.
Confidentiality Obligations:	To be determined based on what would be customary and appropriate for similar types of arrangements and is acceptable to the Obligor and the Financing Entity.
Governing Law:	Province of Ontario.

FHP Memo - Draft V5 17-Aug-2017_cv.pdf

Disclaimer

Ernst & Young LLP (“EY”) prepared the attached Report only for the OPCD. EY did not perform its services on behalf of, or to serve the needs of, any other person or entity. Accordingly, EY expressly disclaims any duties or obligations to any other person or entity based its use of the attached Report. Any other person or entity must perform its own due diligence inquiries and procedures for all purposes, including, but not limited to, satisfying itself as to the financial condition and control environment of the Province or any of the other entities involved, as well as the appropriateness of the accounting for any particular situation addressed by the Report.

EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and for decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) component of the FHP on Ontario's consolidated financial statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management~~, including the accounting opinions views of their external accounting advisors~~ and their external auditors and/or advisors. Given the complexity of the GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served. ~~This accounting analysis considers currently available information, including efforts underway by the International Accounting Standards Board as related to rate regulated accounting. It also draws upon publicly available information including previous studies and bases for conclusions dealing with rate-regulated accounting, both in the public sector and the private sector.~~

Background

The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over ~~the following~~ four years.

Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices is to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 and related regulations (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for 18-19% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province (i.e. the government reporting entity) will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts, including interest and other costs, will be recoverable from ratepayers through future rates over ~~an estimated 18-year period starting in approximately 2028~~a future period, ending in 30 years (2047). In other words, the impact of #1 above is fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the appropriate accounting for the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province in accordance with PSAS. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Commented [VC(1]: Agreed – need to have the accounting documented

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

Commented [VC(2]: ? do we need to document the independence of the regulator – evidence –supreme court case re: OPG

Prior to consideration of the FHP Act, ~~I~~in accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The rate setting process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to settle any such variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The IESO is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, as an agent.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying electricity, however, is ~~greater~~ higher or lower than the MCP. The actual cost can be higher than the MCP as certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators may receive compensation for investing in clean energy infrastructure when it is relatively less economical. In these instances, the IESO (and previously the ~~XXX~~Ontario Power Authority) entered into contracts to pay the generators the~~r excess~~ costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts that are in excess of the MCP are currently included in the rates set by the OEB (as part of the Global Adjustment) with the intention they will be recovered from consumers in the same

period they are paid to the generators. As previously noted, the complexity of the rate setting process results in variances between the amount paid to the generators and the amount collected from RPP consumers.

Under existing legislation, the IESO is required to fund any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent settlement with ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, the cost of supplying electricity to RPP consumers that is paid to generators will no longer be fully collected over a 12-month period.

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from ratepayers over a ~~thirty year~~longer period. Deferring the recovery of these costs from the consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.

Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires that IESO establish and maintain a variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. This role of the OEB is not dissimilar to its current role with respect to the setting of RPP rates to recover the global adjustment, albeit over 12 months. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream.

The Province has requested that OPG administer the deferral of the Global Adjustment under the FHP because of OPG's participation in the market and~~,~~ the regulatory knowledge OPG possesses ~~and the expected ability to consolidate the accounting of the related activity in the financial statements of OPG~~. To fulfill this role, OPG intends to establish a financing entity (OPG Trust) ~~which would have a choice~~ to purchase the IESO's regulatory asset on a monthly basis ~~which would~~and eliminate any cash shortfall in the IESO. OPG Trust will not be required to purchase the regulatory assets from IESO. Reasons for it deciding not to purchase the regulatory assets could relate to a capital markets disruption such that OPG Trust would not be able to finance the acquisition. ~~Through this arrangement,~~ OPG Trust ~~will~~ intends to finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. The current accounting for these entities is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC. ~~Nonetheless,~~ US GAAP to IFRS adjustments are made for the purposes of preparing the consolidated provincial accounts.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for purposes of determining the differences between US GAAP and IFRS. ~~for its general purpose financial statements~~.

This memo does not reconsider the classification of these existing entities (i.e., such classifications are based on past published Public Accounts).

As discussed in detail in a subsequent section, OPG expects that under IFRS it will be considered to control OPG Trust. As such, ~~If this is the case,~~ OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS. ~~If, however, it is determined that OPG Trust is controlled by the Province, OPG Trust will either (a) be consolidated in the GRE on a line-by-line basis under PSAS determined to be an OGO, or (b) reflected in the GRE through modified equity accounting under IFRS if determined to be a GBE.~~

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.

- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and prepares its standalone, general purpose financial statements in accordance with PSAS based on an assessment of its user needs, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE. ~~Under PSAS, the entity has selected to apply PSAB accounting standards to meet its user needs.~~

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities[2] to be reflected in the financial statements. Under the new policy, the assets and liabilities recognized on the IESO's statement of financial position relating to the IESO-administered markets include cash, amounts due from market participants, interest receivable, revolving line of credit, HST receivable, amounts due to market participants and other liabilities. The IESO statement of operations and accumulated surplus does not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS does no~~'~~t provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

[2] The IESO ~~itself does not buy or sell electricity. It~~ administers the wholesale electricity market by authorizing market participants, publishing system forecasts and market information, producing statements and invoices, and performing financial settlement transactions for the markets.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;
b) the entity has inventory risk before or after the customer order, during shipping or on return;
c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and
d) the entity bears the customer's credit risk for the amount receivable from the customer.

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, which makes it a self-sustaining entity, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

Commented [VC(3]: Does the legislation speak to IESO incurring a loss?

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules. This treatment is consistent with the conclusion that the IESO is acting as an agent in the market-settlement process.

Commented [VC(4]: Is there a reference for this statement?

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of the FHP Act to be a 'regulatory asset'. This variance account is similar in nature to the current variance account established under Section 25.33(5) of the Electricity Act, 1998 , discussed in the Background Section to this memo.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in both the standalone financial statements of the IESO and the consolidated financial statements of the GRE. As discussed in a later section, the conclusion reached with respect to the appropriate accounting for the FHP in the standalone financial statements of the IESO as an OGO reporting under PSAS may impact the consolidated financial statements of the GRE.

As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) has publicly stated that it does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board. The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes. In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following: *Chapter 9, Section 1.2.3* *Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.* The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's

expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Commented [LAP5]: Uplift charges are comprised of a number of things. To ask IESO for help to summarize succinctly.

Need details

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to provincial revenues and, therefore, is no longer a component of the IESO~~'s~~ invoice.

Wholesale Transmission Charge

This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge

When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*

Commented [DM(6]: Will provide ASAP (Following up with IESO)

Commented [DM(7]: Understanding is not all costs have shifted; need to confirm where the line is drawn

Commented [LAP8]: To confirm with Energy if all costs have shifted.

Commented [LAP9]: CV to determine if there is anything else to add from IESO's analysis.

Commented [LAP10]: To confirm with Energy if all costs have shifted.

- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with OEB Decision and Order EB-2015-0298.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [LAP11]: Consider Navigant report if/when becomes available

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in

the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

a) *It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
b) *Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. ~~Although the timing of the recovery of the regulatory asset has not yet been established by statute, the~~The recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan (Appendix B), will need to be continually evaluated throughout the recovery period.

The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

The IESO is considered an agent in the market-settlement process and, therefore, recognizes revenue on a net basis. Although this conclusion impacts whether the recovery of costs through rates are presented as revenue in the financial statements of the IESO, it is not considered to preclude these amounts from being considered 'future revenue' for purposes of assessing the criteria in ASC 980-340-25-1. In fact, the capitalization of the incurred costs in the FHP variance account preserves the treatment of the IESO as

Commented [VC(12]: Suggest we expand this analysis – not sure this is technically true (the price set would just be very high), but practically, this would probably not be permitted to occur

Commented [LAP13]: Once the terms of the guarantee are finalized, I think we should comment (if true) that the guarantee relates to regulatory changes and does not cover lack of demand.

CV – will share a copy of the current agreement – does not cover lack of demand

an agent (i.e., if these costs are not capitalized, it results the recognition of costs in the period incurred and the recognition of revenue in a subsequent period when electricity is consumed, which, in effect, is gross presentation). To put another way, not capitalizing the costs in FHP variance account treats the IESO as a principal in the transaction by showing costs and revenue.

Is ASC 980 an acceptable source of guidance under PSAS[3]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1 (i.e., silence under PSAS on this specific topic does not, on its own, mean that such guidance is to be ignored). However, PSAS 1000.05 makes it clear that in order to do so, it must first be

[3] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) *they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;*
b) *the public sector entity can control the economic resource and access to the future economic benefits; and*
c) *the transaction or event giving rise to the public sector entity's control has already occurred.*

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period.

The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

The guidance on forgivable loans in PSAS 3050, Loans receivable, provides an example where an asset can be recognized under PSAS based on the existence of sufficient evidence of a reasonable expectation of its recovery.

Commented [VC(14]: To update based on the new LTEP to be issued this fall.

Commented [LAP15]: Once the terms of the guarantee are finalized, I think we should comment (if true) that the guarantee relates to regulatory changes and does not cover lack of demand.

Also need to consider whether a different conclusion is reached on consolidation

CV -- agreed

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

- *(a) the balance in the variance account shall be reduced by the amount of the payment;*
- *(b) the regulatory asset shall be adjusted accordingly;*
- *(c) the financing entity shall acquire a corresponding investment interest; and*
- *(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.*

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

Commented [LAP16]: Once terms of guarantee are finalized, need to consider if it impacts this discussion. Impact may not be at IESO level, but on consolidation.

Commented [VC(17)]: See previous point – to reference to that discussion.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro ~~can~~ may be relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29
The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

While PSAS does not prescribe an ordering of consideration for sources other than primary sources, the statements made with respect to IFRS by the OAG have been considered. It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*
- *h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- *a) are normally employed to deliver government services;*
- *b) may be consumed in the normal course of operations; and*
- *c) are not for sale in the normal course of operations.*

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'.

In accordance with PSAS 1201.040(a), financial assets are presented separately on the statement of financial position. The IESO classifies its regulated assets (i.e., the original variance account and the

regulated assets relating to unrecovered smart metering expenses and unrecovered PSAB transition items) as financial assets.

Although the regulatory asset created under the FHP does not clearly meet the definition of either a financial asset or a non-financial asset under PSAS, ~~Consistent with these other regulated assets, the regulatory asset created under the FHP meets the definition~~ it possesses characteristics more consistent with that of a financial asset ~~in PSAS 1000.39~~ since it will be available to discharge existing liabilities or finance future operations and is not for consumption in the normal course of operations.

The FHP is expected to be executed in a manner such that the regulatory asset will be available to discharge existing liabilities or finance future operations in the short term through its commoditization (i.e., transfer to the OPG Trust). However, even if not commoditized, the regulatory asset will ~~Although the regulatory asset is not~~be available to discharge existing liabilities or finance future operations in the future similar to, for example, a long-term receivable. ~~existing at the date of the statement of financial position, that is no different than, for example, a long-term accounts receivable.~~

By recognizing the regulatory asset ~~as a~~in a manner consistent with that of a financial asset, the FHP will have a neutral impact on both the Province's net debt and accumulated deficit, which appears appropriate and aligned ~~-~~with the intent of guidance in PSAS 1100, Financial statement objectives:

Financial statements should present information to describe the government's financial position at the end of the accounting period. Such information should be useful in evaluating:

a) *the government's ability to finance its activities and to meet its liabilities and contractual obligations; and*
b) *the government's ability to provide future services.*

A government's net debt is an important indicator of a government's financial position, highlighting the financial affordability of future government service provision. A net debt position represents a "lien" on the ability of the government to apply financial resources and future revenues to provide services. Non-financial assets are added to net debt to calculate the other indicator of a government's financial position — its accumulated surplus or deficit. Non-financial assets are "prepaid service potential". Reporting a government's recognized non-financial resources as part of its financial position provides information necessary for a more complete understanding of a government's debt position, financial position and future operating requirements.

Governments provide public services and redistribute wealth for a variety of social and economic purposes. To meet those objectives, governments need information about the cost of services and the affordability of services. An understanding of the extent of the financial "lien" the government has on its ability to provide future services as a result of past transactions and events is essential information. Governments also need to have an appreciation of the magnitude of the total economic resources they have on hand to deliver services. A government's net financial resources / net debt position, assessed in combination with the non-financial resources position of the government, provides a measure of the net recognized economic resources available to the government at the financial statement date to provide services in the future.

If the regulatory asset is not recognized ~~as~~ in a manner consistent with that of a financial asset by the GRE, the Province's net debt will increase significantly, suggesting that the Province has a much higher future revenue requirement. This would be inaccurate, however, since the regulatory asset is going to be recovered under statute from electricity consumers, not taxpayers.

Commented [LAP18]: Consider need to specifically address PS 3450.

Commented [LAP19]: Consider if Balanced Budget Legislation should be addressed

Additionally, while an increase in net debt and/or accumulated deficit in the financial statements of the GRE would be an indicator the Province's financial position has deteriorated in accordance with PSAS 1200.036, the FHP is designed to, in substance, have a neutral impact on the Province's financial position.

Sale of the Regulatory Asset [NTD – Need to consider impact of guarantee when finalized, but may only impact at consolidated level if IESO not a party to guarantee]

Commented [VC(20]: To add

As discussed above, IESO management has concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with the guidance in ASC 980.

Since the IESO does not have the financial capability to finance the regulatory asset, OPG intends to establish a financing entity (OPG Trust) to purchase the IESO's regulatory asset on a monthly basis to eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

The sale of the regulatory asset to OPG Trust is permitted under Section 26 of the FHP Act:

> *26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.*
>
> *Agreement*
>
> *(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.*
>
> *Effect of payment*
>
> *(3) Upon receipt by the IESO of the payment by the financing entity,*
>
> *(a) the balance in the variance account shall be reduced by the amount of the payment;*
>
> *(b) the regulatory asset shall be adjusted accordingly;*
>
> *(c) the financing entity shall acquire a corresponding investment interest; and*
>
> *(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.*

Consideration needs to be made as to whether the sale of the regulatory asset is accounted for as a sale transaction or a financing transaction. If treated as a sale transaction, the existing regulated asset is derecognized (DR Expense, CR Regulated Asset) and the cash received is recognized as sales proceeds (DR Cash, CR Revenue). Since the cash proceeds received are equal to the book value of the regulated asset, there is no net impact to income. If treated as a financing transaction, the existing regulated asset continues to be recognized and the cash proceeds received are treated as a loan (DR Cash, CR Payable).

Commented [VC(21]: Do you think IESO should recognize revenue and expense – vs. a gain of NIL?

IESO management has concluded the sale of the regulatory asset to OPG Trust will result in the derecognition of the regulated asset (i.e., sale transaction). The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from the KPMG Letter:

We have considered the foregoing analysis and management's conclusion. We concur that the regulatory asset should be derecognized on transfer to the OPG Trust as IESO no longer has rights or future economic benefits associated with the asset.

PSAS provides little guidance relating to the derecognition of an asset. In particular, PSAS 1000, *Financial statement concepts*, PSAS 3210, *Assets*, and PSAS 3450, *Financial instruments*, are all silent on

the topic. Although the transfer of the regulatory asset is not within the scope of PSAS 3430, *Restructuring Transactions*, the following derecognition guidance in this standard provides some relevant insight:

.21 Individual assets and liabilities transferred in a restructuring transaction should be derecognized by the transferor if they no longer meet the definitions of assets and liabilities and applicable recognition criteria at the restructuring date.

.24 When a transferor continues to be involved in the individual assets and/or liabilities it transferred to a recipient subsequent to the restructuring date, it would assess the nature and extent of its continued involvement against the definitions of assets and liabilities and applicable recognition criteria to evaluate whether:

(a) derecognition of the asset and liability transferred would be appropriate; and
(b) its continued involvement gives rise to a new asset or new liability that needs to be recognized.

.25 A new asset or new liability may arise from a restructuring due to a transferor's continued involvement in the individual assets and liabilities transferred (for example, if it agrees to guarantee repayment of all or a portion of a transferred liability or leases back a portion of a transferred asset). As the new asset or new liability is not transferred, together with related program or operating responsibilities, they are not part of the restructuring transaction. They would be accounted for in accordance with individual Sections of the PSA Handbook by both the transferors and recipients.

The IESO should derecognize the regulated asset when transferred to OPG Trust if it no longer meets the definition of an asset in PSAS 1000.35-.36. However, consideration should also be made as to whether the IESO has any continued involvement in the regulatory asset that would result in the recognition of a new asset and/or a new liability (i.e. financing transaction).

The following supports the IESO's position that subsequent to the transfer to OPG Trust, the regulatory asset no longer possesses the three essential characteristics of an asset in PSAS 1000.36 and, therefore, should be derecognized:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows
The future economic benefits embodied in the regulated asset are realized by the IESO through the transfer of the regulatory asset to OPG Trust in exchange for cash. As noted above, under Section 26(2)(d) of the FHP, the IESO retains no further right, title or interest in the regulatory asset transferred to OPG Trust. Accordingly, there is no remaining future economic benefit to the IESO.
The public sector entity can control the economic resource and access to the future economic benefits
Although the IESO will collect funds on behalf of OPG Trust, the following sections of the FHP support that control of and access to the future economic benefits of the regulatory asset pass to OPG Trust: *Section 16 - IESO to receive amounts* *2) The IESO shall, as agent of the investment interest owners, receive amounts in respect of the clean energy adjustment paid to it from electricity vendors in accordance with the market rules made under section 32 of the Electricity Act, 1998 or the regulations.*

4) All amounts received by the IESO in respect of the clean energy adjustment shall, until remitted to or for the benefit of the investment interest owner, be held in trust by the IESO for the investment interest owners. *5) The IESO shall remit amounts received by it in respect of the clean energy adjustment, inclusive of interest earned on the amounts referred to in subsection (1), to or for the benefit of the investment interest owners in accordance with the regulations.* *Section 29 - Irrevocable rights and interests* *1) The investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests of investment interest owners:* *1. The right and interest to impose, invoice, collect, receive and recover the clean energy adjustment from specified consumers, including the right to determine the clean energy adjustment in accordance with this Act.* *2. The right to receive, collect and recover the clean energy adjustment that is imposed, invoiced and recoverable under this Act, including any amounts in respect of the clean energy adjustment that are held by electricity vendors, IESO and other prescribed parties.*
The transaction or event giving rise to the public sector entity's control has already occurred
Not applicable as IESO does not control.

As previously noted, the IESO relinquishes its rights, title and interest in the regulatory asset upon transfer to OPG Trust. Subsequent to the transfer, the IESO's only continuing involvement is to act as agent of OPG Trust, which involves receiving funds and holding them in trust on behalf of OPG Trust. This level of continuing involvement does not result in the recognition of a new asset and/or a new liability by the IESO. Accordingly, it is appropriate to account for the transfer of the regulatory asset as a sale and derecognize the regulated asset.

Derecognition of the regulated asset is also consistent with ASC 980. ASC 980-340-40-1 provides the following guidance on the derecognition of an asset that has been recognized in accordance with ASC 980-340-25-1:

If at any time an entity's incurred cost no longer meets the criteria for the capitalization of an incurred cost (see paragraph 980-340-25-1), that cost shall be charged to earnings.

In order for an incurred cost to be capitalized, ASC 980-340-25-1(a) requires the following:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.

The capitalization criterion in ASC 980-340-25-1(a) is no longer met after the regulatory asset is transferred to OPG Trust because there are no future cash inflows that benefit the IESO. As mentioned above, the IESO realized the economic benefits associated with the regulatory asset upon the transfer. In accordance with Section 16 of the FHP, any future cash collected by the IESO is on behalf of OPG Trust.

.....

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS are set out in Scenario A in the table below. For comparison purposes, Scenario B in the table below sets out the accounting if it is determined ~~, depends on whether~~ the regulatory asset is not eligible for recognition as an asset ~~for accounting purposes~~ under PSAS. ~~To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes. The following table illustrates the journal entries to be booked by the IESO under both scenarios:~~

Scenario A – Regulated Asset			Scenario B – Not a Regulated Asset		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Revenue	(100)	CR	Gain	(100)
DR	Expense	100			
CR	Asset	(100)	~~CR~~	~~Gain~~	~~(100)~~

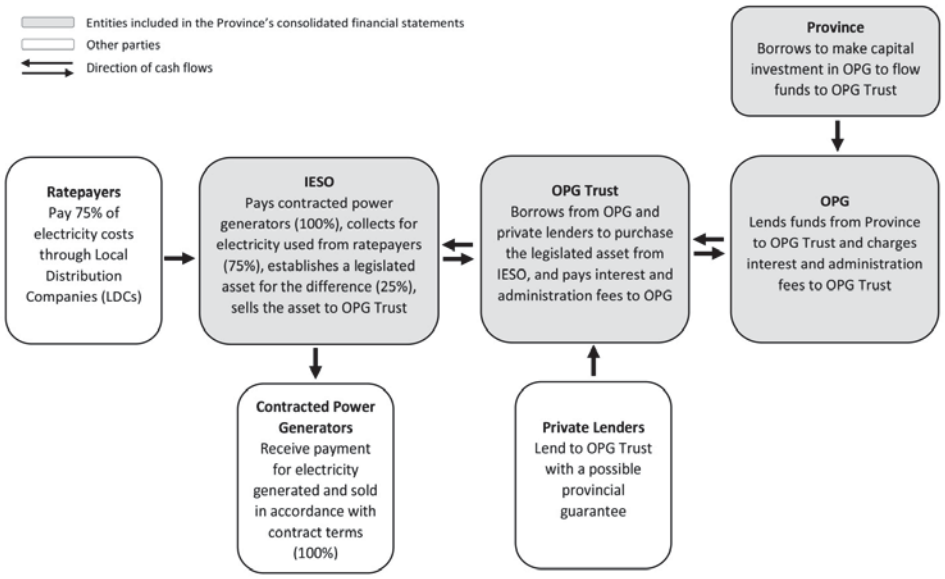
Commented [OPCD22]: Consider inserting 2 additional lines for impact on net debt and impact on annual surplus/deficit? If not sold by the end of the year, will have a loss on the IESO f/s and the province's f/s.

Commented [LAP23]: Maybe better to do once we add the consolidation section which would reverse the gain.

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

APPENDIX A

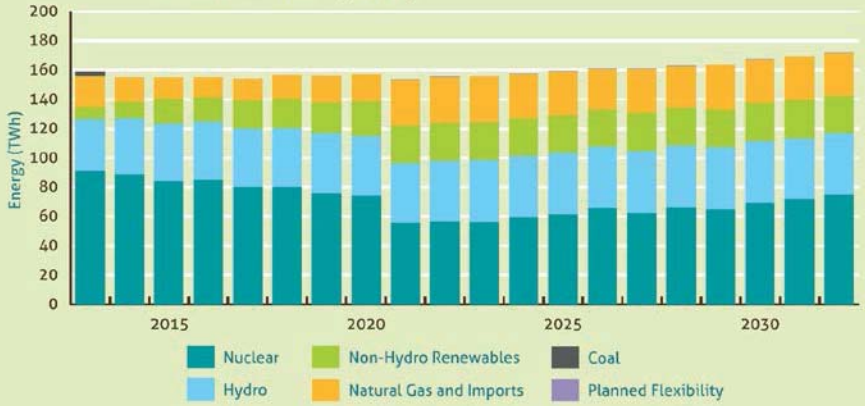
Proposed Legislated Transaction Structure
Prepared by the Office of the Auditor General of Ontario



Commented [OPCD24]: Can chart be expanded to include impact on CFS (consolidation of IESO reflecting RRA on CFS, Interest Income from OPG through revenue of GBE will help to offset borrowing costs incurred by Province on equity injection).

APPENDIX B

Figure 19: Ontario's Forecast Electricity Production (TWh)



Notes: The Planned Flexibility identified in Figure 19 is required to meet peak requirements and represents less than 1 TWh of energy per year. Forecasting of electricity production includes the expectation of imports and exports of electricity in all years. Imports and exports are an important component in managing the operation of the electricity system. As a result, electricity production forecast exceeds the forecast Ontario consumer demand.

RE_ EY_OPCD Status Updates.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Donaldson, Mark (TBS) [Mark.Donaldson3@ontario.ca]
Subject: RE: EY/OPCD Status Updates
Date: Friday, August 11, 2017 01:14:04

Sorry for delay. I have just sent a new version to Blake and Suzie that includes an analysis of the sale of the regulatory asset to OPG Trust.

--

LeeAnne Probert | Senior Manager | Assurance Services

Ernst & Young LLP

Office: 416 943 3554 | leeanne.probert@ca.ey.com

From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Thursday, August 10, 2017 2:05 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Blake Langill <blake.w.langill@ca.ey.com>; Donaldson, Mark (TBS) <Mark.Donaldson3@ontario.ca>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Subject: RE: EY/OPCD Status Updates

Hi all – any updates on timeline?

Cindy

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: August 4, 2017 8:34 AM
To: Hosick, Sarah (TBS); Blake Langill; Donaldson, Mark (TBS); Lee Anne Probert; Petsche, Nadine (TBS); Veinot, Cindy (TBS)
Subject: Re: EY/OPCD Status Updates

Sorry just saw this. Fine with me too. We will get back to you with timelines Cindy. Have a great long weekend.

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Date: August 4, 2017 at 8:14:05 AM EDT
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>, Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>, Blake Langill <blake.w.langill@ca.ey.com>, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>, Lee Anne Probert <leeanne.probert@ca.ey.com>, Donaldson, Mark (TBS) <Mark.Donaldson3@ontario.ca>
Subject: Re: EY/OPCD Status Updates

Thanks Lee Anne. I will wait to hear from a couple of the others. Can you remind me when we can expect the next section of the analysis.

Cindy

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Lee Anne Probert
Sent: Friday, August 4, 2017 7:33 AM
To: Veinot, Cindy (TBS); Blake Langill; Donaldson, Mark (TBS); Petsche, Nadine (TBS); Hosick, Sarah (TBS); Suzie Gignac
Subject: Re: EY/OPCD Status Updates

I'm fine to cancel.

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Date: August 4, 2017 at 7:31:39 AM EDT
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>, Lee Anne Probert <leeanne.probert@ca.ey.com>, Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>,

Donaldson, Mark (TBS) <Mark.Donaldson3@ontario.ca>, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>, Blake Langill <blake.w.langill@ca.ey.com>
Subject: EY/OPCD Status Updates

Just checking in to see if there are any updates for this call. If not we can cancel. Cindy

---
Organizer: Veinot, Cindy (TBS)
When: 8:30 AM - 9:00 AM August 4, 2017
Subject: EY/OPCD Status Updates
Location: Teleconference 416-212-8013/1-866-633-1033, Conference ID 4950903

Sent from my BlackBerry 10 smartphone on the Rogers network.

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RE_ EY_OPCD Status Updates.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Donaldson, Mark (TBS) [Mark.Donaldson3@ontario.ca]
Subject: RE: EY/OPCD Status Updates
Date: Friday, August 11, 2017 01:14:04

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Sorry for delay. I have just sent a new version to Blake and Suzie that includes an analysis of the sale of the regulatory asset to OPG Trust.

--

LeeAnne Probert | Senior Manager |

RE_ EY_OPCD Status Updates - 3pm Cancelled .rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
Subject: RE: EY/OPCD Status Updates - 3pm Cancelled
Date: Thursday, September 07, 2017 13:23:41
Attachment 1: image001.gif

Thanks Sarah. I am in a course and Lee Anne is away tomorrow so could you provide some times when Mark is available next week? Alternatively, we could cancel the meeting tomorrow and keep the one next Friday.

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Hosick, Sarah (TBS) [mailto:Sarah.Hosick@ontario.ca]
Sent: Thursday, September 07, 2017 1:12 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>
Cc: Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Subject: RE: EY/OPCD Status Updates - 3pm Cancelled

Cindy would still like the calls to go ahead with Mark in her absence.

That being said, if there's a more beneficial time the four of you wish to work out instead while Cindy is away, please feel free.

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: September 7, 2017 1:00 PM
To: Hosick, Sarah (TBS)
Cc: Blake Langill; Lee Anne Probert
Subject: RE: EY/OPCD Status Updates - 3pm Cancelled

Hi Sarah:

Can you confirm that OPCD calls with EY/Cindy on Sept 8th and 15th should be cancelled as Cindy is away?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Carolyn Roberts | Phone: 613 598 4844 | carolyn.roberts@ca.ey.com

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From: Hosick, Sarah (TBS) [mailto:Sarah.Hosick@ontario.ca]
Sent: Thursday, August 31, 2017 1:35 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Subject: EY/OPCD Status Updates - 3pm Cancelled
Importance: High

Hi everyone,

Apologies for the late minute change. We are going to have to reschedule this meeting until the week of the 18th when Cindy is back in the office.

Thanks,

Sarah

Sarah Hosick

Executive Assistant & Special Policy Advisor (A)

Assistant Deputy Minister's Office | Office of the Provincial Controller

Office of the Treasury Board | Treasury Board Secretariat

7 Queen's Park Cres E, 2nd Floor, Toronto, ON, M7A 1Y7

416-212-8512

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image001.pdf

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From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
Subject: RE: EY/OPCD Status Updates - 3pm Cancelled
Date: Thursday, September 07, 2017 13:00:18
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Hi Sarah:

Can you confirm that OPCD calls with EY/Cindy on Sept 8th and 15th should be cancelled as Cindy is away?

Thanks,

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst &

Attachments:
image001.gif (8 KB)
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RE_ EY_OPCD Status Updates - 3pm Cancelled .rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]
Subject: RE: EY/OPCD Status Updates - 3pm Cancelled
Date: Thursday, September 07, 2017 13:23:41
Attachment 1: @

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https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201710117684061~201709071723470000~Z~010B6570B8F2671242EA305A92FAFB71View the original item

Thanks Sarah. I am in a course and Lee Anne is away tomorrow so could you provide some times when Mark is available next week? Alternatively, we could cancel the meeting tomorrow and keep the one nex

Attachments:
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https://ctsbigdcapmvs10.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=125F1BA62D744314BA6D0E0BA043C1F471110000ctsbigdcapmvs01&SavesetId=201710117684061~201709071723470000~Z~010B6570B8F2671242EA305A92FAFB71&AttachmentId=1image001.gif

RE_ EY_OPCD Status Updates.rtf

From: Donaldson, Mark (TBS) []
To: Suzie Gignac [suzie.r.gignac@ca.ey.com]
CC: Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: EY/OPCD Status Updates
Date: Friday, November 03, 2017 09:48:47

Good morning, Suzie,

Items we're tracking that we need to follow-up on:

- Final protection agreement (guarantee)
- FE control assessment
- Overview – stranded debt transaction (referenced in AG report)
- impact of interest during moratorium; regulations
- "legislated" accounting – perspective
- Status/impact of L/C re: small LDCs
- Intangible assets (OPG)

If there's any you think are missing, happy to add. The protection agreement is on fast-track to land very soon, and the FHP regs are currently tracking through approvals. We'll update on our next call.

Thanks,
Mark

From: Suzie Gignac [mailto:suzie.r.gignac@ca.ey.com]
Sent: November 2, 2017 5:52 PM
To: Blake Langill; Lee Anne Probert; Donaldson, Mark (TBS)
Subject: RE: EY/OPCD Status Updates

Hi Mark:

That is fine from my end. Are you able to send us the list of outstanding work that you were pulling together so that we can review and add as appropriate? Also, any news on guarantee or regs?

Thanks,

Suzie

From: Donaldson, Mark (TBS) <Mark.Donaldson@ontario.ca>
Date: November 2, 2017 at 5:46:02 PM EDT
To: Lee Anne Probert <leeanne.probert@ca.ey.com>, Blake Langill <blake.w.langill@ca.ey.com>, Suzie Gignac <suzie.r.gignac@ca.ey.com>
Subject: RE: EY/OPCD Status Updates

Hi All,

Cindy is away tomorrow and there are some deliverables I had promised that I still need to compile, so I'm going to suggest (unless there is opposition) that we cancel tomorrow's call. Apologies for the late notification.

If there's anything you think we should check in on, please let me know and we can still do that.

Will send you those products by EOD tomorrow.

Cheers,

Mark

Mark Donaldson, CPA, CMA

Director, Accounting Policy and Financial Reporting

Office of the Provincial Controller Division, Treasury Board Secretariat

7 Queen's Park Cres, 2nd Floor

Toronto, Ontario

M7A 1Y7

-----Original Appointment-----
From: Veinot, Cindy (TBS)
Sent: July 17, 2017 11:27 AM
To: Veinot, Cindy (TBS); Suzie Gignac; Lee Anne Probert; 'blake.w.langill@ca.ey.com'; Donaldson, Mark (TBS)
Cc: Hosick, Sarah (TBS)
Subject: EY/OPCD Status Updates
When: November 3, 2017 8:30 AM-9:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: Teleconference 416-212-8013/1-866-633-1033, Conference ID 4950903

Cindy to moderate.

- Update June 2, 2017: Tuesday meetings cancelled; weekly Friday meetings to continue.

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RE_ EY_OPCD Update.rtf

From: Suzie Gignac [suzie.r.gignac@ca.ey.com]
To: Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Lee Anne Probert [leeanne.probert@ca.ey.com]
CC: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: EY/OPCD Update
Date: Monday, July 30, 2018 11:48:37
Attachment 1: image001.gif

Thanks for the update Mark. Lee Anne is going to start looking at the information this afternoon. Would you have time for a quick call to discuss tomorrow morning between 10-12?

Suzie

Suzanne Gignac, Partner, CPA, CA

Ernst & Young LLP / Ernst & Young s.r.l./S.E.N.C.R.L.

99 Bank Street, Suite 1200, Ottawa, Ontario K1P 6B9, Canada

Direct: 1 613 598 4376 | Fax: 1 613 232 5324 | suzie.r.gignac@ca.ey.com

Executive Coordinator, Jeannie Kaminski | Phone: 613 598 4809 | jeannie.kaminski@ca.ey.com

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From: Donaldson, Mark (TBS) [mailto:Mark.Donaldson@ontario.ca]
Sent: Thursday, July 26, 2018 5:07 PM
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>; Blake Langill <blake.w.langill@ca.ey.com>; Lee Anne Probert <leeanne.probert@ca.ey.com>
Cc: Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Subject: RE: EY/OPCD Update

Hi Everyone – thanks for the time yesterday.

I updated Cindy and we decided what we would like to do is prepare an addendum to our position paper that speaks to the response provided by the OAGO and identifies any new positions raised. In so doing, the addendum can then refer back to specific positions discussed in the paper and/or expand on them and confirm how our position does (or doesn't) change based on the response. This document will be an internal file document for future reference.

Hope that provides more clarity on how we want to proceed. Given the time available to us, perhaps we can schedule some time to do a quick check-in next Friday morning, if that works?

Thanks … happy to chat further anytime.

Mark

(416) 325-8027

-----Original Appointment-----
From: Donaldson, Mark (TBS)
Sent: July 23, 2018 9:42 AM
To: Donaldson, Mark (TBS); Veinot, Cindy (TBS); Suzie Gignac; Blake Langill; Lee Anne Probert
Cc: Hosick, Sarah (TBS)
Subject: EY/OPCD Update
When: July 25, 2018 2:00 PM-2:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Teleconference - 416-212-8014 or 1-866-500-5845, Access Code 1474532

Materials to follow

Attachments: final position paper provided to the OAGO and the response – for our discussion

<< File: Position Paper - FHP (2018)_Final.docx >> << File: Paper.pdf >>

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image001.pdf

RE_ Fair Hydro - Change of Law - Protection and Process Agreements.rtf

From: ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
To: Saulnier, Brett [bsaulnier@torys.com]; Milligan, Peter [PMilligan@osler.com]; Sebastiano, Rocco [RSebastiano@osler.com]; Mansoori, Nina [nmansoori@torys.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; 'LADAK Lubna -TREASURY' [lubna.ladak@opg.com]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]; Donaldson, Mark (TBS) [Mark.Donaldson@ontario.ca]; Cayley, Daniel (ENERGY) [Daniel.Cayley@ontario.ca]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; Ramchandani, Rima [rramchandani@torys.com]; 'LEE John -TREASURY' [john.s.lee@opg.com]; 'RYFA Ken -TREASURY' [ken.ryfa@opg.com]; 'HAHN PARKER Janet -TREASURY' [j.hahnparker@opg.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; 'LAURETA LAPIRA May -TREASURY' [may.lapira@opg.com]; Feldman, Michael [mfeldman@torys.com]; 'WONG Leslie -LAWDIV' [leslie.wong@opg.com]; Fullerton, Rick [RFullerton@osler.com]; Mayman, Gadi (OFA) [Gadi.Mayman@ofina.on.ca]; Manning, Mike (OFA) [Mike.Manning@ofina.on.ca]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; 'ian.benaiah@rbccm.com' [ian.benaiah@rbccm.com]; 'Khan, Nur (nur.khan@rbccm.com)' [nur.khan@rbccm.com]; 'brent.r.taylor@rbccm.com' [brent.r.taylor@rbccm.com]; 'katrina.niehaus@gs.com' [katrina.niehaus@gs.com]; 'brian.delaney@gs.com' [brian.delaney@gs.com]; 'Maciel, Andrew' [Andrew.Maciel@cibc.com]; 'Adalja, Sunil' [Sunil.Adalja@cibc.com]; 'Persad, Nicole' [Nicole.Persad@cibc.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Olusoga, Yinka [yolusoga@torys.com]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; PALMER, AARON [AARON.PALMER@blakes.com]; VINER, JON [JON.VINER@blakes.com]; PRESTAGE, JA [JA.PRESTAGE@blakes.com]; 'MAUTI John -FIN & C CTRL' [john.mauti@opg.com]; Thouin, Alena (ENERGY) [Alena.Thouin@ontario.ca]; McKinlay, Tom (MAG) [Tom.McKinlay@ontario.ca]
Subject: RE: Fair Hydro - Change of Law - Protection and Process Agreements
Date: Wednesday, December 13, 2017 12:47:49
Attachment 1: @

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Hi Brett. In the interest of time, I am attaching my mark-up of the version of the Process Agreement you circulated yesterday morning. The Province is reviewing this concurrently and so it is subjec

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23239361-vpdf-Change of Law - Process Agreement.PDF (282 KB)
https://ctsbigdcapmvs05.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=184971630C5FAB646A01170AFB6CF78EC1110000ctsbigdcapmvs01&SavesetId=201801125796524~201712131648180000~Z~F013BD83B84DD27A3DA9DA1ED3270AD1&AttachmentId=623239361-vpdf-Change of Law - Process Agreement.PDF

Re_ EXTERNAL - New thinking.rtf

From: CHENG Alec -FIN & C CTRL [alec.cheng@opg.com]
To: Picard, Michel [mpicard@kpmg.ca]; MAUTI John -FIN & C CTRL [john.mauti@opg.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Imbrogno, Serge (ENERGY) [Serge.Imbrogno@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Ouellette, Lois A [louellette@kpmg.ca]; Betik, Matthew [mbetik@kpmg.ca]; HARTWICK Ken -FINANCE [ken.hartwick@opg.com]
Subject: Re: EXTERNAL - New thinking
Date: Saturday, February 25, 2017 22:46:20

Normally, in a related party transaction, one party would set up an asset the other party should have a liability (or a reduction of asset). Given this principle, in my view, the proper accounting should be a hit to the Province or IESO books to offset the asset on the sale to OPG reflecting the sale of future cash inflows. Without a regulatory asset, this would result in the deferred amount flowing through the provincial deficit.

Original Message
From: Picard, Michel
Sent: Saturday, February 25, 2017 6:03 PM
To: MAUTI John -FIN & C CTRL
Cc: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Kim Marshall; CHENG Alec -FIN & C CTRL; Calwell, Carolyn (ENERGY/MEDEI/MRI); Imbrogno, Serge (ENERGY); Nelms, Scott (ENERGY); Hume, Steen (ENERGY); Ouellette, Lois A; Betik, Matthew; HARTWICK Ken -FINANCE
Subject: Re: EXTERNAL - New thinking

Thanks John.

I was thinking that the asset was sold on a daily basis but not necessarily settle on a daily basis.

The reason of the daily sale was to match the energy cost incurred to avoid having an accounting loss.

Instead of daily, the sale could take place on, at least, on a monthly basis to avoid any accounting impact on IESO's monthly income statement. The settlement should be made to meet the cash outflows requirement.

I believe there is a risk for the AG to refuse rate regulated accounting under PSAB. Without the intervention of the OEB, OPG should be able to get a better rating of the bonds.

Sent from my iPhone

On Feb 25, 2017, at 13:05, MAUTI John -FIN & C CTRL <john.mauti@opg.com<mailto:john.mauti@opg.com>> wrote:

Michel,
I believe this approach increases the risk of seeing through what this transaction is and having it hit the Provincial deficit immediately. Plus, the transaction would incorrectly be viewed as an OPG only transaction with the GA rebate being on account of OPG.

We've discussed the optics in the past of the IESO not showing the acquisition / set up of an asset through the "speed" with which it is absorbed and picked up by OPG. We've taken it to the extreme of the position that the asset is never on the IESO's books because it settles daily (so it's not a tranche on a quarterly or semi annual basis but basically 365 tranches per year).

What you're suggesting is that OPG recognizes an asset that the IESO so no ability to set up on its own. Doing it daily does not change that fact in my opinion.

My suggestion:
“Desire to be involved” was never a criteria for this plan..... why not compel the OEB to adhere to the legislation and write them in to limit their involvement to ensuring the recovery is as per allowed in the legislation (no ability to alter or really make any decision other than the legislation and subsequent regulation are being followed). Legislation and regulation that directs the OEB to do things is standard practice and is not something that the OEB can determine or dictate.

Thanks
John Mauti

From: Picard, Michel [mailto:mpicard@kpmg.ca]
Sent: Friday, February 24, 2017 10:51 PM
To: Veinot, Cindy (TBS); Petsche, Nadine (TBS); Kim Marshall; MAUTI John -FIN & C CTRL; CHENG Alec -FIN & C CTRL; Calwell, Carolyn (ENERGY/MEDEI/MRI); Imbrogno, Serge (ENERGY); Nelms, Scott (ENERGY); Hume, Steen (ENERGY)
Cc: Ouellette, Lois A; Betik, Matthew
Subject: EXTERNAL – New thinking

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All,

As you know by now, the OEB believes that they should not be involved with the approval process of the regulatory asset.

In the absence of regulatory accounting, PSAB requires that the energy purchased (the unrecognized regulatory asset) be expensed immediately.

If the sale contract would be set-up in a way that the unrecognized asset is sold to the OPG Trust on a daily basis, then an offsetting revenue would be recorded.

As IESO is an agent for the market participants, IESO is showing the market transactions in the income statement on a net basis.

Therefore, no impact on the income statement and the sale would be recorded as a receivable from the OPG Trust.

The accounting treatment in the IESO’s books should not impact the nature of the asset purchased by the OPG Trust, as I believe it would still be considered an intangible asset.

The new accounting approach would:

· not require the approval of the OEB;
· not require IESO to adopt regulatory accounting under PSAB; and
· permit the legislation to be as tight as possible for the right to collect the intangible asset; and
· not require the consolidation of the market books.

I would appreciate your comments on the proposed approach above.

Ps: Is this the magic that Andrew was expecting!

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

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M 416 560 2569
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(http://subscribe.kpmg.ca<https://urldefense.proofpoint.com/v2/url?u=http-3A__pages.kpmgemail.com_page.aspx-3FQS-3D2e4c31a3756cb940af903f205e1f1e041bdb8334b58bad706ad9d7762eb124d4&d=DwMGaQ&c=0TzQCy9lgR5hSW-bDg5HA76y7nf4lvOzvVop5GM3Y80&r=DAOe89GuHpPZrONj_IODmw&m=x8jOMnpnHgIfMDkvFGR2RUAuvCsT0NVUQ5RRDcCtE9c&s=2TcOdaz_sQq-GO5HrvMBWpmzOUrZF6joIHbpymtTNfQ&e=>).

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Re_ EXTERNAL Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro.rtf

From: Gadi Mayman [Gadi.Mayman@ofina.on.ca]
To: Montgomery, Kaitlin (MOF) [Kaitlin.Montgomery@ontario.ca]
CC: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; McKinlay, Tom (ENERGY) [Tom.McKinlay@ontario.ca]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]; Hanslep, Malle (MOF) [Malle.Hanslep@ontario.ca]; Whitfield, Tobias P. (MOF) [Tobias.Whitfield@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Karpowicz, Eva (MOF) [Eva.Karpowicz2@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Gavaris, Hresa (OFA) [Hresa.Gavaris@ofina.on.ca]; Strathy, Anna (OFA) [Anna.Strathy@ofina.on.ca]
Subject: Re: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro
Date: Monday, July 10, 2017 10:12:23
Attachment 1: image001.jpg

My morning on Wednesday is pretty jammed, but I'm available any time after 11:30, as I can free up my time in the afternoon. I agree that TD should be included.

Regards,
Gadi

On Jul 10, 2017, at 9:58 AM, Montgomery, Kaitlin (MOF) <Kaitlin.Montgomery@ontario.ca> wrote:

> Hi Everyone,
>
> Following up on our Thursday discussion I'd like to set up a call with OPG this week – could 10am on Wednesday work? Should anyone from TD be included in this discussion as well?
>
> Thanks,
>
> Kaitlin
>
> **From:** Nelms, Scott (MOF)
> **Sent:** July 5, 2017 5:49 PM
> **To:** Calwell, Carolyn (ENERGY/MEDEI/MRI); Hume, Steen (ENERGY); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); Montgomery, Kaitlin (MOF); ASHBOURNE, STEPHEN; Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF); Veinot, Cindy (TBS); Petsche, Nadine (TBS)

Cc: Karpowicz, Eva (MOF)
Subject: RE: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Good suggestion from Gadi – we should probably touch base internally in advance of meeting with OPG. I wonder if we could try for a quick 30 min phone call either tomorrow or Friday.

I will reach out to OPG to set something up for next week.

From: Nelms, Scott (MOF)
Sent: July 5, 2017 2:44 PM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI); Steen Hume (ENERGY) (Steen.Hume@ontario.ca); Mayman, Gadi (OFA) (Gadi.Mayman@ofina.on.ca); Kandeepan, Ken (OFA); McKinlay, Tom (ENERGY); Montgomery, Kaitlin (MOF); ASHBOURNE, STEPHEN
Subject: FW: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Hi,

Please see the following comments from OPG / Torys on the guarantees.

I wonder if we are now at a point we should suggest sitting down with OPG on this perhaps early next week.

Thanks,

Scott

From: LEE John -TREASURY [mailto:john.s.lee@opg.com]
Sent: June 30, 2017 3:12 PM
To: Nelms, Scott (MOF)
Cc: WONG Leslie -LAWDIV; RYFA Ken -TREASURY; HAHN PARKER Janet -TREASURY
Subject: FW: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

Scott:

Further to our discussion on the outstanding issues, please find below the comments from the Dealers on the "Markup" of the Provincial Protection and Assurance term sheet.

As noted below, the next step should be to get the appropriate parties from the Province to sit down with the dealers and OPG to go over the points and agree on a basis to move forward.

We should try to do that sometime next week. Let us know what times work on the Province side and we will coordinate with the Dealers & counsels.

John

From: Mansoori, Nina [mailto:nmansoori@torys.com]
Sent: Friday, June 30, 2017 12:24 PM
To: LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV
Cc: Ramchandani, Rima; Hill, Krista; Feldman, Michael; Emes, Aaron; Mansoori, Nina
Subject: EXTERNAL – Comments on Provincial Protection and Assurances Term Sheet - Fair Hydro

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John/Les/Ken,

Please find below an issues list on the Province's comments on the Provincial Protection and Assurances Term Sheet (formerly the Provincial Support Agreement). This list reflects input from the dealers, Oslers and Torys. Please let us know if you have any additional comments or questions. If not, will you be reaching out to the Province to schedule a meeting next week (with the dealers, OPG, the Province and their counsels) to discuss these points? The dealers and their counsel don't see value in exchanging further drafts of the term sheet until they have had an opportunity to meet with the Province. We agree with this approach and are happy to assist in coordinating a meeting for next week. It would also be helpful to hear the Province's rationale and concerns for making some of these changes. Please let us know.

Many thanks,

Nina

1. The Servicing Guarantee:

(a) It is written in favour of only the financing entity. However, in the MTSA, we are asking for covenants directly in favour of Indenture Trustee. The Indenture Trustee/specified creditors should have the direct benefit of the guarantee rather than relying on an indirect security interest in the servicing guarantee.

(b) It should be clarified that the servicing obligations of the electricity vendors are covered.

(c) If the guarantee is unenforceable, we should fall back to an indemnity, not a "functionally equivalent direct covenant" which is an uncertain concept.

(d) We don't want an exclusion for economic loss. That may cover whatever losses the specified creditors do suffer.

2. Change of Law.

(a) This should be written as a guarantee not an indemnity.

(b) It should be directly in favour of the Indenture Trustee/specified creditors and it should cover all the “finance amount” and not just funding obligations.

(c) We do not want the guarantee to be provided by another entity which is in turn guaranteed by Ontario. It should come directly from Ontario.

(d) There should be no “materiality” threshold for a claim. If obligations are not paid in full, then there should be a claim.

(e) The choice to assume or accelerate should be at the option of the holders, not the guarantor.

(f) If accelerated, then the 1% premium should be payable. This is a voluntary termination by the Province.

3. Undertaking Regarding Mismatches (market disruption)

(a) At best this structure defers the discussion of protection for a market disruption. At worst, it is impractical that take-out financing needs to be arranged in advance of each warehouse financing. We should rely on a definition of market disruption.

4. Approvals.

(a) Province to clarify what is contemplated under the heading “Approval Requirement”. Is Province proposing to approve any obligation incurred by the Financing Entity?

(b) Approval under Section 28 of the *Financial Administration Act* to be attained (in case the OFHPA is declared void in its entirety).

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TORYS
LLP

Re_ EY .rtf

From: Blake Langill [blake.w.langill@ca.ey.com]
To: Picard, Michel [mpicard@kpmg.ca]; Lee Anne Probert [leeanne.probert@ca.ey.com]; Suzie Gignac [suzie.r.gignac@ca.ey.com]; Kim Marshall (Kim.Marshall@ieso.ca) [Kim.Marshall@ieso.ca]
CC: Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Re: EY
Date: Thursday, June 15, 2017 09:08:27

Michel, I'll email it to you before the call... having some technology issues so might be 9:59-ish...

Cheers.
-blake

Blake Langill | Partner
Tel: +1-416-943-3556

Assistant: Amanda Craig | Tel: +1-416-943-3581 | amanda.craig@ca.ey.com
---

Sent from my iPhone

From: Picard, Michel <mpicard@kpmg.ca>
Date: June 15, 2017 at 7:46:27 AM EDT
To: Lee Anne Probert <leeanne.probert@ca.ey.com>, Kim Marshall (Kim.Marshall@ieso.ca) <Kim.Marshall@ieso.ca>, Suzie Gignac <suzie.r.gignac@ca.ey.com>, Blake Langill <blake.w.langill@ca.ey.com>
Cc: Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>
Subject: EY

All,

Please find enclosed the amended and signed letter. I would appreciate if you could return a signed copy before the call of today.

Thanks a million.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

KPMG LLP

333 Bay Street, Suite 4600

Toronto, Ontario, M5H 2S5

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mpicard@kpmg.ca

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Re_ EY_OPCD Status Updates.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Donaldson, Mark (TBS) [Mark.Donaldson3@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: Re: EY/OPCD Status Updates
Date: Friday, August 04, 2017 07:33:45

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I'm fine to cancel.

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Date: August 4, 2017 at 7:31:39 AM EDT
To: Suzie Gignac <suzie.r.gignac@ca.ey.com

Re_ EY_OPCD Status Updates.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Donaldson, Mark (TBS) [Mark.Donaldson3@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: Re: EY/OPCD Status Updates
Date: Friday, August 04, 2017 07:33:45

I'm fine to cancel.

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Date: August 4, 2017 at 7:31:39 AM EDT
To: Suzie Gignac <suzie.r.gignac@ca.ey.com>, Lee Anne Probert <leeanne.probert@ca.ey.com>, Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>, Donaldson, Mark (TBS) <Mark.Donaldson3@ontario.ca>, Petsche, Nadine (TBS) <Nadine.Petsche@ontario.ca>, Blake Langill <blake.w.langill@ca.ey.com>
Subject: EY/OPCD Status Updates

Just checking in to see if there are any updates for this call. If not we can cancel. Cindy

---
Organizer: Veinot, Cindy (TBS)
When: 8:30 AM - 9:00 AM August 4, 2017
Subject: EY/OPCD Status Updates
Location: Teleconference 416-212-8013/1-866-633-1033, Conference ID 4950903

Sent from my BlackBerry 10 smartphone on the Rogers network.

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Re_ EY_OPCD Status Updates.rtf

From: Lee Anne Probert [leeanne.probert@ca.ey.com]
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Blake Langill [blake.w.langill@ca.ey.com]; Donaldson, Mark (TBS) [Mark.Donaldson3@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; Suzie Gignac [suzie.r.gignac@ca.ey.com]
Subject: Re: EY/OPCD Status Updates
Date: Friday, August 04, 2017 07:33:45

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I'm fine to cancel.

From: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>
Date: August 4, 2017 at 7:31:39 AM EDT
To: Suzie Gignac <suzie.r.gignac@ca.ey.com

RE_ _Fair_ Legislation (Discussion Draft).rtf

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) []
To: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: "Fair" Legislation (Discussion Draft)
Date: Monday, April 10, 2017 08:21:59
Attachment 1: image001.gif
Attachment 2: image002.jpg
Attachment 3: Document2-1blh.docx

Thanks, Cindy. Also, attached is a document received from the OEB.

From: Veinot, Cindy (TBS)
Sent: April-10-17 8:21 AM
To: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Subject: RE: "Fair" Legislation (Discussion Draft)

Hi Carolyn – I'll call into the meeting this morning – I have a conflict mid day that I'm not going to be able to move, but hopefully we will have dealt with the main issue by then. I'm going to see if Nadine can attend in person.

Cindy

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)
Sent: April-10-17 7:01 AM
To: Hume, Steen (ENERGY); Nelms, Scott (MOF); Cox, Hilary (ENERGY); Veinot, Cindy (TBS)
Subject: Fw: "Fair" Legislation (Discussion Draft)

Fyi

From: Feldman, Michael <mfeldman@torys.com>

Sent: Sunday, April 9, 2017 10:08 PM

To: 'ASHBOURNE, STEPHEN'

Cc: JACKSON, ADAM; Peter Hamilton (PHamilton@stikeman.com); LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; MCAULEY Tyler -LAWDIV; WILSON, JUDY; STOKES, BRYSON; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Mansoori, Nina; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Watson, Gwen; Rehob, James (ENERGY); Alan Hibben; Shear, Dan (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); O'Brian, Adam; Fitzpatrick, Michael F.; STOKES, BRYSON; VINER, JON; Feldman, Michael

Subject: RE: "Fair" Legislation (Discussion Draft)

Stephen,

I am attaching our revised version of the draft legislation, together with a blackline against the last version that you circulated to this group. It is being circulated to OPG at the same time as everyone else and so remains subject to their comments. Also, this draft reflects input that we received from the Dealers and their counsel although they too will be receiving our revised draft without having seen an earlier version.

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: April-07-17 1:22 AM
To: Feldman, Michael <mfeldman@torys.com>
Cc: JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; 'Shear, Dan (ENERGY)' <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; VINER, JON <JON.VINER@blakes.com>
Subject: "Fair" Legislation (Discussion Draft)

Thanks for your comments, Michael. The attached version picks up many of your, Peter's and H&W's comments. In some cases it defers consideration, pending dealer input (such as your suggestion of tracking individual, standalone Regulatory Assets per transaction; delinking the investors from the LDCs, in favour of having IESO be the main servicer; and deleting some of the US precedent language). The regulatory input included in your mark-up was particularly helpful, although not easily dealt with tonight without the Province's input, so many of those points have simply been brought forward with additional footnotes for now. The manner and extent of delegations (primarily the Financing Plan and the Fair Allocation Plan), the nature of OEB review and regulatory actions, the scope of the undertaking and other similar issues, are still under consideration by MOE. Your comments to the effect that nothing can affect a funding obligation once incurred were referenced, as I think that is a pervasive and correct idea. The ultimate location of provisions (Part of the Electricity Act; new Act; Regulations) is still under consideration – for now it's all in this document to facilitate this group review. Finally, there are a number of "validity" type points, which arose in your mark-up and which we are still thinking about. We can discuss those further in the morning. Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com

Dir: 416-863-3086

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From: Feldman, Michael [mailto:mfeldman@torys.com]
Sent: Thursday, April 06, 2017 4:26 PM
To: ASHBOURNE, STEPHEN
Cc: JACKSON, ADAM; Peter Hamilton (PHamilton@stikeman.com); LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; MCAULEY Tyler -LAWDIV; WILSON, JUDY; STOKES, BRYSON; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Mansoori, Nina; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Feldman, Michael; Watson, Gwen; James.Rehob@ontario.ca; Alan Hibben; 'Shear, Dan (ENERGY)'; Carolyn.Calwell@ontario.ca; O'Brian, Adam; Fitzpatrick, Michael F.
Subject: Torys Comments on Blakes Draft Legislation

All,

I am attaching our comments on the last version of the draft legislation sent to us by Blakes. Both a clean and blacklined version are attached.

This is being distributed to OPG at the same time as everyone else and so remains subject to their comments as this is very much a work in process.

We also just received comments from Hunton & Williams but in the interests of time we have not been able to include those in our mark up, but expect to be in a position to raise any of their big issues at our meeting tomorrow. Also, I will send their comments separately to Blakes.

Regards,

Michael K. Feldman

P. 416.865.7513 | F. 416.865.7380 | 1.800.505.8679

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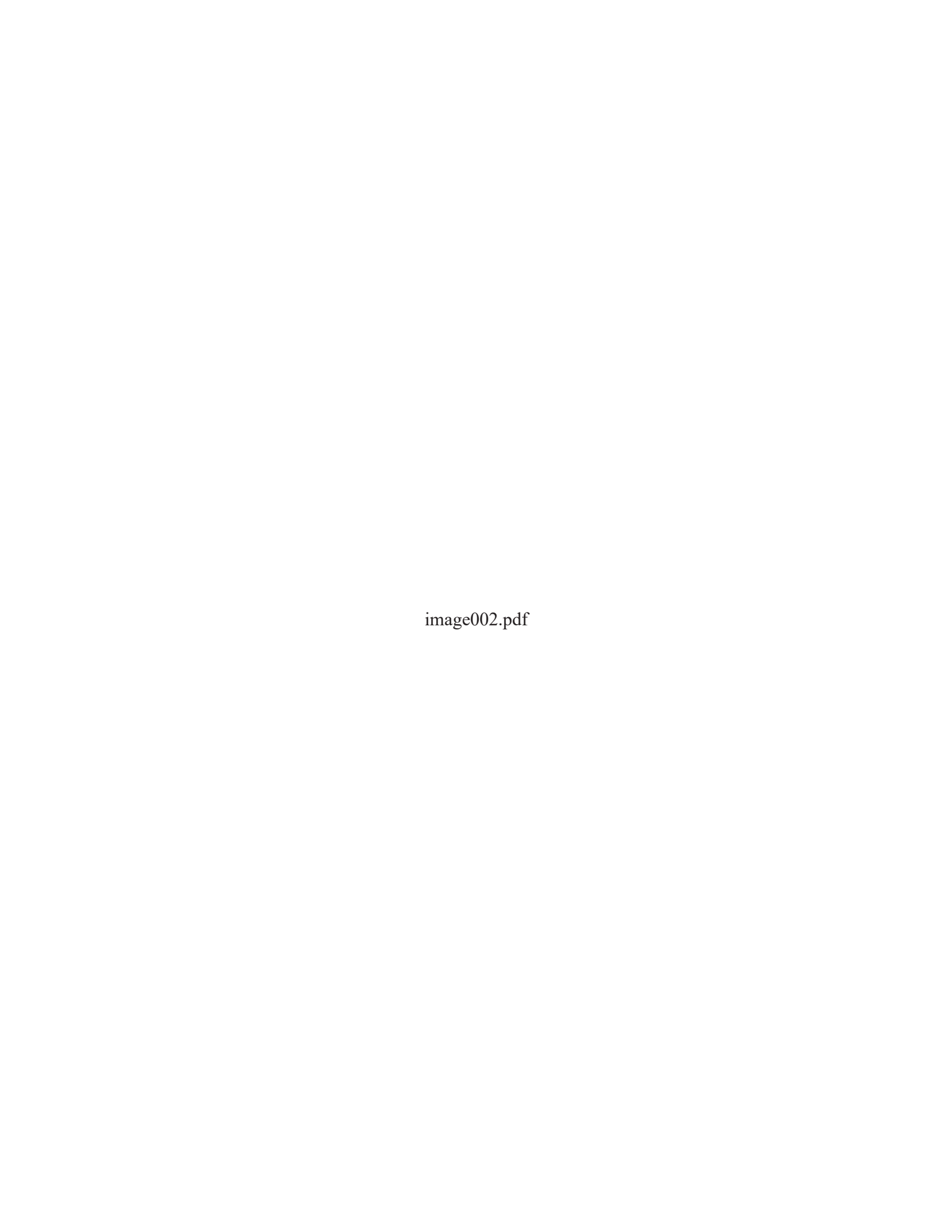
Blakes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FHP OEB

The draft as currently configured departs some way from the original intent of the FHP, which was expressed as relating to refinancing the Global Adjustment as an input to the RPP.

The OEB suggests that it would be simpler, more in keeping with the announcement and the current regulatory structure in place in Ontario, and and still familiar enough to the Markets to use the RPP approach currently in place, by leveraging existing IESO processes and OEB regulatory tools.

The approach of having each ratepayer obligated is problematic as it raises serious enforcement issues, is unnecessary as will be explained further below, and does not work as a component of RPP.

<u>Using current RPP price setting regime</u>

- The new proposed commercial regime proposed in the April 6th draft is different from the regime that Ontario currently has and would likely be more costly to set up. It essentially sets up a parallel collection scheme in order to provide commercial certainty. This parallel regime which has as a tenet that each individual rate payer is a debtor, is not necessary, as an effective scheme is already in place.

- Currently a Ratepayer pays its commodity charges based on usage under the Regulated Price plan (RPP).)This is accomplished through the RPP price setting exercise undertaken by the Board, in accordance with The OEB Act section 79(16) and the accompanying regulation. This system is well established and workable for the type of ratepayers this plan will cover.

- The OEB does not see the value/rationale for a "fixed cost" attribution. If the Allocation Factor is set as a cents/kwh charge, then this charge could be included in RPP and have the advantage of also working as a bypass charge by relying on Gross Load billing (similar to the Debt retirement charge.) for any ratepayer who chooses to load displace/net meter.

- the best approach would be for the Administrator to provide the required information to the IESO and the OEB on the amount to be recovered. Based on that information, the OEB would calculate RPP cost, then design the prices. The bypass charge would be calculated using the cost from the Administrator to calculate a per/kwh amount, in the same way the OEB calculates the RPP Variance settlement factor today that LDCs charge a customer who is exiting the RPP. That same per/kwh should be used for RPP eligible consumers.

- The specified amount if it is a cents/kWh would work for RPP (allocated to TOU) and could be used for calculating some form of amount owing (for bypass).The Transition Charge could be billed on a Gross Load basis so that whether a ratepayer was net metered or had complete load displacement there would still be a charge each month, just as there was for DRC (all self-generation after 1999 had to pay DRC on a gross load basis.)

- In terms of variances, there could be one RPP variance that would track the difference between what is paid by Ratepayers and what is owed (Transition Charges + Market variance + weather+ exit/bypass payments for Load displacement and net metering).. IESO would need to have a separate variance for the non RPP customers, with similar costs collected.

- the Rights sections would need to be drafted differently so it is clear a Ratepayer Group is responsible (not individual ratepayers) That Ratepayer Group would be the RPP class plus the RPP Eligible class, plus potentially any others one may want to include.

- This approach would be much simpler to draft and for the markets here to understand as it uses existing well understood and enforceable processes . It could follow what is in GA legislation today rather then being completely and wholly new.

<u>Ability to make sure payments are made</u>

- the current draft seeks to ensure that all amounts advanced by Creditors are secure. It does this by making each individual rate payer in effect a debtor, with the OEB and the LDCs acting as enforcers. This is neither desirable nor necessary. (FN 19 –makes the LDCs responsible. This could be a serious issue for the scheme as this could affect credit ratings for the LDCs with a corresponding upward pressure on distribution rates.)

- The charges should not be enforceable against individual ratepayers, but should be enforceable by virtue of requiring the LDCs to collect charges from ratepayers through the RPP rate order. This type of enforcement would rely on existing OEB powers with which the market, including current credit agencies is familiar.

- Under the rates/licensing regime that is in place the OEB can Order/obligate the LDCs to collect an amount (and require compliance with those Orders. The Rate Order would therefore ensure collection and repayment

- There are also other statutory provisions in place which make the payment of the amounts owing secure. See Chapter 9 of IESO's market rules which spells out settlement and billing for various charges; Refer also to sections 25.33 of the Electricity Act (adjustments to ensure prices reflect the cost of electricity) and 32 (market rules) .

- The OEB licensing regime has supported the other government initiatives and can support these processes. The licensing regime, together with the rate orders would support the repayment of the amounts. The whole market/sector today relies on the OEB Licensing and Enforcement powers.

<u>OEB role in approving the Treasury (Financing Plan)</u>

- The OEB agrees that it should not be required to assess the prudence of the Treasury Plan as approved by the OPG trust.

- if there is a desire for some oversight role the OEB would suggest that it be limited to a role akin to the role it was given in the IPSP approval process, which was basically to confirm the Plan meets the government's expectations (some version of what is set out in the Schedule).

- One approach might be to assess the rigour of the process a company designs to issue debt/arrange repayment, and perhaps also an examination of the extent to which the company followed its own plan. This could be akin to the way the OEB would have approved OPA's procurement strategies (but not the results) after an IPSP approval.

<u>OEB role in setting up the regulatory asset</u>

- Legislation has in the past established deferral or variance accounts (IESO, OPG) and in some cases the OEB issued accounting orders as a formality effectively duplicating what is in the regulation, for administrative ease (e.g. OPG COS payment amount orders include accounting orders for all active accounts – old and new) in the absence of further information we cannot comment further on what is contemplated here

<u>Other matters</u>

(FN 16) speaks to expanding the base to include suite-metered customers,the OEB would clarify for the drafters that ALL suite metered customers are customers of Electricity Distributors (as they get supply at bulk meter).

Also in definitions "Electricity Distributor" needs to be tied to rate-regulated, otherwise Cornwall is caught.

RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

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Stephen,

This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will n

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Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday

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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Tuesday, April 11, 2017 16:04:25
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Attachment 3: WSComparison__6707378_1-_6707378_3.pdf

Please see attached IESO/Stikemans comments.

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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

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Partner

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Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative will be well in excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Retail Consumers (the "Fair Allocation Plan"). [NTD: The IESO has a number of comments on the

FAP: (i) Is it necessary to include this much detail in the FAP, as opposed to broadly referencing a FAP that will articulate principles/parameters for allocating future deferred amounts, etc., and which will be developed and/or set out in the Regs; (ii) while we appreciate the constitutional issues, we believe there risk in prescribing this much detail in purpose/objects and in how the FAP is engineered, which makes it easier to challenge. Is it not intended to provide for as much flexibility as possible?; (iii) is it intended that the 17% deferred amount is an outcome of the yet to be developed FAP?; (iv) the FAP is in essence a policy-based decision(s) and in the IESO's view would seem to have to necessarily be prepared by the Ministry, albeit with input from relevant experts, including the IESO, LDCs, etc. – as opposed to being delegated to experts]

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Retail Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred by IESO to cover such a shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in one or more future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf such financing entities by a financial services agent under the Financing Plan contemplated in this Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Agent whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1] [NTD: Is this needed if OEB determines volumetric rate to recover Period Transition Charge?]

[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the obligations of an Electricity Distributor under Article 5.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of an Electricity Distributor under Article 4.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by IESO, a Successor IESO or the Financial Services Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4] [NTD: is there a need to reference this requirement in the legislation?]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means any actual or purported sale, assignment or transfer of an Investment Interest to an Absolute Assignee, and "Dispose" shall have a corresponding meaning.

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[2] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[3] This would pick up adjustments based on actual collection experience, changes in the retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

“Disposition Document” means any agreement, deed, conveyance, instrument or other document which relates to a Regulatory Asset or an interest therein. [ND: changes are intended to address partial circularity]

“Electricity Distributor” means, in respect of a Service Area, the rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

“Electricity Distributor Remittances” means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received [or deemed to be received] [NTD: delete deeming language unless it is intended to provide for deemed collections] by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

“Electricity Invoice” means an invoice issued by any of a Electricity Distributor (or by an Alternative Servicer) to a Retail Consumer that is served by the Electricity Distributor’s distribution system in accordance with Section 4(1) in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor’s designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act. [NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice.]

“Estimate” means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

“Estimated Future Green Transition Benefits” means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period by an Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges. [Should the Repayment Amount not be reduced to anticipate ordinary course refinancings by Finance Entities?]

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

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[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period [in respect of a Funding Obligation] [NTD: not all receipts may relate to a Funding Obligation] , including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period. [NTD: Make provision for receipts in respect of reserve accounts, i.e Funding Costs should be reduced by interest receipts on reserve accounts]

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges incurred by

or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means (i) the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

[NTD: Parking for a moment the commercial law issues around subordination, we are considering whether the conferral upon the IESO of a subordinated residual interest in the Transition Charges cash flow create consolidation issues. It may also impact our ability to book an asset.]

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO Funding Costs" means, for a Reference Period, the funding costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution

Receipts payable to IESO for the month[7] [NTD: it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDC's entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages]. To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month based on information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or an IESO Successor prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the IESO Successor to recover payment of amounts payable by Electricity Distributors to IESO or the IESO Successor in accordance with Article 5.

"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the aggregate net proceeds received by IESO from or on behalf of any Absolute Assignee as consideration for a Disposition prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means any entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to Section 6(2), which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

“Investment Remittance” means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

“Maximum IESO Recovery” means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

“Maximum Transition Charge Amount” means, for a Reference Period, the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group to such Reference Period in accordance with the Fair Allocation Plan. [NTD: When will there be visibility into this process and amount. Is this calculated on a monthly basis or for a Reference Period]

“Measurement Date” means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

“OEB” means the Ontario Energy Board, together with its successors.

“OPG” means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

“Over-Assessed Amount” means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

“Period Finance Charges” means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

“Period Transition Charges” means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period, calculated in accordance with Section 4(2). [Does this mean that any retained IESO Interest amount is necessarily repaid in the next “Relevant Period, subject to the Maximum Transition Charge Amount?”]

“Pledge” means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

“Pledgee” means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor or an Alternative Collection Agent, any bank account into which the Electricity Distributor or such Alternative Collection Agent deposits or receives Transition Charge Collections; (b) for the IESO or an IESO Successor, any bank account into which IESO or the IESO Successor deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the IESO Successor as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" [should be defined, perhaps in the regulations]

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a Retail Consumer in respect of a Reference Period, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length. [NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Transition Charges.]

"Transition Charge Collection" means any amount received or deemed by this Act to have been received upon the collection of a Transition Charge paid by or on behalf of a Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 11(2).

Article 3 – Transition Charges

(1) **Retail Consumer Obligation to Pay a Transition Charge** – Each Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Retail Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice. [Is the intent that IESO can recover the IESO retained interest only through the Transition Charges, subject to the Maximum Transition Charge Amount and after payment of the Assigned Interest?]

(2) **Indebtedness of Retail Consumers** – Until paid, a Transition Charge charged to a Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Retail Consumer

to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Retail Consumer under the Electricity Invoice or otherwise.[9]

(3) **No Set-Off or Reduction** – A Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

Article 4 – Invoicing of Transition Charges

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Retail Consumer pursuant to

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[8] Determine if this is critical for rating and markets. Logistics under consideration.

[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Agent on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a Retail Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees may appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, an Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges.

(10) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Retail Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to collect amounts owing by Retail Consumers in respect of Transition Charges charged to such Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

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[10] Mirror collection "standard of care" under applicable legislation.

[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all Transition Charge Collections received by it from Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable an IESO Successor shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Retail Consumers that pay their Electricity Invoices directly to IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable an IESO Successor shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any IESO Successor shall hold such amounts in trust for the Regulatory Asset Owners.

(6) **IESO Remittances** – (a) on each Settlement Date[13], IESO and if applicable an IESO Successor shall remit all amounts on deposit in its Regulatory Asset Account in respect of the Investment Interest to or to the account of the Absolute Assignees; and (b) on each Settlement Date[14], IESO and if applicable the IESO Successor shall remit all amounts on deposit in its Regulatory Asset Account in respect of the IESO Retained Interest to the IESO. [NTD: to discuss. I had thought that what we had discussed was that IESO could recover the IESO Retained Interest Amount not as part of the Transition Charges, but independently through its own processes. This would require an allocation, but not express subordination. If subordination is required together with a Maximum Transition Charge Amount, consider whether this puts IESO in the position of a residual interest holder and consider impact on ability to book asset, consolidation and prospectus.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successor** – IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same

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[12] Consider building this obligation into a deemed condition of licence for the IESO.

[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

[14] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[15], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Retail Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, an Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations in respect of the Transition Charges otherwise required to be undertaken by such Electricity Distributor, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor, as applicable. Any Electricity Distributor that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.

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[15] This is in anticipation of a possible future restructuring of the distribution system.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[16]

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[17]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

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[16] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Retail Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[17] Consider adding or substituting this provision for a right to appoint a receiver.

b. the right to impose, bill, invoice, collect and receive Transition Charges from Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Retail Consumer to pay the Transition Charges charged to the Retail Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the IESO Successor in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of IESO and if applicable an IESO Successor to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and

notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – [NTD: Addressed in Section 13(3)]. IESO may Dispose of all or any part of its interest in a Regulatory Asset in favour of an Absolute Assignee and, any such Disposition, when made, shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof. Upon any Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest expressed to be subject to the Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens or other adverse interests in favour of such other persons.

(4) **Validity of Pledges** – [NTD: Section 13(3)], a Pledge by an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security

interest in such proceeds shall be perfected pursuant to the PPSA.[18] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. [Covered by the PPSA]

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5. [Add Default rights of a Pledgee]

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[19]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups

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[18] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

19 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Retail Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail Consumer Group over such Reference Period.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition

Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition Charges across the Retail Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset. [Is this different from the Regulatory Asset or the IESO Retained Interest?]

(2) **[NTD: Leave to agreements]**

(3) **Dispositions** – IESO may, from time to time, effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (c) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition. [NTD: Is (c) necessary?]

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

(5) **IESO Financing Costs** – IESO may incur reasonable financing costs in order to finance its ownership of the IESO Retained Interest.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Agent shall be authorized to prepare, implement and amend the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare and propose the adoption of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

(2) **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.

(3) **OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) **Replacement of the Administrative Agent** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) **Obligation to Apply IESO Remittances** – The Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, any Alternative Servicer, any Alternative Collection Agent, IESO, any IESO Successor, the Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable

pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) Incurrences are Binding – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[20]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][21]

Article 11 – Undertaking of the Lieutenant Governor in Council[22]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection

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[20] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[21] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[22] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[23]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

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[23] Requested by Torys. For discussion.

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[24]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

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[24] OPG would like the specific amendments related to OPG to be included in the Bill.]

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[25]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(9) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology);

(6) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required

[25] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative will be well in excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Retail Consumers (the "Fair Allocation Plan"). [NTD: The IESO has a number of comments on the FAP: (i) Is it necessary to include this much detail in the FAP, as opposed to broadly referencing a FAP that will articulate principles/parameters for allocating future deferred amounts, etc., and which will be developed and/or set out in the Regs; (ii) while we appreciate the constitutional issues, we believe there risk in prescribing this much detail in purpose/objects and in how the FAP is engineered, which makes it easier to challenge. Is it

not intended to provide for as much flexibility as possible?; (iii) is it intended that the 17% deferred amount is an outcome of the yet to be developed FAP?; (iv) the FAP is in essence a policy-based decision(s) and in the IESO's view would seem to have to necessarily be prepared by the Ministry, albeit with input from relevant experts, including the IESO, LDCs, etc. – as opposed to being delegated to experts]

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Retail Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred by IESO to cover such a shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in one or more future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf such financing entities by a financial services agent under the Financing Plan contemplated in this Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this Act:

"Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Agent whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee

during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1] [NTD: Is this needed if OEB determines volumetric rate to recover Period Transition Charge?]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the ~~collection activities and activities of any~~obligations of an Electricity Distributor ~~or IESO~~ under Article ~~5, as agent for and on behalf of the Regulatory Asset Owners.~~5.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of ~~the Servicer~~an Electricity Distributor under Article ~~4, as agent for and on behalf of the Regulatory Asset Owners.~~4.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars),

[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.

as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by ~~the Servicer~~IESO, a Successor IESO or the Financial Services Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4] [NTD: is there a need to reference this requirement in the legislation?]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means ~~an~~any actual or purported sale, assignment~~,~~ or transfer~~, conveyance, sale, contribution, set-over, exchange or other disposition~~ of an Investment Interest to an Absolute Assignee~~ pursuant to a Disposition Document.~~, and "Dispose" shall have a corresponding meaning.

"Disposition Document" means ~~the~~any agreement, deed, conveyance, instrument or other document~~ under~~ which relates to a Regulatory Asset ~~Owner effects a Disposition to an Absolute Assignee~~ or an interest therein. [ND: changes are intended to address partial circularity]

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received [or deemed to be received] [NTD: delete deeming language unless it is intended to provide for deemed collections] by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any

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[2] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[3] This would pick up adjustments based on actual collection experience, changes in the retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by any of a Electricity Distributor (or ~~in its stead,~~ by an Alternative Servicer)~~, by the Servicer or by a Retailer, in each case~~ to a Retail Consumer that is served by the Electricity Distributor's distribution system in accordance with Section 4(1) in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act. [NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice.]

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period ~~in respect of the~~by an Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges. [Should the Repayment Amount not be reduced to anticipate ordinary course refinancings by Finance Entities?]

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or

establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve

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[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period [in respect of a Funding Obligation] [NTD: not all receipts may relate to a Funding Obligation] , including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period. [NTD: Make provision for receipts in respect of reserve accounts, i.e Funding Costs should be reduced by interest receipts on reserve accounts]

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means (i) the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

[NTD: Parking for a moment the commercial law issues around subordination, we are considering whether the conferral upon the IESO of a subordinated residual interest in the Transition Charges cash flow create consolidation issues. It may also impact our ability to book an asset.]

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO ~~Financing~~Funding Costs" means, for a Reference Period, the ~~financing~~ funding costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]~~; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.~~ [NTD: it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDC's entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages]. To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month based on information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or ~~if applicable the Alternative Collection Agent~~an IESO Successor prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the ~~Alternative Collection Agent~~ IESO Successor to recover payment of amounts payable by Electricity Distributors to IESO or the IESO Successor in accordance with Article 5.

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the aggregate net proceeds received by IESO from or on behalf of ~~each~~any Absolute Assignee as consideration for ~~the~~a Disposition ~~of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee~~ prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means ~~the~~any entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to ~~a Disposition~~Section 6(2), which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, ~~(a)~~ the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group to such Reference Period in accordance with the Fair Allocation Plan~~, divided by (b) the applicable~~. [NTD: When will there be visibility into this process and amount. Is this calculated on a monthly basis or for a Reference Period ~~Length.~~]

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period~~.~~, calculated in accordance with Section 4(2). [Does this mean that any retained IESO Interest amount is necessarily repaid in the next "Relevant Period, subject to the Maximum Transition Charge Amount?"]

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor or an Alternative Collection Agent, any bank account into which the Electricity Distributor or such Alternative Collection Agent deposits or receives Transition Charge Collections; (b) for the ~~Servicer~~IESO or an IESO Successor, any bank account into which IESO or the IESO Successor deposits or receives Transition Charges~~, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent~~

~~deposits or receives Transition Charge Collections~~, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the ~~Alternative Collection Agent~~IESO Successor as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" ~~means any event specified as such in a Funding Obligation.~~ [should be defined, perhaps in the regulations]

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and

distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.

~~"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.~~

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a Retail Consumer in respect of a Reference Period, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length. [NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Transition Charges.]

"Transition Charge Collection" means any amount received or deemed by this Act to have been received upon the collection of a Transition Charge paid by or on behalf of a Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 11(2).

Article 3 – Transition Charges

(1) **Retail Consumer Obligation to Pay a Transition Charge** – Each Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Retail Consumer by its

Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice. [Is the intent that IESO can recover the IESO retained interest only through the Transition Charges, subject to the Maximum Transition Charge Amount and after payment of the Assigned Interest?]

(2) **Indebtedness of Retail Consumers** – Until paid, a Transition Charge charged to a Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Retail Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Retail Consumer under the Electricity Invoice or otherwise.[9]

(3) **No Set-Off or Reduction** – A Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

Article 4 – Invoicing of Transition Charges

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[8] Determine if this is critical for rating and markets. Logistics under consideration.

[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Agent on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a Retail Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees ~~shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to~~may appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, ~~IESO, the Servicer,~~an Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. ~~Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.~~

~~**(10) No Set-Off or Reduction** – No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.~~

(10) ~~**(11)**~~ **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Retail Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to collect amounts owing by Retail Consumers in respect of Transition Charges charged to such Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if

[10] Mirror collection "standard of care" under applicable legislation.

[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all Transition Charge Collections received by it from Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable ~~any Alternative Collection Agent~~an IESO Successor shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Retail Consumers that pay their Electricity Invoices directly to IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable ~~the Alternative Collection Agent~~an IESO Successor shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any ~~Alternative Collection Agent~~IESO Successor shall hold such amounts in trust for the Regulatory Asset Owners.

(6) **IESO Remittances** – ~~On~~(a) on each Settlement Date[13], IESO and if applicable ~~the Alternative Collection Agent~~an IESO Successor shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~in respect of the Investment Interest to or to the account of the Absolute Assignees ~~an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii)~~; and (b) on each Settlement Date[14], IESO and if applicable the IESO Successor shall remit all amounts on deposit in its Regulatory Asset Account in respect of the IESO Retained Interest ~~Amount as of the Settlement Date.~~to the IESO. [NTD: to discuss. I had thought that what we had discussed was that IESO could recover the IESO Retained Interest Amount not as part of the Transition Charges, but independently through its own processes. This would require an allocation, but not express subordination. If subordination is required together with a Maximum Transition Charge Amount, consider whether this puts IESO in the position of a residual interest holder and consider impact on ability to book asset, consolidation and prospectus.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such

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[12] Consider building this obligation into a deemed condition of licence for the IESO.

[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

[14] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successor** – IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[~~14~~15], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Retail Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, ~~the~~an Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor ~~or IESO~~, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations in respect of the Transition Charges otherwise required to be undertaken by such Electricity Distributor ~~or IESO~~, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor ~~or IESO~~, as applicable. Any Electricity Distributor ~~or IESO, as applicable,~~ that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to

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[~~14~~15] This is in anticipation of a possible future restructuring of the distribution system.

permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[15]16

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[16]17

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

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[15]16 Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Retail Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[16]17 Consider adding or substituting this provision for a right to appoint a receiver.

b. the right to impose, bill, invoice, collect and receive Transition Charges from Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Retail Consumer to pay the Transition Charges charged to the Retail Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the ~~Alternative Collection Agent~~ IESO Successor in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of IESO and if applicable ~~the Alternative Collection Agent~~an IESO Successor to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by IESO to an Absolute Assignee made under the Financing Plan, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted~~[NTD: Addressed in Section 13(3)]. IESO may Dispose of all or any part of its interest in a Regulatory Asset in favour of an Absolute Assignee and, any such Disposition, when made, shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition~~, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer.~~ . Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof~~, and upon such~~. Upon any Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest expressed to be subject to the Disposition~~, including all rights under the Investment Interest arising after such Disposition.~~ .

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens or other adverse interests in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province~~[NTD: Section 13(3)], a Pledge by an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and may be perfected by filing a financing statement

under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[17][18] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).~~ [Covered by the PPSA]

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5. [Add Default rights of a Pledgee]

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~, in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18][19]

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[17][18] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

[18][19] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Retail Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail Consumer Group over such Reference Period.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail

Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition Charges across the Retail Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset. [Is this different from the Regulatory Asset or the IESO Retained Interest?]

(2) ~~**Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.~~ **[NTD: Leave to agreements]**

(3) **Dispositions** – IESO may, from time to time, effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the ~~Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the~~ Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (~~d~~c) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition. [NTD: Is (c) necessary?]

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party~~ and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly~~

~~permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement~~.

(5) **IESO Financing Costs** – IESO ~~shall be entitled in good faith to~~may incur reasonable financing costs ~~(including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears,~~ in order to finance its ownership of the IESO Retained Interest ~~from time to time.~~ .

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Agent shall be authorized to prepare, implement and amend the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare and propose the adoption of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

(2) **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.

(3) **OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) **Replacement of the Administrative Agent** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) **Obligation to Apply IESO Remittances** – The Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, ~~IESO,~~ any Alternative Servicer, any Alternative Collection Agent, IESO, any IESO Successor, the Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) Incurrences are Binding – ~~Notwithstanding anything to the contrary in this Act, each~~Each Disposition made to or by an Absolute Assignee ~~and~~, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding ~~for the purposes of this Act~~, including in determining the amount of related Transition Charges, ~~despite~~notwithstanding any ~~impairment or defect resulting from such failure.~~ defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[~~19~~20]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][~~20~~21]

Article 11 – Undertaking of the Lieutenant Governor in Council[~~21~~22]

[~~19~~20] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[~~20~~21] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[~~21~~22] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article ~~11.~~[22] 11.[23]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other

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~~22~~23 Requested by Torys. For discussion.

documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[~~23~~24]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

[~~23~~24] OPG would like the specific amendments related to OPG to be included in the Bill.]

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule ~~3~~[24]3[25]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(9) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology);

(6) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that

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[24][25] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to

time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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Total changes	223

RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Peter Hamilton [PHamilton@stikeman.com]
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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
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Please see attached IESO/Stikemans comments.

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Please see attached IESO/Stikemans comments.

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Stephen,

This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will n

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Steve,
We have been corresponding with Torys today and are in the process of preparing a consolidated mark-up reflecting comments from the Dealers and OPG, which will also incorporate some of the com

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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Tuesday, April 11, 2017 13:19:05
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Stephen,

This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will not be ready by 2 PM. We would like to use tomorrow's meeting to discuss the mark-up we are preparing rather than a further revised version that will not reflect our feedback.

Elliot

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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

Stephen R. Ashbourne

Partner

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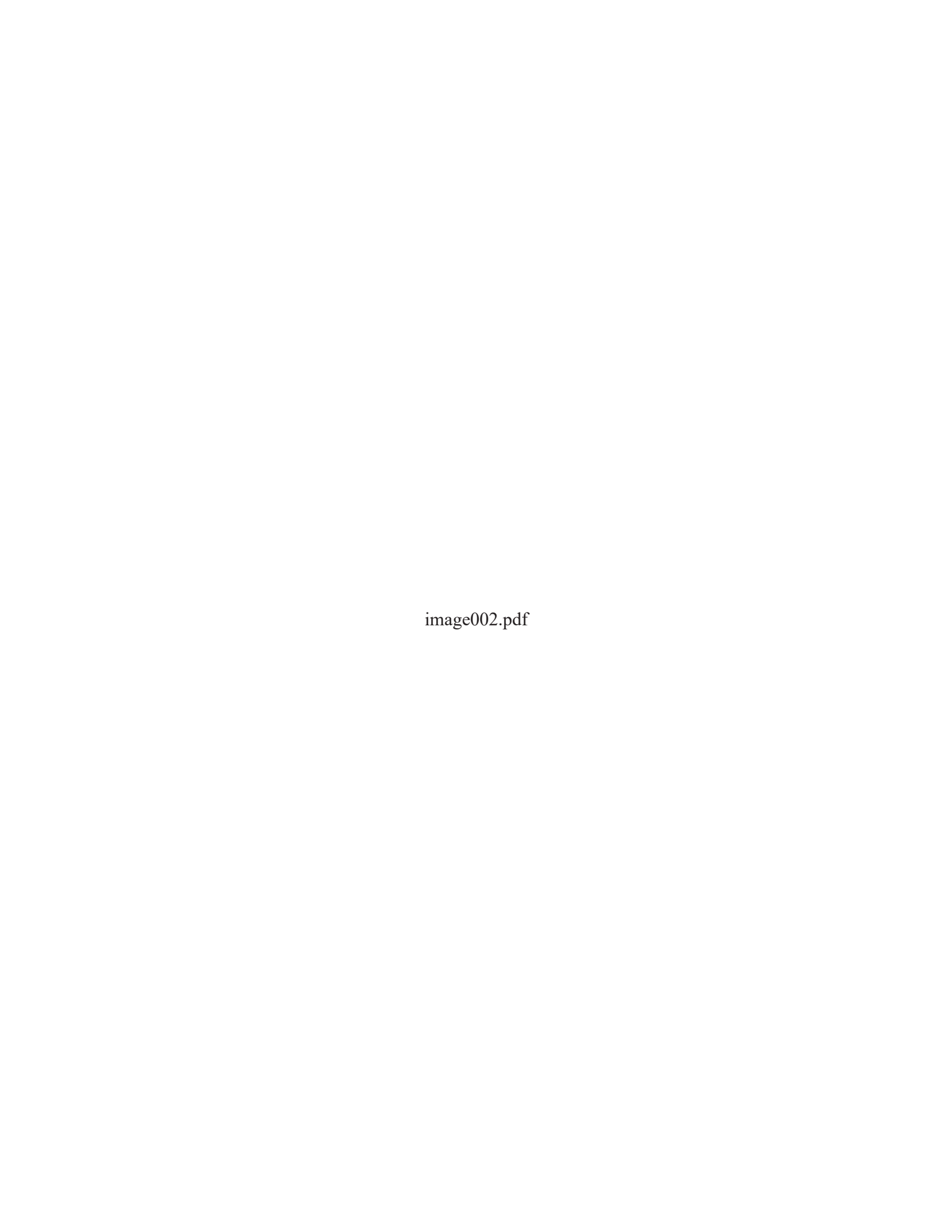
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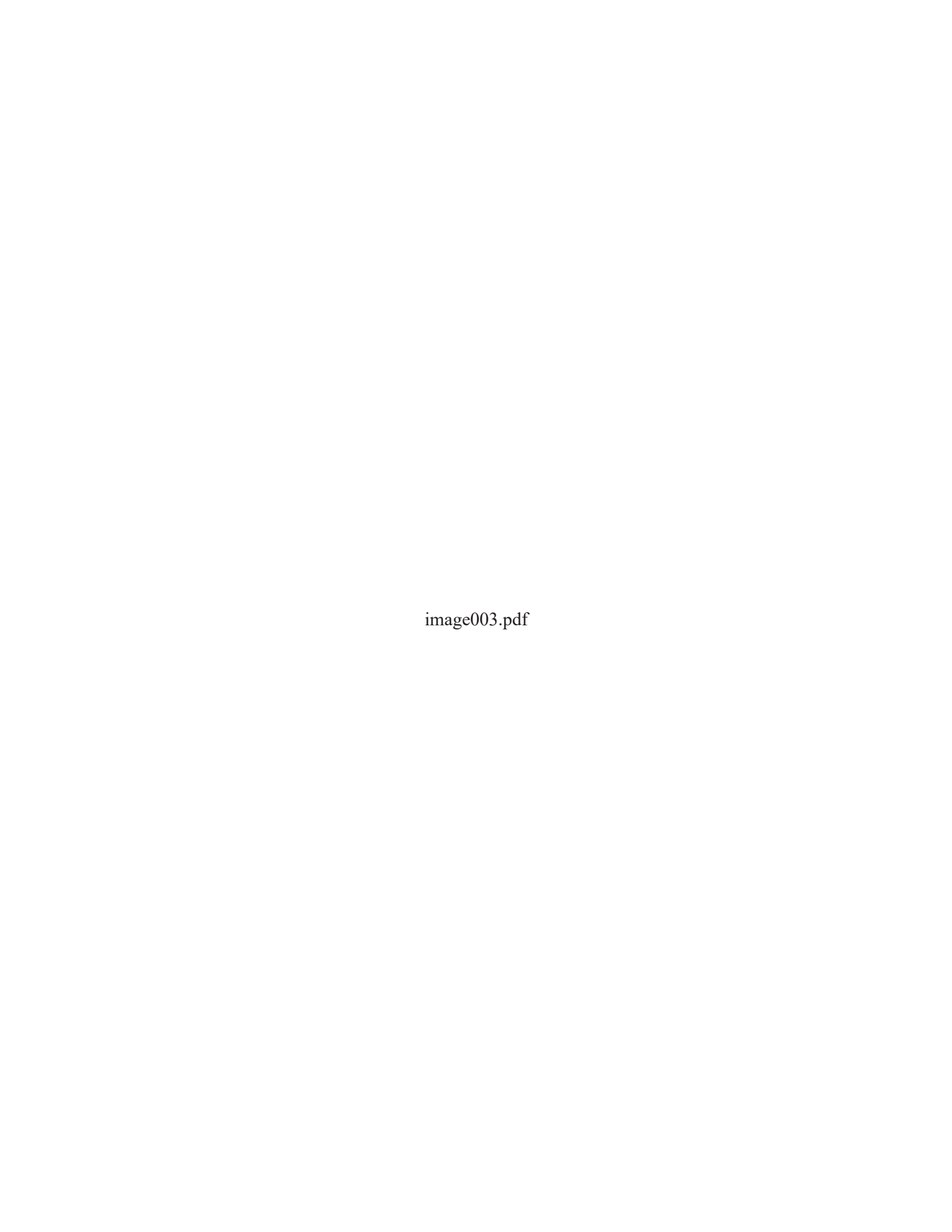
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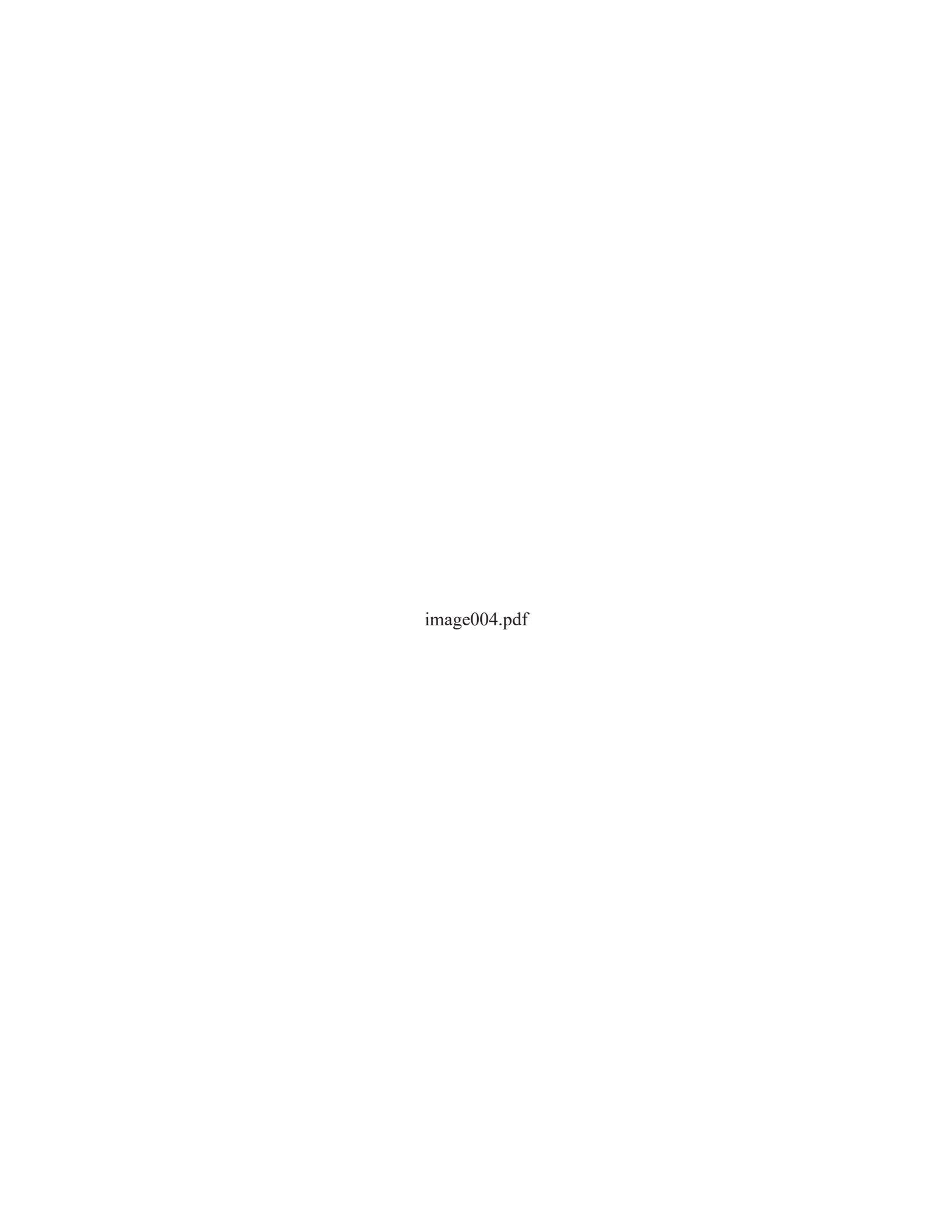
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All - please find attached a revised draft of the summary legislation circulated by Blakes on April 10 which reflects consolidated comments from OPG and the dealers (and their respective counsel). Ple

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Fair_Hydro_Act Torys_Osler Mark-up April 11 2017 Draft (Torys-Oslers_Apr....docx (64 KB)
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&AttachmentId=2Fair_Hydro_Act Torys_Osler Mark-up April 11 2017 Draft (Torys-Oslers_Apr....docx

RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Mansoori, Nina [nmansoori@torys.com]
To: WILSON, JUDY [JUDY.WILSON@blakes.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; Peter Hamilton (PHamilton@stikeman.com) [PHamilton@stikeman.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Alan Hibben [alan.hibben@rogers.com]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Michael.Boll@ieso.ca [Michael.Boll@ieso.ca]; Feldman, Michael [mfeldman@torys.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Keizer, Charles [ckeizer@torys.com]; Myers, Jonathan [jmyers@torys.com]; Emes, Aaron [aemes@torys.com]; Wortsman, Jerald [jwortsman@torys.com]; Bomhof, Scott [sbomhof@torys.com]; Estey, Bill [bestey@torys.com]; Watson, Gwen [gwatson@torys.com]; O'Brian, Adam [aobrian@hunton.com]; Fitzpatrick, Michael F. [MFitzpatrick@hunton.com]; VINER, JON [JON.VINER@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Sebastiano, Rocco [RSebastiano@osler.com]; GZacher@stikeman.com [GZacher@stikeman.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hilloowala, Maharukh [Maharukh.Hilloowala@tdsecurities.com]; Wolff, Michael [Michael.Wolff@tdsecurities.com]; Holloway, Harold [Harold.Holloway@tdsecurities.com]; Akman, Steven [Steven.Akman@tdsecurities.com]; Manii, David [david.manii@tdsecurities.com]; Nevison, Gary [Gary.Nevison@tdsecurities.com]; Niehaus, Katrina [Katrina.Niehaus@gs.com]; Maciel, Andrew [Andrew.Maciel@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Alvi, Shariq [Shariq.Alvi@cibc.com]; Benaiah, Ian [ian.benaiah@rbccm.com]; Fullerton, Rick [RFullerton@osler.com]; Collins, Patrick J [Patrick.Collins@gs.com]; Mullen, Max M. [Max.Mullen@gs.com]; Delaney, Brian [Brian.Delaney@gs.com]; Hong, Yoomin [yoomin.hong@gs.com]; Raman, Akila [Akila.Raman@gs.com]; King, Richard [rking@osler.com]; Innes, Michael [MInnes@osler.com]; Milligan, Peter [PMilligan@osler.com]; 'Smith, Elliot' [ESmith@osler.com]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Wednesday, April 12, 2017 12:15:30
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To: WILSON, JUDY [JUDY.WILSON@blakes.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; Peter Hamilton (PHamilton@stikeman.com) [PHamilton@stikeman.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Alan Hibben [alan.hibben@rogers.com]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Michael.Boll@ieso.ca [Michael.Boll@ieso.ca]; Feldman, Michael [mfeldman@torys.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Keizer, Charles [ckeizer@torys.com]; Myers, Jonathan [jmyers@torys.com]; Emes, Aaron [aemes@torys.com]; Wortsman, Jerald [jwortsman@torys.com]; Bomhof, Scott [sbomhof@torys.com]; Estey, Bill [bestey@torys.com]; Watson, Gwen [gwatson@torys.com]; O'Brian, Adam [aobrian@hunton.com]; Fitzpatrick, Michael F. [MFitzpatrick@hunton.com]; VINER, JON [JON.VINER@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Sebastiano, Rocco [RSebastiano@osler.com]; GZacher@stikeman.com [GZacher@stikeman.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Johnson, Paul (ENERGY) [Paul.Johnson3@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hilloowala, Maharukh [Maharukh.Hilloowala@tdsecurities.com]; Wolff, Michael [Michael.Wolff@tdsecurities.com]; Holloway, Harold [Harold.Holloway@tdsecurities.com]; Akman, Steven [Steven.Akman@tdsecurities.com]; Manii, David [david.manii@tdsecurities.com]; Nevison, Gary [Gary.Nevison@tdsecurities.com]; Niehaus, Katrina [Katrina.Niehaus@gs.com]; Maciel, Andrew [Andrew.Maciel@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Alvi, Shariq [Shariq.Alvi@cibc.com]; Benaiah, Ian [ian.benaiah@rbccm.com]; Fullerton, Rick [RFullerton@osler.com]; Collins, Patrick J [Patrick.Collins@gs.com]; Mullen, Max M. [Max.Mullen@gs.com]; Delaney, Brian [Brian.Delaney@gs.com]; Hong, Yoomin [yoomin.hong@gs.com]; Raman, Akila [Akila.Raman@gs.com]; King, Richard [rking@osler.com]; Innes, Michael [MInnes@osler.com]; Milligan, Peter [PMilligan@osler.com]; 'Smith, Elliot' [ESmith@osler.com]; ASHBOURNE, STEPHEN [STEPHEN.ASHBOURNE@blakes.com]
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&AttachmentId=2Fair_Hydro_Act Torys_Osler Mark-up April 11 2017 Draft (Torys-Oslers_Apr....docx

RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Ken Kandeepan [Ken.Kandeepan@ofina.on.ca]
To: Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Wednesday, April 12, 2017 14:11:22

Hi Sarah

We are on the phone and it appears that the moderator, whoever that is has not yet signed on, can you pls follow up.

Thanks

Ken k

-----Original Message-----
From: Hosick, Sarah (TBS) [mailto:Sarah.Hosick@ontario.ca]
Sent: Wednesday, April 12, 2017 1:02 PM
To: Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Cc: Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Nadine Petsche (MOF) <Nadine.Petsche@ontario.ca>
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Done

-----Original Message-----
From: Ken Kandeepan [mailto:Ken.Kandeepan@ofina.on.ca]
Sent: April-12-17 1:01 PM
To: Hosick, Sarah (TBS)
Cc: Veinot, Cindy (TBS); Petsche, Nadine (TBS)
Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Hi Sarah

Can you pls forward the meeting invite

Thanks

Ken k

-----Original Message-----
From: Veinot, Cindy (TBS) [mailto:Cindy.Veinot@ontario.ca]
Sent: Wednesday, April 12, 2017 12:36 PM
To: Nadine Petsche (MOF) <Nadine.Petsche@ontario.ca>; Suzie Gignac <suzie.r.gignac@ca.ey.com>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>
Subject: FW: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Importance: High

Base document for today's 2 pm call

-----Original Message-----

From: Calwell, Carolyn (ENERGY/MEDEI/MRI)

Sent: April-12-17 12:30 PM

To: Hume, Steen (ENERGY); Nelms, Scott (MOF); Veinot, Cindy (TBS); Cox, Hilary (ENERGY); Christie, Tim (ENERGY)

Cc: Rehob, James (ENERGY); Shear, Dan (ENERGY); Kacaba, Jennifer (ENERGY); Huang, Jackson (MEDG/MRIS)

Subject: FW: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Importance: High

Here is the document, just received, that we will work from this afternoon.

-----Original Message-----

From: Mansoori, Nina [mailto:nmansoori@torys.com]

Sent: April-12-17 12:16 PM

To: WILSON, JUDY; STOKES, BRYSON; JACKSON, ADAM; Peter Hamilton (PHamilton@stikeman.com); Rehob, James (ENERGY); Alan Hibben; Shear, Dan (ENERGY); Calwell, Carolyn (ENERGY/MEDEI/MRI); Michael.Boll@ieso.ca; Feldman, Michael; LEE John -TREASURY; RYFA Ken -TREASURY; WONG Leslie -LAWDIV; Hill, Krista; Ramchandani, Rima; Keizer, Charles; Myers, Jonathan; Emes, Aaron; Wortsman, Jerald; Bomhof, Scott; Estey, Bill; Watson, Gwen; O'Brian, Adam; Fitzpatrick, Michael F.; VINER, JON; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF); Sebastiano, Rocco; GZacher@stikeman.com; Christie, Tim (ENERGY); Johnson, Paul (ENERGY/MEDEI/MRI); Kwan, Ronald (OFA); He, Gavin (OFA); Veinot, Cindy (TBS); Hosick, Sarah (TBS); kim.marshall@ieso.ca; Cox, Hilary (ENERGY); Hilloowala, Maharukh; Wolff, Michael; Holloway, Harold; Akman, Steven; Manii, David; Nevison, Gary; Niehaus, Katrina; Maciel, Andrew; Persaud, Donnie - Debt Capital Markets; Adalja, Sunil; Alvi, Shariq; Benaiah, Ian; Fullerton, Rick; Collins, Patrick J; Mullen, Max M.; Delaney, Brian; Hong, Yoomin; Raman, Akila; King, Richard; Innes, Michael; Milligan, Peter; 'Smith, Elliot'; ASHBOURNE, STEPHEN

Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Importance: High

All - please find attached a revised draft of the summary legislation circulated by Blakes on April 10 which reflects consolidated comments from OPG and the dealers (and their respective counsel). Please note that the attached remains subject to the continuing review of OPG and the dealers. We will have printed copies of the blackline available at today's meeting.

Best Regards,

Nina

Nina Mansoori

P. 416.865.7332 | F. 416.865.7380 | 1.800.505.8679

Torys LLP

79 Wellington St. W., 30th Floor, Box 270, TD South Tower Toronto, Ontario M5K 1N2 Canada | www.torys.com

-----Original Message-----

From: Smith, Elliot [mailto:ESmith@osler.com]

Sent: April-12-17 12:39 AM

To: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>

Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>

Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Steve,

We have been corresponding with Torys today and are in the process of preparing a consolidated mark-up reflecting comments from the Dealers and OPG, which will also incorporate some of the comments received this evening from the IESO/Stikemans. We will circulate the consolidated mark-up before tomorrow's meeting.

Elliot

Elliot Smith

Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

FACSIMILE

esmith@osler.com

Osler, Hoskin & Harcourt LLP

Box 50, 1 First Canadian Place

Toronto, Ontario, Canada M5X 1B8

-----Original Message-----

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

Sent: Tuesday, April 11, 2017 1:54 PM

To: Smith, Elliot <ESmith@osler.com>

Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>

Subject: Re: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Elliot, in the interest of time, it may make sense for me to walk you through where your items have been addressed.
Steve

Stephen R. Ashbourne

Partner

stephen.ashbourne@blakes.com<mailto:stephen.ashbourne@blakes.com>

Dir: 416-863-3086<tel:416-863-3086>

On Apr 11, 2017, at 1:19 PM, Smith, Elliot <ESmith@osler.com<mailto:ESmith@osler.com>> wrote:

Stephen,

This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will not be ready by 2 PM. We would like to use tomorrow's meeting to discuss the mark-up we are preparing rather than a further revised version that will not reflect our feedback.

Elliot

<image002.gif>

Elliot Smith

Partner - Energy, Construction & Infrastructure

416.862.6435

DIRECT

416.862.6666

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esmith@osler.com<mailto:esmith@osler.com>

Osler, Hoskin & Harcourt LLP

Box 50, 1 First Canadian Place

Toronto, Ontario, Canada M5X 1B8

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From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]

Sent: Monday, April 10, 2017 11:16 PM

To: Feldman, Michael <mfeldman@torys.com<mailto:mfeldman@torys.com>>; JACKSON, ADAM <ADAM.JACKSON@blakes.com<mailto:ADAM.JACKSON@blakes.com>>; Peter Hamilton (PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>) <PHamilton@stikeman.com<mailto:PHamilton@stikeman.com>>; LEE John -TREASURY <john.s.lee@opg.com<mailto:john.s.lee@opg.com>>; RYFA Ken -TREASURY <ken.ryfa@opg.com<mailto:ken.ryfa@opg.com>>; WONG Leslie -LAWDIV <leslie.wong@opg.com<mailto:leslie.wong@opg.com>>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com<mailto:tyler.mcauley@opg.com>>; WILSON, JUDY <JUDY.WILSON@blakes.com<mailto:JUDY.WILSON@blakes.com>>; STOKES, BRYSON <BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>>; Hill, Krista <khill@torys.com<mailto:khill@torys.com>>; Ramchandani, Rima <rramchandani@torys.com<mailto:rramchandani@torys.com>>; Keizer, Charles <ckeizer@torys.com<mailto:ckeizer@torys.com>>; Myers, Jonathan <jmyers@torys.com<mailto:jmyers@torys.com>>; Emes, Aaron <aemes@torys.com<mailto:aemes@torys.com>>; Mansoori, Nina <nmansoori@torys.com<mailto:nmansoori@torys.com>>; Wortsman, Jerald <jwortsman@torys.com<mailto:jwortsman@torys.com>>; Bomhof, Scott <sbomhof@torys.com<mailto:sbomhof@torys.com>>; Estey, Bill <bestey@torys.com<mailto:bestey@torys.com>>; Watson, Gwen <gwatson@torys.com<mailto:gwatson@torys.com>>; James.Rehob@ontario.ca<mailto:James.Rehob@ontario.ca>; Alan Hibben <alan.hibben@rogers.com<mailto:alan.hibben@rogers.com>>; 'Shear, Dan (ENERGY)' <Dan.Shear@ontario.ca<mailto:Dan.Shear@ontario.ca>>; Carolyn.Calwell@ontario.ca<mailto:Carolyn.Calwell@ontario.ca>; O'Brian, Adam <aobrian@hunton.com<mailto:aobrian@hunton.com>>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com<mailto:MFitzpatrick@hunton.com>>; STOKES, BRYSON <BRYSON.STOKES@blakes.com<mailto:BRYSON.STOKES@blakes.com>>; VINER, JON <JON.VINER@blakes.com<mailto:JON.VINER@blakes.com>>; Brad.Purkis@tdsecurities.com<mailto:Brad.Purkis@tdsecurities.com>; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca<mailto:Scott.Nelms@ontario.ca>)

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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

Stephen R. Ashbourne

Partner

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RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Monday, April 10, 2017 23:15:31
Attachment 1: image5983e9.GIF
Attachment 2: TOR_2528-#23107566-v9-_Fair_Hydro_Act_.DOCX
Attachment 3: TOR_2528-#23107566-vpdf-_Fair_Hydro_Act_.PDF

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

Stephen R. Ashbourne

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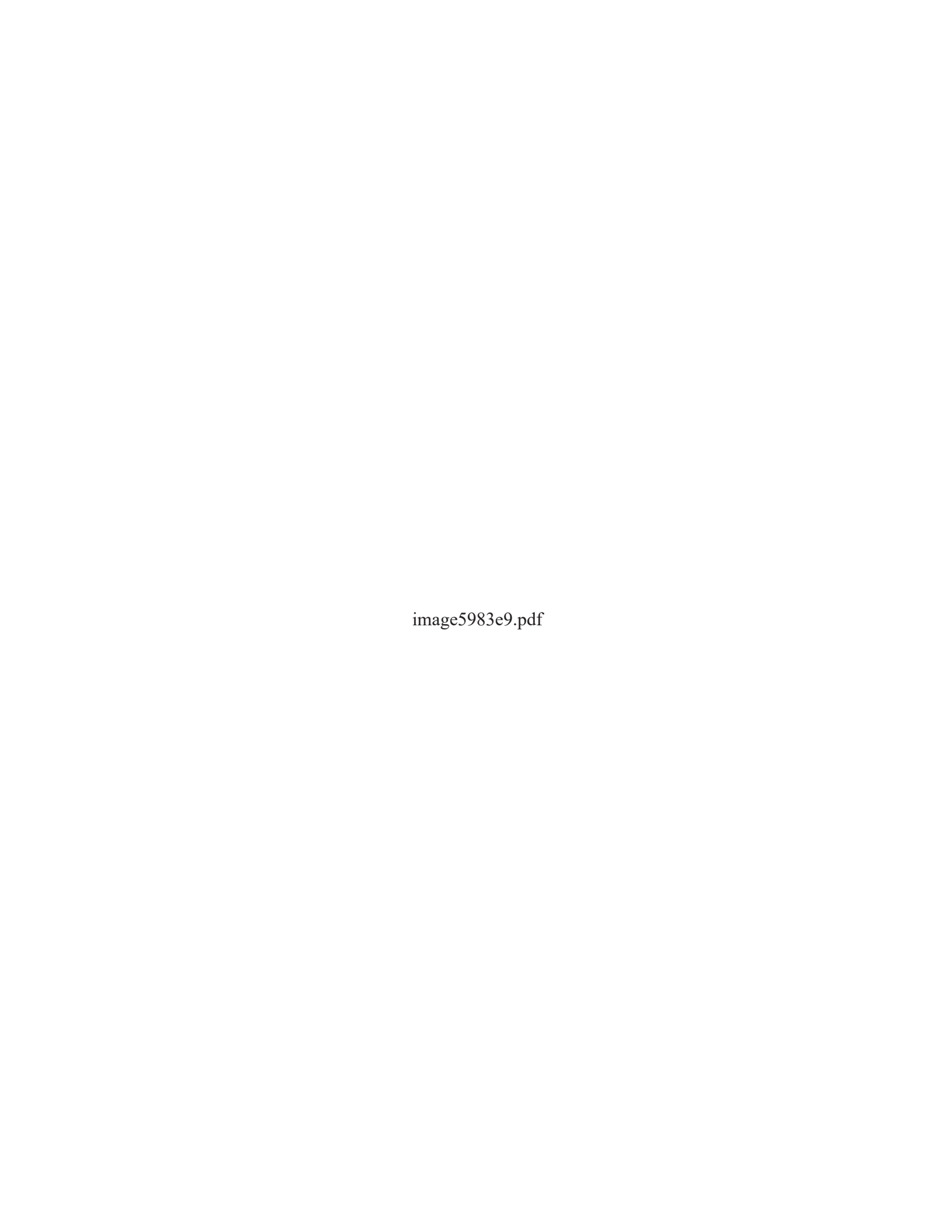
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Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative will be well in excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Retail Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs

Adjustment, then the amount payable by such Retail Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred by IESO to cover such a shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in one or more future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf such financing entities by a financial services agent under the Financing Plan contemplated in this Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this Act:

> “Absolute Assignee” means a person to whom a Regulatory Asset Owner effects a Disposition.
>
> “Actual” means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Agent whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> “Additional Funding Charges” means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute

Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services

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[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.

[2] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

Agent, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of an Investment Interest to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by any of a Electricity Distributor (or in its stead, by an Alternative Servicer), by the Servicer or by a Retailer, in each case to a Retail Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act.

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any

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[3] This would pick up adjustments based on actual collection experience, changes in the retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

Retail Consumer Group, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of the Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.[6]

"Financing Plan" means the written plan prepared by the Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other

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[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for the Servicer, any bank account into which IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their

own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a Retail Consumer in respect of a Reference Period, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.

"Transition Charge Collection" means any amount received or deemed by this Act to have been received upon the collection of a Transition Charge paid by or on behalf of a Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section 11(2).

Article 3 – Transition Charges

(1) **Retail Consumer Obligation to Pay a Transition Charge** – Each Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Retail Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Retail Consumers** – Until paid, a Transition Charge charged to a Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Retail Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Retail Consumer under the Electricity Invoice or otherwise.[9]

(3) **No Set-Off or Reduction** – A Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

Article 4 – Invoicing of Transition Charges

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued

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[8] Determine if this is critical for rating and markets. Logistics under consideration.

[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

by the Electricity Distributor or if applicable by the Alternative Servicer to the Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Agent on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a Retail Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative

Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Retail Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to collect amounts owing by Retail Consumers in respect of Transition Charges charged to such Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all Transition Charge Collections received by it from Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

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[10] Mirror collection “standard of care” under applicable legislation.

[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Retail Consumers that pay their Electricity Invoices directly to IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners.

(6) **IESO Remittances** – On each Settlement Date[13], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account (a) first, to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successor** – IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by Retail Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

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[12] Consider building this obligation into a deemed condition of licence for the IESO.

[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

[14] This is in anticipation of a possible future restructuring of the distribution system.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure.

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[15]

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity

[15] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Retail Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[16]

(14) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

b. the right to impose, bill, invoice, collect and receive Transition Charges from Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Retail Consumer to pay the Transition Charges charged to the Retail Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the

[16] Consider adding or substituting this provision for a right to appoint a receiver.

Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by IESO to an Absolute Assignee made under the Financing Plan, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest subject to the Disposition, including all rights under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and

the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a Pledge by an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[17] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document, in each case under the Financing Plan. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

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[17] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18]

(1) Adoption of the Fair Allocation Plan – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).

(2) Principles and Parameters – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Retail Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail Consumer Group over such Reference Period.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future

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18 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition Charges across the Retail Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(2) **Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(3) **Dispositions** – IESO may effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Agent shall be authorized to prepare, implement and amend the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare and propose the adoption of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan.

(2) **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.

(3) **OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) **Replacement of the Administrative Agent** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) **Obligation to Apply IESO Remittances** – The Financial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) **Incurrences are Binding** – Notwithstanding anything to the contrary in this Act, each Disposition made to or by an Absolute Assignee and all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite any impairment or defect resulting from such failure.

[Article 10 – Compliance Matters[19]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) **[OPG's Rate Settings** – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG

[19] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20]

Article 11 – Undertaking of the Lieutenant Governor in Council[21]

(1) **No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections** – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) **Undertaking and Agreement** – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

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[20] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[21] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article 11.[22]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[23]

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[22] Requested by Torys. For discussion.

[23] OPG would like the specific amendments related to OPG to be included in the Bill.]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(9) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Retail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology);

(6) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of

[24] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act" ~~– Part V.2~~

Article 1 – Purpose[1]

~~IESO has entered into Power Contracts with Generators. The agreed-upon reference prices and quantities set out therein were determined based on commitments made by IESO to provide Generators with long-term price certainty, so as~~The Province has and continues to encourage the construction and development of facilities for the ~~purpose of~~ long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer ~~and~~, feed in tariff and other similar programs (the "Green Generation Initiative"). ~~[The terms of the Power Contracts were intended to approximate the anticipated useful life of the related generation assets]; however, it has been determined that the useful life of many of these assets will be well in excess of the actual term of the related Power Contracts and will extend over more than one generation of ratepayers.~~ The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will benefit present and future ~~ratepayers of the Province. Currently, market prices for electricity are less than the reference prices set out in the Power Contracts, leaving a gap in funding which is funded by charging consumers a "Global Adjustment" (part of which is available to IESO to pay this shortfall).~~electricity consumers in the Province.

The imputed costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.

~~Each month, the IESO determines the Global Adjustment payable by consumers for the consumption~~The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province~~. A component of the Global Adjustment is the amount by which the reference prices in the Power Contracts~~ under the Green Generation Initiative, which may be higher than prevailing market price for electricity. These differences arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with long-term price certainty for electricity, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. In general, whenever amounts payable under these procurement contracts exceed the market price for electricity~~ for the quantities of electricity specified under the Power Contracts for the relevant period[2]. The relationship between the past, present and future benefits to Ratepayers from~~, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts. It has been determined that the useful lives of many of the assets encouraged by the Green Generation Initiative~~, on the one hand, and the costs of~~ will be well in

[1] ~~Consider the scope and breadth of the Purpose section. This text is considered to be useful to establish the legislative basis for the statute, which text will be useful in the event of a challenge.~~

[2] ~~Consider modifying this to also refer to gas contracts and hydroelectric contracts, which provide for mechanics that are not based on contracts for differences.~~

excess of the respective terms of the related procurement contracts, and in many cases may extend over more than one generation of electricity consumers.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative ~~borne by past, present and future Ratepayers through their respective allocations of the Global Adjustment, on the other hand, do not necessarily reflect an equitable allocation of such benefits and costs over time, with the result that an adjustment may be appropriate to address inter-generational fairness considerations. Such an adjustment should reflect~~will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective durations of the procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Retail Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Retail Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on principles and parameters that ~~can be applied from time to time in order to~~ establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative ~~across present and future Ratepayers. A plan to allocate such costs and benefits~~ equitably across present and future ~~Ratepayers may be developed based on those principles and parameters (a~~Retail Consumers (the "Fair Allocation Plan").

If ~~a~~the Fair Allocation Plan determines that the equitable allocation of the ~~Global Adjustment to the Ratepayers~~costs associated with the Green Generation Initiative to the Retail Consumers of a particular time period ~~in respect of the Power Contracts~~ should be reduced below the amount ~~otherwise determined,~~that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Ratepayers to Electricity Distributors in respect of such period,~~Retail Consumers and in turn ~~by the Electricity Distributors to the~~available to IESO~~, would~~ will, in the aggregate, be less than the amount payable by the IESO to the ~~Generators under the Power Contracts~~generators in respect of such period. ~~If the difference is greater than any net Power Contract surpluses available to IESO from earlier periods, IESO will have a funding shortfall.[3] In order for IESO to cover such a funding shortfall for a period,~~In this case IESO will need to obtain funding from another source~~, which could include funding from third party sources operating in public and private capital markets~~ to cover such a shortfall. If a funding obligation is incurred ~~in order to enable the~~by IESO to cover such a ~~funding~~ shortfall during one period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs ~~will be~~ incurred ~~and may~~will become payable in one or more ~~other~~future periods. ~~It will be necessary to provide~~In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding ~~obligations and to pay related funding costs with certainty when the funding obligations~~amounts when they become due and payable~~. This Part~~, this Act imposes irrevocable and non-bypassable financial obligations ~~of Ratepayers~~on Retail Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts . The right and interest in and to collect such financial obligations~~, which~~ will take the form of the Regulatory Asset contemplated in this ~~Part and~~Act, which will constitute property rights and interests. ~~The~~Interests in the Regulatory Asset ~~will~~may be sold and absolutely assigned ~~and will belong~~by IESO to one or more ~~newly created~~ financing entities, which in turn will finance their ~~purchase of such Regulatory Asset~~acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf ~~the~~such financing entities by ~~an administrative~~a financial services agent ~~(initially OPG),~~ under the Financing Plan

[3] ~~Confirm whether any RPP forecasting variance is to be included in (i) a funding shortfall; and (ii) related IESO financing costs to be included in Transition Charges.]~~

contemplated in this ~~Part~~Act. The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations ~~and~~, to be borne by the future ~~Ratepayers~~Retail Consumers of the period in which such payment obligations become due, with the ~~costs and~~ benefits of the Green Generation Initiative ~~charged~~allocated to such future ~~Ratepayers~~Retail Consumers under the Fair Allocation Plan.

The purpose of this ~~Part~~Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Ratepayers~~Retail Consumers on an equitable and cost effective basis.

Article 2 - Definitions

In this ~~Part~~Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the ~~Administrative~~Financial Services Agent whose records shall be determinative for the purposes of this ~~Part in~~Act except to the ~~absence~~extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period in respect of an Absolute Assignee, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by ~~the Regulatory Asset Owners~~or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including (without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the ~~Administrative~~Financial Services Agent on behalf of, ~~a Regulatory Asset Owner~~the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on ~~a Regulatory Asset Owner~~the Absolute Assignee or incurred by on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the ~~Administrative~~Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager ~~of~~or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in

good faith by the Financial Services Agent for recovery and payment under the Financing Plan.

~~"Administrative Agent" means [OPG] or, following any Replacement Event, such other person or persons who may be appointed as the administrative agent of the Regulatory Asset Owner under the Financing Plan in compliance with the requirements set out in Schedule 2.~~

"Allocation Factor" means, in respect of a ~~Ratepayer~~Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the ~~Ratepayer~~Retail Consumer by ~~[IESO]~~the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[4][1]

"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[~~5~~2] means the methodology specified in the Fair Allocation Plan for allocating the Period Transition Charges for a Reference Period to ~~the~~ individual ~~Ratepayers~~Retail Consumers of the applicable ~~Ratepayer~~Retail Consumer Group based on its Allocation Factor.

~~"Bypass Charge" means [To be developed].~~[6]

"Collected Amount Adjustment" means, in respect of a ~~Reference~~True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the ~~Administrative~~Financial Services Agent, as applicable, equal to (a) the Estimate of the

[4] ~~Consider basing~~[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those ~~would~~may be identified and ~~rolled into~~caught by the True-Up.

[5] ~~A key question will be how the overall costs will be spread across the rate base. For example, the~~[2] This allocation may be volumetric ~~or not,~~ or some combination of a flat amount and a volumetric charge. ~~This will also impact any discussion regarding any bypass (e.g., grid exit) charge in connection with the bypass discussion~~Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[6] ~~Consideration needs to be given to any amount that will be charged to a ratepayer who successfully bypasses (e.g., leaves the grid). In allocating Transition Charges, considerations would include whether to reserve Bypass Charges and spread them over the life of the program, and correspondingly how to factor those into the calculation of Transition Charges.~~

Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.~~7~~[3]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) and each Pledgee that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means the person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act.

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of ~~all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of a Regulatory Asset Owner's right, title and interest in, to and under the Regulatory Asset~~an Investment Interest to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which a Regulatory Asset Owner effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means, in respect of a Service Area, the rate regulated distributor licensed ~~by the OEB~~under Part V of the *Ontario Energy Board Act, 1998* in respect of such Service Area, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to IESO or if applicable the Alternative Collection Agent in accordance with Section 5(3) , including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by ~~an~~any of a Electricity Distributor (or in its stead, by an Alternative Servicer)~~ or~~, by the Servicer or by a Retailer, in each case to a Retail Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to a distribution network in the Electricity Distributor's designated Service Area and in respect of applicable Transition Charges to be charged to the Retail Consumer under this Act.

"Estimate" means~~,~~ (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the ~~Administrative Agent~~Financial Services Agent; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to any Retail Consumer Group, the estimated value (in current

[3] This would pick up adjustments based on actual collection experience, changes in the ~~Consumer Base~~retail consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] Consider adding the Financial Services Agent and the Servicer as parties.

dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this ~~Part in~~Act except to the ~~absence~~extent of a manifest calculation error.

"~~Fair Allocation Plan" [has the meaning given in Article 1].~~Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Retail Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Retail Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, ~~in respect of~~for a Reference Period in respect of an Absolute Assignee, the sum (without duplication) of the following amounts ~~for~~that are or become payable during the Reference Period in respect of the Absolute Assignee: (a) Repayments; (b) Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.~~"Finance Receipts" means, for a Reference Period, all amounts received by or on behalf of the Regulatory Asset Owners during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Regulatory Asset Owners under derivatives and any withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a Funding Obligation.~~

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Agent" means OPG or, following any Replacement Event, such other person or persons who may be appointed as the Financial Services Agent of the

Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition.[8] under the Financing Plan.[6]

"Financing Plan" means the written plan [prepared by the Administrative Agent]Financial Services Agent on behalf of each Absolute Assignee in compliance with Article 89 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred in order to fund a Funding Shortfallby an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (ij) the cash flows arising from time to time or otherwise derived from the Regulatory Assetan Investment Interest may otherwise be applied, as the same may be amended, amended and restated or terminated by the Financial Services Agent in compliance with Article 9 from time to time.

"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Regulatory Asset OwnerAbsolute Assignee during the Reference Period in respect of allits Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to aits Funding ObligationObligations, exceeds (b) the aggregate of all Finance Receiptsamounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.

[5] Discuss whether to accommodate multiple Financial Services Agents. MOE to consider.

[8] OPG has suggested[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act. These raise issues for consideration by the stakeholders.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing ~~charges, indebtedness,~~charge payments; pass-through payments; payment obligations arising under or in respect of derivatives~~,~~; payment obligations owing to service providers, ~~administrative agents~~Financial Services Agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all ~~taxes payable in connection with the foregoing)~~Additional Funding Charges incurred by or on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee under the Financing Plan ~~in order to fund a Funding Shortfall for a Reference Period~~, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.[9]

~~"Funding Shortfall" means, for a Reference Period, (a) the amount, if any, by which (i) the IESO Power Contract Net Payment for the Reference Periods, exceeds (ii) the GA Power Contract Contribution for Reference Period, minus (b) the IESO Applied Surplus for the Reference Period.~~[10]Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"GA Power Contract Contribution" means, for a Reference Period, the aggregate of the payments to be made by the applicable Ratepayer Group in respect of the portion of the Global Adjustment [attributable to the Power Contracts] in accordance with the Fair Allocation Plan.~~[11]

"Generator" means a generator of electricity that is subject to ~~[this~~the *Electricity Act*~~]~~[12]~~.~~, *1998*.

"Global Adjustment" ~~means the amount calculated from time to time under [Section • of the *Electricity Act*], which includes among other things an amount determined in respect of the costs associated with the Green Generation Initiative, including amounts attributable to the Power Contracts.~~[13]has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" ~~[~~has the meaning given in Article ~~1]~~.1.

~~[9] OPG has asked whether this should include IESO finance arrangements.~~

~~[10] Consider whether to simplify by referring to the calculations of GA, with vs. without Fair. The issue would be that Fair is then linked into the GA calculation specifically, rather than to the specific assets that are subject to revised amortization under Fair. The constitutional position requires a clear nexus to the assets. Also, confirm whether RPP forecasting variances are to be included.~~

~~[11] IESO to confirm its ability to allocate a shortfall in a given month between what it receives and what it owes under the GA, in order to calculate (a) existing volume-based variances which are rolled into subsequent month GA and trued-up every 6 months under RPP, (b) existing variances attributable to OREC which are funded by the Province, and (c) new variances attributable to Fair Hydro program.]~~

~~[12] Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*. "Generator is a defined term in other legislation (OEB Act, Electricity Act) so this should ultimately be a distinct term such as "FH Generator" to avoid confusion.~~

~~[13] Note that if adjustments for Fair Hydro program are to be applied after existing GA adjustments, then this may need a new name (such as "FH Adjustment").~~

"IESO" means the Independent Electricity System Operator created pursuant to ~~[insert].~~Part II of the *Electricity Act, 1998*.

"IESO ~~Applied Surplus~~Available Amount" means, for a Reference Period, the lesser of (a) the amount~~,~~ (if any~~,~~) by which (i) the ~~IESO Power Contract Net Payment~~Maximum Transition Charge Amount for the Reference Period, exceeds (ii) ~~the GA Power Contract Contribution~~Period Finance Amount for the Reference Period, and (b) the IESO ~~Unapplied Surplus on the last day of the immediately preceding Reference Period.~~ Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO during the month pursuant to section • of the *Electricity Act*.

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified.

"IESO ~~Power Contract Net Payment" means, for a Reference Period, the amount by which (a) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period.~~Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

~~"IESO Power Contract Net Receipt" means, for a Reference Period, the amount by which (a) the sum of amounts payable by the Generators to IESO under all Power Contracts for the Reference Period, exceeds (b) the sum of amounts payable by IESO to the Generators under all Power Contracts for the Reference Period.~~

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[7] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO ~~Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for [managing the Province's power system].~~Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.

"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.

"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

~~"IESO Unapplied Surplus" means, at a particular time, the amount, if any, by which (a) the sum of (i) all IESO Power Contract Net Receipts for Reference Periods occurring prior to the time, and (ii) all GA Power Contract Contributions for Reference Periods occurring prior to the time, exceeds (b) the sum of (i) all IESO Power Contract Net~~

~~Payments for Reference Periods occurring prior to the time, and (ii) all IESO Applied Surpluses for Reference Periods occurring prior to the time.~~ Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period ~~Transition Charge~~Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount and (b) the True-Up Amount in respect of the immediately preceding Reference Period.

"Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by ~~a Regulatory Asset Owner~~the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the ~~Regulatory Asset~~Investment Interest.

"Pledgee" means a person to whom ~~a Regulatory Asset Owner~~an Absolute Assignee grants a Pledge.

~~"Power Contracts" means long-term power contracts entered into by IESO with certain Generators, under which IESO has agreed to pay such Generators amounts, determined in respect of quantities of electricity over specified periods, to the extent that applicable market prices for such quantities of electricity during a specified period are less than specified reference prices for such quantities of electricity, and, correspondingly, Generators have agreed to pay IESO amounts if the market prices for such quantities exceed the applicable reference prices for such quantities.~~[14]Program End Date" means •, [2047].

"Province" means the Province of Ontario.

~~"Ratepayer" means present and future [retail] consumers of electricity [in the Province] who are [RPP][or OREC-eligible] consumers, which shall include all such retail consumers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.~~[15]

~~[14] Consider expanding to include PPAs that are not contracts for differences. Should this contemplate the possibility of additional or amended power contracts?~~

~~[15] Need to describe consumers in a fashion that is broad and not weakened by a bypass risk. Consider terminology to align with the description of the eligible customer class provided by the Ministry, e.g., same as OREC-eligible consumers except for consumers served by Independent Power Authorities (who do not pay GA). Also, consider use of the word "retail", to avoid limiting to customers of retailers and confirm removal of reference to transmission-connected customers.~~

~~"Ratepayer Group" means, in relation to a Reference Period, the Ratepayers who receive Electricity Invoices[16] during the Reference Period.~~

"Redemption Amount" means the amount payable by or on behalf of ~~a Regulatory Asset Owner~~an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the ~~[Legislation Implementation~~Measurement Date~~]~~ to (and including) June 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.

"Refinancing" means ~~that a~~, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of ~~a Regulatory Asset Owner~~the Absolute Assignee by applying the net proceeds obtained by the ~~Regulatory Asset Owner~~Absolute Assignee incurring one or more other Funding Obligations.

"Regulatory Asset" means the property ~~right~~rights and ~~interest~~interests described in Section 6(1), ~~or if the context requires, a specified portion or undivided interest in such property right and interest that is described in the applicable Disposition Document~~which collectively is comprised of the IESO Retained Interest and each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; (b) for the Servicer, any bank account into which ~~the Servicer~~IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent ~~that it has retained any ownership interest in, to or under the Regulatory Asset~~of) the IESO Retained Interest and (b) each Absolute Assignee, ~~to the extent that it has acquired and owns any ownership interest (including a specified portion on a divided basis or by way of an undivided interest) in, to or under the Regulatory Asset~~as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively ~~all of the Regulatory Asset Owners~~IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7). ~~For greater certainty, where one Regulatory Asset Owner owns the entirety of the Regulatory Asset, "Regulatory Asset Owners" refers to this Regulatory Asset Owner.~~

[16] ~~Expand to include eligible consumers who are not customers of Electricity Distributors (e.g., suite-metered customers).~~

~~"Related Generation Assets" means the [facilities, plants and equipment] constructed, acquired or developed in connection with the Green Generation Initiative.~~

"Related Rights" means~~, with respect to a Regulatory Asset Owner's Regulatory Asset,~~ all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in ~~relation to~~accordance with any Funding Obligation, then the Business Day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the ~~Regulatory Asset Owner~~Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by ~~a Regulatory Asset Owner~~an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.

"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with ~~[this~~the *Electricity Act*[17]~~]~~, *1998*.

"Servicer" means ~~[To be determined]~~IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset ~~Owner [To be determined – collective invoicing agent, and consider expanding].~~Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, for a ~~Ratepayer~~Retail Consumer in respect of a Reference Period, ~~the sum of~~ (a) ~~[one sixth] of~~ the Period Transition Charge, (b) multiplied by its Allocation Factor ~~and (b) any Bypass Charge charged to the Ratepayer~~ in respect of the Reference Period, divided by (c) the applicable Reference Period Length.

"Transition Charge Collection" means any amount received or deemed by this ~~Part~~Act to have been received upon the collection of a Transition Charge paid by or on behalf of a ~~Ratepayer~~Retail Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the ~~Administrative~~Financial Services Agent equal to (a) the Estimate of the Finance Amount for the related True-Up Period, minus (b) the Actual Finance Amount for such related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in Council" means the undertaking of the Lieutenant Governor in Council given under Section ~~10~~11(2).

~~"Unrecovered Transition Costs" means the [unrecovered][unamortized] costs incurred in connection with the creation, adoption and implementation of the Green Generation Initiative, including any negative value of the Power Contracts and [other].~~[18]

Article 3 – Transition Charges

(1) **~~Ratepayer~~Retail Consumer Obligation to Pay a Transition Charge** – Each ~~Ratepayer~~Retail Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such ~~Ratepayer~~Retail Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

~~[17] Revise once determine whether this will be a standalone Act or remain part of the *Electricity Act*.~~
~~[18] Note that this is the term that describes the "asset" that we are amortizing over a longer period of time.~~

(2) **Indebtedness of ~~Ratepayers~~Retail Consumers** – Until paid, a Transition Charge charged to a ~~Ratepayer~~Retail Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the ~~Ratepayer~~Retail Consumer to the Regulatory Asset Owners, ~~(~~each with respect to its respective interest in the Regulatory Asset~~)~~. Such indebtedness shall constitute a single and separate[8] debt obligation owing by the ~~Ratepayer~~Retail Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the ~~Ratepayer~~Retail Consumer under the Electricity Invoice or otherwise.~~[19]~~[9]

(3) **No Set-Off or Reduction** – A ~~Ratepayer~~Retail Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such ~~Ratepayer~~Retail Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of ~~Ratepayer~~Retail Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a ~~Ratepayer~~Retail Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section ~~8~~9(3)) are deemed to be irrevocable, final and effective without any further action, ~~in~~except to the ~~absence~~extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

[8] Determine if this is critical for rating and markets. Logistics under consideration.

~~[19] Torys suggests that we not create a debtor/creditor relationship between ratepayers and regulatory asset owners. Instead, ratepayers would only have relationships with electricity distributors and the Fair program would rely on consumers paying distributors and distributors to collecting those amounts and remitting them to IESO. The current draft goes further to bridge the investors more directly with ratepayers. There are differences in the approaches, including reliance from a credit perspective on the LDCs (rather than an ability to replace the individual LDCs with the investors choice). This depends on the credit analysis, and comfort that a later requirement will not be accommodated without a change in the legislation.~~[9] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. ~~Consideration should be given to whether that achieves the same direct relationship and whether the effectiveness of the current regulatory licensing regime should be suggested as the basis~~Consider if it is helpful to integrate the existing regulatory scheme for ~~a market based credit decision.~~invoicing and collections (regarding RPP) in the legislation.

~~(6)~~ ~~**[Anti-avoidance; No-by-pass** – Transition Charges charged to a Ratepayer in respect of any Finance Amount incurred under with the Financing Plan applicable at the time the related Funding Obligation was incurred may not be avoided and shall be [non-by-passable].]~~

Article 4 – Invoicing of Transition Charges[20]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Ratepayer~~Retail Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Ratepayer~~Retail Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Ratepayer~~Retail Consumer.

(2) **Calculation of the Period Transition Charge** – Not later than [35] days prior to the first day of a Reference Period, each ~~Regulatory Asset Owner~~Absolute Assignee (or the ~~Administrative~~Financial Services Agent on its behalf) shall provide the ~~Servicer~~OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day. Not later than one month prior to the first day of a Reference Period, the ~~Servicer or if applicable the Alternative Servicer~~[21]OEB shall calculate the Period Transition Charge applicable to the Reference Period based on the calculations and information set forth in such written notices received from the ~~Regulatory Asset Owners, which~~Absolute Assignees and based on such amounts specified by IESO or Successor IESO, which calculations, information and amounts shall be determinative ~~in~~, except to the ~~absence~~extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the ~~Servicer or if applicable the Alternative Servicer~~OEB shall apply the Attribution Methodology to determine the Allocation Factor for each ~~Ratepayer~~Retail Consumer of the applicable ~~Ratepayer~~Retail Consumer Group.

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the ~~Servicer or if applicable the Alternative Servicer~~OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each ~~Ratepayer~~Retail Consumer of the applicable ~~Ratepayer~~Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a ~~Ratepayer by the Servicer~~Retail Consumer and specified as such in an Electricity Invoice shall be

~~[20] Details concerning Invoicing of Transition Charges (Article 4) and Collections and Remittances (Article 5) are complex. Consider how much of this can be addressed through regulations, or if acceptable based on existing OEB license conditions/codes, IESO market rules/manuals, etc.~~

~~[21] Should this be a designated government official, rather than an agent appointed by investors?~~

determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, ~~in~~except to the ~~absence~~extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the ~~Regulatory Asset Owners~~Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(9) ~~**Regulatory Asset Owners**~~**Absolute Assignees have Standing** – The ~~Regulatory Asset Owners~~Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Ratepayers~~Retail Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges. Any court of the Province ~~[and the OEB]~~ shall have jurisdiction over any actions brought before it by the ~~Regulatory Asset Owners~~Absolute Assignees in relation to any such failure.[22]

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor~~,~~ or any Alternative Servicer ~~or any [Alternative Collection Agent]~~ to ensure that Transition Charges are properly charged to ~~Ratepayers~~Retail Consumers and specified as such in Electricity Invoices.

[22] ~~Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.~~

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts~~]~~ to collect amounts owing by ~~Ratepayers~~Retail Consumers in respect of Transition Charges charged to such ~~Ratepayers~~Retail Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent.

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Ratepayers~~Retail Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for ~~each~~the Regulatory Asset ~~Owner~~Owners.

(3) **Electricity Distributor Remittances** – On each ~~[~~applicable Remittance Date~~]~~, an Electricity Distributor shall remit all Transition Charge Collections received by it from ~~Ratepayers~~Retail Consumers in respect of the related Reference Period to or to the account of IESO or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – IESO or if applicable any Alternative Collection Agent shall, as an agent of the Regulatory Asset Owners, undertake [diligent][reasonable] efforts to accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Ratepayers~~Retail Consumers that pay their Electricity Invoices directly to ~~the Servicer.~~[23]IESO.[12]

(5) **Segregation of Electricity Distributor Remittances** – IESO and if applicable the Alternative Collection Agent shall ~~[~~promptly~~]~~ segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, IESO or if applicable any Alternative Collection Agent shall hold such amounts in trust for ~~each~~the Regulatory Asset ~~Owner~~Owners.

(6) **IESO Remittances** – On each ~~[~~Settlement Date~~]~~[24][13], IESO and if applicable the Alternative Collection Agent shall remit all amounts on deposit in its Regulatory Asset Account (a) first, to or to the account of the ~~Regulatory Asset Owner~~Absolute Assignees an amount equal to the Investment Remittance for the related month and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date.

[10] Mirror collection "standard of care" under applicable legislation.
[11] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.
~~[23]~~[12] Consider building this obligation into a deemed condition of licence for the IESO.
~~[24]~~[13] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **~~Successors of~~ IESO Successor** – ~~Any successor of~~ IESO Successor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province~~25~~14, then such person shall, if requested by the ~~Regulatory Asset Owners~~Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Ratepayers~~Retail Consumers in its applicable service area, including all consumers connected to the electricity distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by ~~Ratepayers~~Retail Consumers as provided in this ~~Part; (c) terminate service to non-paying Ratepayers on the same basis as termination of service is permitted for non-payment of electricity transmission and distribution rates; (d~~Act; (c) exercise all enforcement rights of the ~~Regulatory Asset Owners or Pledgee~~Absolute Assignees for the benefit of ~~a Regulatory Asset Owner or Pledgee~~an Absolute Assignee; and (~~e~~d) remit any Transition Charge Collections to the ~~Regulatory Asset Owner or Pledgee~~Absolute Assignees or Pledgees, as applicable, each in accordance with its ~~Regulatory Asset~~Investment Interest.

(10) **~~Regulatory Asset Owners~~Absolute Assignees have Standing** – The ~~Regulatory Asset Owners and any Pledgee~~Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Alternative ~~Servicer~~Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from ~~Ratepayers~~Retail Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5. Any court of the Province ~~[and the OEB]~~ shall have jurisdiction over any actions brought before it by the ~~Regulatory Asset Owners~~Absolute Assignees in relation to any such failure. ~~26~~

(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the ~~Regulatory Asset Owners~~Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the

~~25~~14 This is in anticipation of a possible future restructuring of the distribution system. ~~Also, this would cover any OREC-eligible customer (market participant) of IESO.~~

~~26 Consider having such matters first go through the OEB, particularly if the obligation to bill, collect or remit is deemed to be a condition of license for distributors, IESO, retailers and unit sub-metering providers, which would be enforceable provisions under the OEB Act and within OEB jurisdiction to enforce.~~

Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the ~~Regulatory Asset Owners~~Absolute Assignees.

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any ~~Ratepayer~~Retail Consumer, any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.~~27~~15

(13) **Sequestration** – If any Electricity Distributor, IESO, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by ~~the Regulatory Asset Owners or Pledgee~~and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the ~~applying party~~Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the ~~Regulatory Asset Owners or Pledgee~~Absolute Assignees, each with respect to its ~~Regulatory Asset.~~ Investment Interest, and the Pledgees as applicable.[16]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by ~~the Regulatory Asset Owner~~some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

(1) **Composition** – The Regulatory Asset shall constitute ~~an existing, present~~a current and irrevocable property right and interest consisting, collectively, of the following rights and interests ~~of a Regulatory Asset Owner in the following~~ (without duplication):

~~27~~15 Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Ratepayer~~Retail Consumer reduces its payment of Transition Charges, despite this language~~, and same~~. Same for Electricity Distributor Remittances and IESO Remittances.

[16] Consider adding or substituting this provision for a right to appoint a receiver.

a. the right of ~~a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts~~IESO (i) to record its IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b);

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Ratepayers~~Retail Consumers, including the right to determine the amount of Transition Charges in accordance with this ~~Part~~Act;

c. the right to enforce the obligations and indebtedness of each ~~Ratepayer~~Retail Consumer to pay the Transition Charges charged to the ~~Ratepayer~~Retail Consumer from time to time in accordance with Article ~~2~~,3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of IESO or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article ~~4~~5;

f. the right to enforce the duties and obligations of IESO and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article ~~4~~5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred.

(2) **Validity of Dispositions** – Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province ~~[~~or any consent requirement applicable to a Disposition that may arise by ~~contract or by~~ operation of any applicable law of the Province~~]~~, a Disposition by ~~a Regulatory Asset Owner~~IESO to an Absolute Assignee made under the Financing Plan ~~pursuant to a Disposition Document~~, or by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with ~~its~~the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the ~~Regulatory Asset~~applicable Investment Interest (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the Regulatory Asset Owner's applicable right, title, and interest in, to and under the Regulatory Asset (or relevant portion thereof), and not merely as a Pledge thereof~~. [A Disposition shall not be subject to recharacterization or challenge on any other basis and the validity of a Disposition shall not be affected or impaired by: (a) the commingling of Transition Charge Collections or other proceeds from Transition Charges with other amounts; (b) the retention of any interest (including any partial, residual or subordinated interest, whether direct or indirect) in the Regulatory Asset by the transferring Regulatory Asset Owner; (c) any right to repurchase the Regulatory Asset in favour of the transferring Regulatory Asset Owner; (d) any recourse that an Absolute Assignee may have against the transferring Regulatory Asset Owner; (e) any indemnification rights or obligations provided by the transferring Regulatory Asset Owner; (f) any obligation of the transferring Regulatory Asset Owner to collect and remit Transition Charge Collections on behalf of an Absolute Assignee, including but not limited to, any retention by the transferring Regulatory Asset Owner to bare legal title for the purpose of collecting Transition Charges; or (g) the ascribed or intended treatment of the Disposition by the transferring Regulatory Asset Owner or the Absolute Assignee on any different basis including for tax, financial reporting or other purposes.]~~[28], and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the Investment Interest subject to the Disposition, including all rights under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the transferring Regulatory Asset Owner and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the transferring Regulatory Asset Owner, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

~~[28] Consider if helpful to investors, or delete.~~

(4) **Validity of Pledges** – Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province ~~[~~or any consent requirement applicable to a Pledge that may arise by ~~contract or by~~ operation of any applicable law of the Province~~]~~, a Pledge by ~~a Regulatory Asset Owner~~an Absolute Assignee may be made to secure any related Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the ~~Regulatory Asset~~related Investment Interest in accordance with the terms of the Pledge. Other than as required by the Financing Plan, no consent of any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - ~~Any Pledge made by a~~For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset ~~Owner~~shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation ~~incurred under the Financing Plan shall be perfected, valid and binding from the time when the Pledge is made and shall be valid and binding as against the Regulatory Asset, the Regulatory Asset Owner making the Pledge and all other persons who have claims of any kind (whether in tort, contract or otherwise) against the Regulatory Asset or the pledging Regulatory Asset Owner, irrespective of whether such persons have notice of the Pledge and the security interests of the Pledgee under such Pledge shall have priority over any liens in favour of such other persons. All proceeds of the Regulatory Asset~~may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the ~~Regulatory Asset Owner~~Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected~~, without any physical delivery thereof, registration of any financing statement with respect thereto~~ pursuant to the ~~[~~PPSA~~]~~ ~~or any other further act.~~[29].[17] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may ~~subsequently~~ attach to the property rights and interests in the ~~Regulatory Asset~~Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Any~~Subject to the terms of the Collective Action Agreement, a Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. ~~[A Pledgee~~All provisions of the PPSA shall ~~cause a financing statement to be filed in respect of a Pledge on the basis that~~apply to the Regulatory Asset on the basis that it is ~~"~~intangible~~"~~ personal property, ~~for informational purposes only under the [PPSA].~~except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and

~~29~~17 Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document, in each case under the Financing Plan. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's ~~right~~rights and ~~interest~~interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective ~~[~~and ~~joint]~~coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.[30]

Article 7 – Establishment of the Fair Allocation Plan[31][18]

(1) Adoption of the Fair Allocation Plan – The ~~[Minister of Energy]~~[32]Delegate may , [by written ~~order~~declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this ~~Part~~Act, ~~[~~except if amended, amended and restated or terminated by a further written ~~order issued~~declaration made by the ~~Minister of Energy~~Delegate in compliance with Section ~~•]~~7(4).

(2) Principles and Parameters[33] – A Fair Allocation Plan shall seek to allocate ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits across present and future ~~Ratepayer~~Retail Consumer Groups on a basis that the ~~Minister of Energy~~Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters[34]:

1. ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits should be allocated over ~~a period not to exceed the later of (a) the estimated remaining useful life of the Related Generating Assets and (b) the remaining term of IESO's commitments under the Power Contracts~~the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods ~~(e.g., 6 month periods),~~ for the purpose of identifying applicable ~~Ratepayer~~Retail Consumer Groups and allocating ~~among them responsibility to bear the Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits among them on a relative basis over time.

[30] ~~This is necessary to ensure that if there are multiple regulatory asset owners and pledgees, they will be coordinated in the application of their rights of enforcement, etc.~~

[31][18] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current ~~Power Contracts~~procurement contracts and not invest in extending service lives to secure further ~~power~~procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

[32] ~~Input required. If the MOE is given this power, conform to applicable authorities (e.g., plans and directives).~~

[33] ~~Consideration will be given as to whether these details should be included in the Regulation.~~

[34] ~~We have provided a few examples of what could be the basic principles. These will depend on market considerations, the Province's decision on the required amount of detail and the ability to sustain the legal basis for the program. These examples are not meant to suggest the appropriate balance – just illustrative to advance a discussion among the stakeholders.~~

3. The share of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits allocable to a particular ~~Ratepayer~~Retail Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the ~~Ratepayer~~Retail Consumer Group over such Reference Period.

4. The ~~estimated Unrecovered~~share of Future Fair Share of Green Transition ~~Costs~~Benefits to be allocated to a ~~Ratepayer~~Retail Consumer Group and any future ~~Ratepayer~~Retail Consumer Group at a particular time should not exceed the ~~estimated value of the Related Generating Assets based on their remaining useful lives or terms~~Estimated Future Green Transition Benefits, measured in respect of the ~~period~~Reference Periods following such particular time and to the Program End Date.

5. No future ~~Ratepayer~~Retail Consumer Group should ~~bear~~be allocated an unreasonably disproportionate share of ~~the Unrecovered~~Estimated Future Green Transition ~~Costs~~Benefits. Except in exceptional circumstances or in the case of any ~~backward-looking adjustment made~~reallocation of an Over-Assessed Amount as contemplated in 7, below, the ~~share of the Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to be allocated under a Fair Allocation Plan to any future ~~Ratepayer~~Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*[35].

6. ~~A reasonable estimate of the rate of inflation~~The time value of money should be ~~applied~~reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal ~~amount of Unrecovered Transition Costs to be allocable to Ratepayer~~allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.

7. ~~Backward-looking adjustments to a~~To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may ~~be made to achieve a fair distribution among Ratepayers of the benefits of the Green Generation Initiative.~~determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan ~~[~~shall~~]~~ specify ~~an objective methodology (~~the "~~Attribution Methodology~~")~~ for the purposes of allocating the Period

~~[35] Consider if a quantitative limit needs to be included in the legislation.~~

Transition Charges across ~~all of~~ the ~~Ratepayers~~Retail Consumers of a particular ~~Ratepayer~~Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that ~~are~~is considered by the ~~Minister of Energy~~Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.

(4) ~~**[Confirmation][Review] of the Fair Allocation Plan** – [OEB?][36]~~**Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation and (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation.

Article 8 – The ~~Financing Plan~~[37]IESO Retained Interest

(1) **Maintain Books of Account** – IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(2) **Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(3) **Dispositions** – IESO may effect a Disposition to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; (c) the Financial Services Agent confirms in writing that the Disposition is permitted under the Financing Plan; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting

~~[36] Any approvals or consents by the OEB will be obtained before any Funding Obligation that is dependent on such approval or consent is incurred. Any such approval or consent will be irrevocable and non-appealable. Any regulatory action occurring after any incurrence will not affect the related Funding Obligation or underlying rights in the Regulatory Asset.~~

~~[37] Consideration will be given as to whether these details should be included in the Regulation.~~

market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan

(1) **Power to Prepare ~~and~~, Implement and Amend the Financing Plan** – ~~In compliance with a [written order][***MOE to confirm process.***] of the Minister of Energy, the Administrative Agent shall~~The Financial Services Agent shall be authorized to prepare, implement and ~~propose~~amend the~~ adoption of a~~ Financing Plan. If the ~~Administrative~~Financial Services Agent is unwilling or unable to prepare and propose the adoption of ~~a~~the Financing Plan, the ~~Minister of Energy~~Delegate may by written ~~order~~declaration designate one or more other persons who shall be authorized to prepare ~~and~~, implement ~~such a~~and amend the Financing Plan.

(2) ~~**Required**~~ **Terms and Conditions of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions ~~that have the effect of allocating the Unrecovered Transition Costs across present and future Ratepayer Groups on a basis that is consistent with the Fair Allocation Plan~~. The Financing Plan shall ~~be consistent with~~have regard to the principles~~,~~ and parameters~~, requirements and conditions~~ set forth in Schedule 3 and such other conditions and requirements as may be specified in a written ~~order~~declaration of the ~~Minister of Energy [~~Delegate or in accordance with the Regulation~~]~~.

(3) ~~**Power to Review and Approve the Financing Plan** – The Minister of Energy may, by written order, designate one or more persons to review the Financing Plan and to review and assess the consistency of the Funding Obligations incurred with such Financing Plan, and the Minister of Energy may specify requirements in respect of such review in such written order. The Administrative Agent, or such other person(s) as may be designated by written order of the Minister of Energy made pursuant to Section 8(1), shall make any such amendments to the Financing Plan, and submit a revised Financing Plan to the designated reviewer for approval within [the time period specified in such written order]/[[•] days of such written order].[***Consider periodic amendments to the Financing Plan following an annual review; provided that amendments cannot affect the existing Funding Obligations. Consider the level of oversight the MoE/OEB will have over this process?***]~~**OEB Approval** – Any Additional Funding Charge payable to or for the benefit of the Financial Services Agent shall be subject to review and approval by the OEB.

(4) ~~**Approval of Financing Plan –** The **[OEB]** shall have the power to and shall approve or disapprove of the Financing Plan based solely on whether the Financing Plan is consistent with (i) the principles, parameters, requirements and conditions set forth in Schedule 3, (ii) such other conditions and requirements as may be specified in a written order of the Minister of Energy [or in accordance with the Regulation] [and (iii) the Fair Allocation Plan]. If the **[OEB]** approves the Financing Plan, then such Financing Plan shall be implemented by the Administrative Agent. If the OEB disapproves of the Financing Plan or otherwise fails to approve the Financing Plan, then the Administrative Agent shall re-submit the Financing Plan with such amendments as the Administrative~~

Agent shall consider necessary for the Financing Plan to be approved by the OEB.[38] **OEB Review** – The OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.

(5) **Consistency with the Fair Allocation Plan** – Funding Obligations should only be incurred if Repayments and Funding Costs would be borne by present and future Designated Ratepayers on a basis that is [generally] consistent with their respective allocations of the costs and benefits of the Green Generation Initiative contemplated in the Fair Allocation Plan. In that regard, at the time of setting the Fair Allocation Plan for any particular period, the aggregate amount payable during future Reference Periods on account of Funding Obligations incurred on or before the date on which a new Funding Obligation is incurred should not exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group contemplated in the Fair Allocation Plan. If, despite the foregoing, the Administrative Agent determines that the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Ratepayer Group under the then current Fair Allocation Plan, the Financing Plan shall require the Administrative Agent to make diligent efforts to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances, if such a Refinancing or deferral is determined to be available the Financing Plan shall require the Administrative Agent to make diligent efforts to implement such Refinancing or deferral on a basis that is consistent with the Fair Allocation Plan.

(5) **(6) Establishment of Special Purpose Entities** – If the implementation of the Financing Plan contemplates the establishment of one or more special purpose finance entities to incur Funding Obligations as a Financing Entity under the Financing Plan, as an Absolute Assignee and on a basis that limits the recourse for the payment of such Funding Obligations to such Absolute Assignee's interest in, to and under the Regulatory Asset, the Administrative Agent shall have regard to the characteristics specified in Schedule 4 in establishing such special purpose entity.]**Replacement of the Administrative Agent** – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative Agent shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Agent under the Financing Plan. If the Financial Services Agent is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services.

(6) **(7) Obligation to Apply IESO Remittances** – The AdministrativeFinancial Services Agent shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Regulatory Asset OwnersAbsolute Assignees, or otherwise in respect of or

[38] Once the Financing Plan is reviewed and approved there would be no further OEB review. If there is opportunity for further review, such review will have no impact on prior issued debt. Any further financings would be put on hold until such review is completed (during which time the IESO would again need to fund the shortfall on an interim basis and obtain necessary funding).

as proceeds from ~~the Regulatory Asset~~an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.[39]

(7) ~~(8)~~ **Non-Recourse** – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, ~~and~~any Alternative Collection Agent, the ~~Administrative~~Financial Services Agent, the OEB, the Province or the Lieutenant Governor in Council, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this ~~Part~~Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) ~~(9)~~ **Incurrences are Binding** – ~~Despite any failure to adhere to the Financing Plan or to comply with any requirement of this Part,~~Notwithstanding anything to the contrary in this Act, each Disposition made to or by an Absolute Assignee and all amounts payable or becoming due and payable by or on behalf of ~~a Regulatory Asset Owner~~an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation, shall be binding for the purposes of this ~~Part~~Act, including in determining the amount of related Transition Charges, despite any impairment or defect resulting from such failure.

[Article ~~9~~10 – Compliance Matters[40~~19~~]

(1) **Right of the [OEB] to Inspect Books and Records** - For the purpose of investigating compliance with the provisions of this ~~Part~~Act, the ~~[~~OEB~~]~~ shall have the right, jurisdiction, power and authority to examine the books and records of ~~any person who is or may become obligated or have duties that arise under this Part or any Funding Obligation~~*[Insert names if any]*.

~~(2) **Power to Investigate Compliance and Impose Regulatory Sanctions** - Subject to the limitations set forth regarding the irrevocability of Transition Charges and the Undertaking of the Lieutenant Governor in Council, nothing in this Part shall (a) prevent or preclude the [OEB] from investigating the compliance of any person who is or may become obligated or have duties that arise under this Part [or any Funding Obligation] with the terms and conditions of this Part and requiring compliance by such person therewith; or (b) prevent or preclude the [OEB] or any successor regulator from imposing regulatory sanctions against any person who is or may become obligated or have duties that arise under this Part for its failure to comply with the terms and conditions of this Part[41].~~

(2) ~~(3)~~ **[~~Other Rating~~OPG's Rate Settings** – When setting other rates for or in respect of ~~any person who is or may become obligated or have duties that arise under this Part,~~

[39] ~~We need to work in the idea that there may be Finance Reserve Deposits or other amounts that remain after paying Finance Amounts. Those surplus amounts should be credited back to Ratepayers.~~

[40~~19~~] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article ~~is~~and any potential role for the Auditor General is still under consideration.

[41] ~~Consider scope of OEB regulation and whether a Financing Entity should be subject to this sort of provision in any event.~~

~~including any Electricity Distributor, IESO, Generator or the Administrative Agent, nothing in this Part shall prevent the [OEB] or any successor regulator from taking~~OPG, the OEB shall not take into account (a) the ~~collection by or attribution to such person of~~ administrative or servicing fees charged by OPG as Financial Services Agent [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services.~~]~~[42]; (b) the cost consequences to OPG of being the Financial Services Agent; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20]

Article ~~10~~11 – Undertaking of the Lieutenant Governor in Council[43][21]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – The [Lieutenant Governor in Council] shall not in any way take or permit any action to reduce, impair, postpone or terminate the obligation of ~~Ratepayers~~Retail Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly~~[~~, including through the introduction of any bill or the passing of any legislation or regulation~~]~~ having such effect. The amount of Transition Charges determined ~~hereunder~~under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by the Lieutenant Governor in Council~~[~~, including through the introduction of any bill or the passing of any legislation or regulation~~]~~ having such effect.

(2) Undertaking and Agreement – The [Lieutenant Governor in Council] shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) ~~**(2) Undertaking and Agreement** – The Lieutenant Governor in Council shall not in any way take or permit any action that limits, alters or impairs the value of the Regulatory Asset or,~~ except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the ~~Regulatory Asset Owners, including any~~ Absolute ~~Assignee from time to time, and~~Assignees or any Pledgee from time to time~~[~~,~~including through the introduction of any bill or the passing of any legislation or regulation~~]~~.;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination

[42] ~~OPG has indicated that the risks and cost consequences to OPG of being an~~[20] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent ~~or of consolidating a Financing Entity for accounting purposes should not be considered by the OEB in setting the regulated payment amounts for~~of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role. ~~To be discussed.]~~

[43] ~~Under consideration~~[21] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, Successor IESO shall be established to perform such obligations.

(4) ~~[If IESO becomes insolvent or otherwise incapable of performing its obligations under this Part, an IESO Successor will be established that is capable of performing such obligations in order that the Regulatory Asset Owners may appoint the IESO Successor as an Alternative Servicer or Alternative Collection Agent. Regulatory Asset Owners shall be fully~~**Compensation for Failure** – Absolute Assignees shall be compensated for any losses suffered by them as a result of any failure by the Lieutenant Governor in Council to comply with its undertakings and agreements in this Article ~~10(2) for any loss suffered by the Regulatory Asset Owner as a result of such failure.[44]~~11.[22]~~]~~

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) ~~**(3)**~~ **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Lieutenant Governor in Council, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article ~~11~~12 – Regulations

Regulations may be made under this ~~Part~~Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with ~~a Regulatory Asset Owner~~an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding ~~Costs~~Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this ~~Part~~Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

[44]22 Requested by Torys. For discussion.

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this ~~Part~~Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by ~~a Regulatory Asset Owner~~an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article ~~12~~13- Miscellaneous~~45~~23

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this ~~Part~~Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this ~~Part~~Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this ~~Part~~Act shall be required with respect to the actions to be taken in compliance with this ~~Part~~Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this ~~Part~~Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this ~~Part~~Act, if any provision of this ~~Part~~Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this ~~Part~~Act that is taken by any person who is or may become obligated or have duties that arise under this ~~Part~~Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this ~~Part~~Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this ~~Part~~Act are intended to be

~~45~~23 OPG would like the specific amendments related to OPG to be included in the Bill.]

severable and that the Legislature would have enacted this ~~Part~~Act even if any Article, Section, paragraph or subparagraph of this ~~Part~~Act held to be unconstitutional or invalid had not been included in this ~~Part~~Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles, and Parameters, Requirements and Conditions for Establishing the Financing Plan

The Financing Plan shall have regard to the following principles, and parameters, requirements and conditions:[***Consider others.***] provide a guideline as to what a Financing Plan should address:

(1) the Financing Plan shall, in respect of each Reference Period, describemake reference to the allocations of UnrecoveredFuture Fair Share of Green Transition CostsBenefits to each Reference Group as contemplated by the Fair Allocation Plan;

(2) the Administrative Agent shall make a good faith estimate of theIESO Funding Shortfalls for each Reference Period, based on the terms of the Power Contracts and assumptions considered to be reasonable respecting forward market prices for electricity;

(3) the Administrative Agent shall describeconsider alternative funding arrangements considered to be suitable for the purpose of fundingto fund the estimated IESO Funding Shortfalls, including by reference to short term and/or long term Funding Obligations that could reasonably be incurred by the Regulatory Asset Owners for such purpose;

(9) **(4)** such Funding Obligations shall reflectconsider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that the effect of incurring such Funding Obligations would be that the payments made thereunder in respect of eachfor a Reference Period (including the anticipated Finance Amounts becoming payable in relation to such Funding Obligations) would reasonably correspond to the allocations of UnrecoveredFuture Fair Share of Green Transition CostsBenefits to the applicable Reference Group under the Fair Allocation Plan;

(4) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Retail Consumer Group under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(5) the Financing Plan shall reflect the outcome of a financial model that incorporatesreflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical RatepayerRetail Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation having regard to the application of the Allocation Methodology); [***Consider what outputs from OPG will be tested by the OEB and when. The modelling in the Financing Plan may permit the OEB to check progress against the model from***

[24] Awaiting input from Torys based on OPG mark-up of Financing Plan sections.

~~*time to time, which may provide a basis for the MoE/OEB to require a review/amendment to the Financing Plan if the ongoing operation of the program results in significant deviation from the model. Consider whether this flexibility is desirable.*~~]

(6) ~~the Administrative Agent, for and on behalf of each Regulatory Asset Owner, shall seek to~~ incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the ~~Regulatory Asset Owners~~Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate ~~a Regulatory Asset Owner~~an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the ~~Administrative~~Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations ~~shall~~should not obligate ~~a Regulatory Asset Owner~~an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the ~~Administrative~~Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the ~~Administrative~~Financial Services Agent shall cause the applicable ~~Regulatory Asset Owner~~Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the ~~Administrative~~Financial Services Agent will select counterparties under any transaction to be entered into by ~~a Regulatory Asset Owner~~an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note

trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the ~~Administrative~~Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the ~~Administrative~~Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding ~~Shortfall~~Shortfalls from time to time on a basis that is consistent with the allocations of ~~Unrecovered~~Future Fair Share of Green Transition ~~Costs~~Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the ~~Administrative~~Financial Services Agent and other agents and service providers to the ~~Regulatory Asset Owners~~Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by ~~a Regulatory Asset Owner~~an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) ~~a description of each~~describe the requirements applicable to any special purchase entity that will purchase ~~the Regulatory Asset from the IESO~~an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities ~~having regard to the parameters in Schedule 4~~; and

(16) the basis on which any Pledge may be given or effected.

~~Schedule 4~~

~~Creation of any Special Purpose Entity to become a Regulatory Asset Owner]~~

~~(1) **Powers and Abilities**:~~

~~a. No part of the revenue or assets of a Regulatory Asset Owner shall enure to the benefit or be distributable to its trustees, officers or directors, as the case may be, or any other private persons, except as may be provided for actual services rendered;~~

~~b. Each Regulatory Asset Owner shall be authorized to:~~

~~i. incur the Funding Obligations contemplated by a Financing Plan and use the proceeds thereof to purchase or acquire, and to own, hold and use the Regulatory Asset;~~

~~ii. contract for servicing of the Restructuring Asset and any bonds contemplated by a Financing Plan and for administrative services; and~~

~~iii. pledge the Regulatory Asset to secure the Funding Obligations incurred by the Regulatory Asset Owner;~~

~~c. So long as any Funding Obligations contemplated under a Financing Plan are outstanding, a Regulatory Asset Owner shall not be authorized to merge or consolidate, directly or indirectly, with any person or entity;~~

~~d. a Regulatory Asset Owner shall not have the power or authority to incur or guarantee or otherwise become obligated to pay any debt or obligations other than what is contemplated under a Financing Plan;~~

~~e. a Regulatory Asset Owner shall cause the proceeds obtained by incurring any Funding Obligation to be placed in one or more separate accounts and used only to purchase the Regulatory Asset and pay any costs as provided for in a Financing Plan; and~~

~~f. so long as the Regulatory Asset is pledged to secure Funding Obligations, the Regulatory Asset Owner must apply revenues from the collection of Transition Charges only to repay such Funding Obligations and other costs as provided for in a Financing Plan.~~

~~(2) **Governance of Regulatory Asset Owner –** A Regulatory Asset Owner shall be created having regard to the following principles:[***OPG to confirm if SPE will be a trust or another type of entity.***]~~

~~a. [Number of trustees]~~

~~b. [Replacement of trustees; vacancies; appointment of successors]~~

~~c. [Removal of trustees for neglect of duty or misconduct]~~

~~d. [Quorum and meetings]~~

~~e. [Fiduciary duty]~~

~~f. [Isolation, separateness and other "non-consolidation" and "bankruptcy remoteness" criteria]~~

~~g. [Delegation of powers and duties to administrative agents]~~

~~h. [Delegation of powers and duties to administrative agents]~~

(17)

Document comparison by Workshare Compare on Monday, April 10, 2017 11:00:11 PM

Input:	
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Document 2 ID	PowerDocs://TOR_2528/23107566/9
Description	TOR_2528-#23107566-v9-"Fair_Hydro_Act"
Rendering set	Standard

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Insertion	
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~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	596
Deletions	610
Moved from	25
Moved to	25
Style change	0
Format changed	0
Total changes	1256

RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

From: Mansoori, Nina [nmansoori@torys.com]
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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Wednesday, April 12, 2017 12:15:30
Attachment 1: Blackline_Summary.pdf
Attachment 2: Fair_Hydro_Act Torys_Osler Mark-up April 11 2017 Draft (Torys-Oslers_Apr....docx

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All - please find attached a revised draft of the summary legislation circulated by Blakes on April 10 which reflects consolidated comments from OPG and the dealers (and their respective counsel). Please note that the attached remains subject to the continuing review of OPG and the dealers. We will have printed copies of the blackline available at today's meeting.

Best Regards,
Nina

Nina Mansoori

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-----Original Message-----
From: Smith, Elliot [mailto:ESmith@osler.com]
Sent: April-12-17 12:39 AM
To: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY

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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Steve,
We have been corresponding with Torys today and are in the process of preparing a consolidated mark-up reflecting comments from the Dealers and OPG, which will also incorporate some of the comments received this evening from the IESO/Stikemans. We will circulate the consolidated mark-up before tomorrow's meeting.

Elliot

Elliot Smith
Partner - Energy, Construction & Infrastructure

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-----Original Message-----
From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Tuesday, April 11, 2017 1:54 PM
To: Smith, Elliot <ESmith@osler.com>
Cc: Feldman, Michael <mfeldman@torys.com>; JACKSON, ADAM <ADAM.JACKSON@blakes.com>; Peter Hamilton (PHamilton@stikeman.com) <PHamilton@stikeman.com>; LEE John -TREASURY <john.s.lee@opg.com>; RYFA Ken -TREASURY <ken.ryfa@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; MCAULEY Tyler -LAWDIV <tyler.mcauley@opg.com>; WILSON, JUDY <JUDY.WILSON@blakes.com>; STOKES, BRYSON <BRYSON.STOKES@blakes.com>; Hill, Krista <khill@torys.com>; Ramchandani, Rima <rramchandani@torys.com>; Keizer, Charles <ckeizer@torys.com>; Myers, Jonathan <jmyers@torys.com>; Emes, Aaron <aemes@torys.com>; Mansoori, Nina <nmansoori@torys.com>; Wortsman, Jerald <jwortsman@torys.com>; Bomhof, Scott <sbomhof@torys.com>; Estey, Bill <bestey@torys.com>; Watson, Gwen <gwatson@torys.com>; James.Rehob@ontario.ca; Alan Hibben <alan.hibben@rogers.com>; Shear, Dan (ENERGY) <Dan.Shear@ontario.ca>; Carolyn.Calwell@ontario.ca; O'Brian, Adam <aobrian@hunton.com>; Fitzpatrick, Michael F. <MFitzpatrick@hunton.com>; VINER, JON <JON.VINER@blakes.com>; Brad.Purkis@tdsecurities.com; Nelms, Scott (MOF) (Scott.Nelms@ontario.ca) <Scott.Nelms@ontario.ca>; Sebastiano, Rocco <RSebastiano@osler.com>; Michael.Boll@ieso.ca; GZacher@stikeman.com; Christie, Tim (ENERGY) <Tim.Christie@ontario.ca>; Johnson, Paul (ENERGY/MEDEI/MRI) <Paul.Johnson3@ontario.ca>; Kwan, Ronald (OFA) <Ronald.Kwan@ofina.on.ca>; Gavin He <Gavin.He@ofina.on.ca>; Veinot, Cindy (TBS) <Cindy.Veinot@ontario.ca>; Hosick, Sarah (TBS) <Sarah.Hosick@ontario.ca>; kim.marshall@ieso.ca; Cox, Hilary (ENERGY) <Hilary.Cox@ontario.ca>; Hilloowala, Maharukh <Maharukh.Hilloowala@tdsecurities.com>; Wolff, Michael <Michael.Wolff@tdsecurities.com>; Holloway, Harold <Harold.Holloway@tdsecurities.com>; Akman, Steven <Steven.Akman@tdsecurities.com>; Manii, David <david.manii@tdsecurities.com>; Nevison, Gary <Gary.Nevison@tdsecurities.com>; Niehaus, Katrina <Katrina.Niehaus@gs.com>; Maciel, Andrew <Andrew.Maciel@cibc.com>; Persaud, Donnie - Debt Capital Markets <Donnie.Persaud@cibc.com>; Adalja, Sunil <Sunil.Adalja@cibc.com>; Alvi, Shariq <Shariq.Alvi@cibc.com>; Benaiah, Ian <ian.benaiah@rbccm.com>; Fullerton, Rick <RFullerton@osler.com>; Collins, Patrick J <Patrick.Collins@gs.com>; Mullen, Max M. <Max.Mullen@gs.com>; Delaney, Brian <Brian.Delaney@gs.com>; Hong, Yoomin <yoomin.hong@gs.com>; Raman, Akila <Akila.Raman@gs.com>; King, Richard <rking@osler.com>; Innes, Michael <MInnes@osler.com>; Milligan, Peter <PMilligan@osler.com>
Subject: Re: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Elliot, in the interest of time, it may make sense for me to walk you through where your items have been addressed. Steve

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On Apr 11, 2017, at 1:19 PM, Smith, Elliot <ESmith@osler.com<mailto:ESmith@osler.com>> wrote:

Stephen,
This version does not reflect the top issues raised by the Dealers. We are sitting down with the Dealers now working on a comprehensive mark-up that we will send later today, but it will not be ready by 2 PM. We would like to use tomorrow's meeting to discuss the mark-up we are preparing rather than a further revised version that will not reflect our feedback.

Elliot
<image002.gif>

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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)

Hi. Here is a revised draft of the legislative summary, for your consideration. Please provide your comments at your earliest opportunity. We will reflect comments received by 2ET tomorrow (Tuesday) in a further group circulation, for discussion on Wednesday. Regards, Steve

Stephen R. Ashbourne
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<image001.gif>

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Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will **continue to** benefit present and future electricity consumers in the Province.

The ~~imputed~~**out-of-market** costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). ~~The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.~~

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative~~, which may be higher than prevailing market price for electricity. These differences~~**. These amounts paid by the IESO** arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with ~~long-term price~~**revenue** certainty ~~for electricity~~, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. ~~In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the~~ **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets ~~encouraged by~~**developed under** the Green Generation Initiative will be ~~well~~ in excess of the respective terms of ~~the related~~**their respective** procurement contracts~~, and in many cases may extend over more than one generation of electricity consumers~~.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective ~~durations~~**terms** of the **applicable** procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to ~~Retail~~**Regulated** Consumers (as defined in Article 2) should be more closely aligned with the benefits that such ~~Retail~~**Regulated** Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on **general** principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future ~~Retail~~**Regulated** Consumers (the "Fair Allocation

Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the ~~Retail~~**Regulated** Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Retail~~**Regulated** Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case**,** IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred ~~by IESO~~ to cover such a shortfall during ~~one~~**any** period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in ~~one or more~~ future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on ~~Retail~~**Regulated** Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf **of** such financing entities by a financial services ~~agent~~**manager** under the Financing Plan contemplated in this Act. ~~The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.~~

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Retail~~**Regulated** Consumers on an equitable and cost effective basis.

Article 2 ~~–~~ Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

"Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition **other than as security**.

"Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services ~~Agent~~**Manager**

whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.

"Additional Funding Charges" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including ~~(without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan~~**without limitation such amounts as may be prescribed**.

~~"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of< *the Attribution Methodology* >in respect of the Reference Period.[1]~~

~~"Alternative Collection Agent" means a person appointed under Section 5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners.~~ **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

[1] ~~Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.~~

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[21] means the methodology specified in the Fair Allocation Plan for allocating the Period ~~Transition~~**Finance** Charges for a Reference Period to ~~individual Retail Consumers of the applicable Retail Consumer Group based on its Allocation Factor.~~**Regulated Consumers. [NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services ~~Agent~~**Manager**, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[32]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) ~~and~~**,** each Pledgee**, and the Financial Services Manager** that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4] **[NTD: Move to Regulations.]**

"Delegate" means **any of** the **following** person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act~~.~~**: ●. [NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of **(a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b)** an Investment Interest to an Absolute Assignee**, in each case** pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which ~~a Regulatory Asset Owner~~**IESO or an Absolute Assignee** effects a Disposition to an Absolute Assignee.

[21] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[32] This would pick up adjustments based on actual collection experience, changes in the ~~retail consumer~~**Regulated Consumer** base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

[4] ~~Consider adding the Financial Services Agent and the Servicer as parties.~~

"Electricity Distributor" means~~, in respect of a Service Area, the~~ **a** rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, ~~1998~~* ~~in respect of such Service Area,~~***1998,*** together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by ~~any of a~~**an** Electricity Distributor (or in its stead, by an Alternative ~~Servicer~~**Collection Agent**), by the Servicer or by a Retailer, in each case to a ~~Retail~~**Regulated** Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to ~~a distribution network in the~~**such** Electricity Distributor's ~~designated Service Area~~**distribution system** and in respect of applicable Transition Charges to be charged to the ~~Retail~~**Regulated** Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services ~~Agent~~**Manager**; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to ~~any Retail Consumer Group~~**Regulated Consumers**, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to ~~Retail~~**Regulated** Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of ~~the~~**all** Absolute ~~Assignee~~**Assignees**: (a) Repayments; (b) **Net** Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services ~~Agent~~**Manager**" means OPG or, following any Replacement Event **involving OPG**, such other person ~~or persons~~ who may be appointed as the ~~Financial Services Agent~~**financial services manager** of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]~~3~~

"Financing Entity" means ~~an entity established in accordance with the Financing Plan to acquire all or an interest in the Regulatory Asset as an Absolute Assignee and to enter into Funding Obligations to finance such acquisition under the Financing Plan.~~[6]**any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.**[4]

"Financing Plan" means the written plan prepared by the Financial Services ~~Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied,~~**Manager in accordance with Article 9,** as the same may be amended, amended and restated or terminated by the

[5] ~~Discuss whether to accommodate multiple~~[3] **There must only be one** Financial Services ~~Agents. MOE to consider~~**Manager**.

[6]4 MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

Financial Services ~~Agent~~**Manager** in ~~compliance~~**accordance** with Article 9 from time to time.

~~"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest< *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* >any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.~~

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including**, without limitation,** each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services ~~Agents~~**Managers**, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges**)** incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.~~

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. [NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]

"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[75]; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount of any subsequent shortfall for the month in which the inaccuracy is identified. .To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. [NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]

"IESO Recovery" means each amount remitted to IESO (including by IESO retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b), and "IESO Recoveries" means, collectively, all such amounts received by IESO.

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[75] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

~~"IESO Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest.~~

~~"IESO Retained Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (d) the IESO Recoveries received by IESO prior to the day.~~

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition~~, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document~~.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the ~~Finance Amounts~~**Funding Obligations** due and payable by all Absolute Assignees in respect of the month.

~~"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.~~

~~"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.~~

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal> *and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including* <**such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.**

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount ~~and~~ (b) the True-Up Amount in respect of the ~~immediately preceding Reference Period. "Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.~~ **applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).**

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) ~~June~~**October** 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

~~"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.~~

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for> ***the Ontario Rebate for Electricity Consumers***<. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "**>*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*<**" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of ~~the IESO Retained Interest and~~ each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which ~~IESO~~Servicer deposits or receives Transition Charges~~, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which~~

the Alternative Collection Agent deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b) each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively IESO and each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means**, with respect to a Regulatory Asset Owner's Investment Interest,** all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Regulatory Asset**Investment Interest**.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to IESO**Servicer** or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retail Consumer" means:

(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under< *the Ontario Rebate for Electricity Consumers*> *Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and

(b) present and future Retailers who use Retailer Consolidated Billing,

and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution

~~system assets and <*whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO*>.~~

~~"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.~~

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

~~"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.~~

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, ~~for a Retail~~**the amount recoverable from a Regulated** Consumer in respect of a Reference Period, ~~(a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the applicable Reference Period Length.~~ **being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. [NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.] [NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received] by the Absolute Assignees** upon the collection of a Transition Charge paid by or on behalf of a ~~Retail~~**Regulated** Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services ~~Agent~~**Manager** equal to (a) the >*Actual Finance Amount for such related True-Up Period*<**, minus (b) the** Estimate of the Finance Amount for the related True-Up Period, ~~minus (b) the <*Actual Finance Amount for such related True-Up Period*>~~, plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the period from and including the [30th] day immediately preceding the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the Reference Period.

"Undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario" means the undertaking of the Lieutenant Governor in CouncilHer Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **RetailRegulated Consumer Obligation to Pay a Transition Charge** – Each RetailRegulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such RetailRegulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of RetailRegulated Consumers** – Until paid, a Transition Charge charged to a RetailRegulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the RetailRegulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[86] debt obligation owing by the RetailRegulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the RetailRegulated Consumer under the Electricity Invoice or otherwise.[97]

(3) **No Set-Off or Reduction** – A RetailRegulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such RetailRegulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of RetailRegulated Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a RetailRegulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collectionsubject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) **Transition Charges are Irrevocable** – The Transition Charges arising under or in respect of Funding Obligations incurred under the Financing Plan (including any

[86] Determine if this is critical for rating and markets. Logistics under consideration.

[97] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether or not the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether or not the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Retail~~Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Retail~~Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Retail Consumer.~~Regulated Consumer. [NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]

(2) **Calculation of the Period ~~Transition~~Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services ~~Agent~~Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. ~~[35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day.~~ Not later than one month prior to the first day of a Reference Period, ~~the OEB~~each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period ~~Transition~~Finance Charge applicable to the Reference Period ~~based on the calculations and information set forth in such written notices received from the Absolute Assignees~~

and based onhaving regard to such amounts specified by IESO or Successor IESOthe Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the Allocation Factorallocation of the Transition Charge for each RetailRegulated Consumer of the applicable Retail Consumer Group. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each RetailRegulated Consumer of the applicable Retail Consumer Group who has a billing address inwho is served by the Electricity Distributor's Service Area.

(5) **Adjustments** – The amount of any Transition Charge charged to a RetailRegulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) Absolute Assignees have Standing – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Retail~~**Regulated** Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges **or to otherwise comply with this Act**. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure~~.~~ **and may make any interim or final order it thinks fit in this regard. [NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) No Set-Off or Reduction – No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to ~~Retail~~**Regulated** Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the ~~Regulatory Asset Owners, undertake [diligent][reasonable][10] efforts to~~**Servicer,** collect amounts owing by ~~Retail~~**Regulated** Consumers in respect of Transition Charges charged to such ~~Retail~~**Regulated** Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent~~.~~ **all in accordance with the Regulations. [NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Retail~~**Regulated** Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[11][8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or its Pledgee**.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all **amounts invoiced by the IESO on account of the**

[10] ~~Mirror collection "standard of care" under applicable legislation.~~

[11][8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

Transition Charge ~~Collections received by it from Retail Consumers~~ in respect of the related Reference Period to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – ~~IESO~~**Servicer** or if applicable any Alternative ~~Collection Agent~~**Servicer** shall, as an agent of the Regulatory Asset Owners, ~~undertake [diligent][reasonable] efforts to~~ accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Retail~~**Regulated** Consumers that pay their Electricity Invoices directly to IESO~~.~~[12] **on the same basis as it accepts and collects other charges from such Regulated Consumers.**[9]

(5) **Segregation of Electricity Distributor Remittances** – ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, ~~IESO~~**Servicer** or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners **or Pledgee**.

(6) ~~**IESO**~~**Servicer Remittances** – On each Settlement Date[13]10, ~~IESO and if applicable the Alternative Collection Agent~~**Servicer** shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~ to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month ~~and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date~~.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO** ~~**Successor**~~**Successors** – IESO ~~Successor~~**Successors** shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[14]11, then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Retail~~**Regulated** Consumers ~~in its~~

[12]9 Consider building this obligation into a deemed condition of licence for the IESO.
[13]10 Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.
[14]11 This is in anticipation of a possible future restructuring of the distribution system.

applicable service area, including all consumers connected to the electricitysuch person's distribution system assets and taking electric delivery service located within such service area; (b) allocate partial payments by RetailRegulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. [NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESOServicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from RetailRegulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5.5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Appointment of an Alternative Collection Agent –** If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.Not Used. [NTD: The Servicer should manage this process.]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any RetailRegulated Consumer, any Electricity Distributor, IESOServicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor,

~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[~~15~~12]

(13) **Sequestration** – If any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[~~16~~13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to ~~IESO~~Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

[~~15~~12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Retail~~Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[~~16~~13] Consider adding or substituting this provision for a right to appoint a receiver.

a. the right of ~~IESO (i)~~**a Regulatory Asset Owner** to record its ~~IESO Retained Interest in its accounts in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b)~~**portion of the Regulatory Asset in its accounts**;

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Retail~~**Regulated** Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each ~~Retail~~**Regulated** Consumer to pay the Transition Charges charged to the ~~Retail~~**Regulated** Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of ~~IESO~~**Servicer** or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of ~~IESO~~**Servicer** and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. **The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.**

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a Disposition that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a~~**A** Disposition by IESO **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee ~~made under the Financing Plan~~, or **a Disposition of all or any part of an Investment Interest** by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the ~~applicable~~**IESO Funding Shortfall or** Investment Interest**, as applicable** (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the ~~Regulatory Asset Owner's applicable~~**IESO Funding Shortfall or an Absolute Assignee's** right, title~~,~~ and interest in, to and under ~~the Regulatory Asset~~**an Investment Interest, as applicable** (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the **IESO Funding Shortfall or** Investment Interest **(or relevant portion thereof)** subject to the Disposition, including all rights under the **IESO Funding Shortfall or** Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the **IESO or** transferring Regulatory Asset Owner**, as applicable,** and all other persons who have claims of any kind (whether in tort, contract or otherwise) against **IESO or** the transferring Regulatory Asset Owner, **as the case may be,** irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent~~

~~requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a~~**A** Pledge by an Absolute Assignee may be made to secure any ~~related~~ Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. ~~Other than as required by the Financing Plan, no~~**No** consent of**, or notice to,** any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation **shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and** may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.~~17~~**14** A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a~~**A** Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~, in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

~~17~~**14** Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[1815] **[NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]**

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, [by written declaration,] designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with Section 7(4).**[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Retail Consumer Groups**Regulated Consumers** on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- **[Inflation period: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]**
- **[Transition Period: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]**
- **[Amortization Period: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]**

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. <*The Fair Allocation Plan should specify the Reference Periods for the purpose of* >identifying applicable Retail Consumer Groups and <*allocating Future Fair Share of Green Transition Benefits among* >them< *on a relative basis over time.* >

2. 3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Retail**Regulated** Consumer Group in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to the Retail**such Regulated** Consumer Group over such Reference Period**, other than**> *in exceptional circumstances*<**.**

[1815] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Retail Consumer Group and any future Retail Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Retail Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except<- *in exceptional circumstances*> or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Retail Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate].*

3. 6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Retail Consumer Groups over time.>*The Fair Allocation Plan should specify the Reference Periods for the purpose of* <>*allocating Future Fair Share of Green Transition Benefits among* <**Regulated Consumers**> *on a relative basis over time.* <

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Retail Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Retail Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Retail Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Transition**Finance** Charges across the Retail**Regulated** Consumers of a particular Retail Consumer Group. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation.; **provided that**> *the Attribution Methodology* <**shall not be used to limit the recovery of Transition Charges. [NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation ~~and~~, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation~~.~~**, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. [NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO ~~Retained Interest~~Funding Shortfall

(1) ~~Maintain Books of Account~~ ~~– IESO may maintain books of account to record the IESO Retained Interest Amount and all adjustments thereto from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.~~**Recording of IESO Funding Shortfall -- IESO will record any IESO Funding Shortfall in its books.**

~~**(2) Limitation on Additions** – IESO shall not record additions to the IESO Retained Interest Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.~~

(2) ~~**(3)**~~ **Dispositions** – IESO may effect a Disposition **of all or any part of the IESO Funding Shortfall** to an Absolute Assignee if (a) the ~~Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the~~ Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; **and** (~~c~~**b**) the Financial Services ~~Agent~~**Manager** confirms in writing that the Disposition **complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and** is permitted under the Financing Plan~~; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition~~.

(3) ~~**(4)**~~ **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any ~~Investment Interest~~**IESO Funding Shortfall** subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party~~and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.~~

~~**(5) IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time. **(6) IESO Recoveries** –~~

IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to IESO under Section 5(6)(b).

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services AgentManager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities> *and propose the adoption*< of such financing plan as the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare< *and propose the adoption*> of the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) TermsPrinciples and ConditionsParameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have having regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation.3.

(3) OEB Approval – Any Additional Funding Charge payable to or for the benefit of the Financial Services AgentManager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) OEB Review of Financing Plan – The [OEB] [shall] undertake an annual review of the records maintained by the Financial Services AgentManager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. [NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]

(5) Replacement of the Administrative AgentFinancial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Administrative AgentFinancial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services AgentManager under the Financing Plan. If the Financial Services AgentManager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services. Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) Obligation to Apply IESO Remittances – The Financial Services AgentManager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when

they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Agent**Manager**, the OEB, the Province or the Lieutenant Governor in Council **or Her Majesty in right of Ontario**, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. [All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]

(8) Incurrences are Binding – Notwithstanding anything to the contrary in this Act, each**Each** Disposition made to or by an Absolute Assignee and**,** all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation **and each Pledge entered into by an Absolute Assignee**, shall be **valid and** binding for the purposes of this Act, including in determining the amount of related Transition Charges, despite**notwithstanding** any impairment or defect resulting from such failure**defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan**.

[Article 10 – Compliance Matters[19][16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Agent**Manager** [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Agent**Manager**; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][20][17]

[19][16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[20][17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Administrative Agent**Financial Services Manager** of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

Article 11 – Undertaking of the ~~Lieutenant Governor in Council~~[21]Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not in any way take or permit **(including by any agency or administrative body)** any action to reduce, impair, postpone or terminate the obligation of ~~Retail~~**Regulated** Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by ~~the Lieutenant Governor in Council~~**Her Majesty in right of Ontario (including by any agency or administrative body)**, including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – ~~The [Lieutenant Governor in Council]~~**Her Majesty in right of Ontario** shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, **or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,**

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) Successor IESO – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, **an IESO** Successor ~~IESO~~ shall **immediately** be established **by Her Majesty in right of Ontario** to perform such obligations.

~~21~~[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes. ⊥
In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(4) Compensation for Failure – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.~~22~~19

(5) No Wind-up of Financing Entity. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. [NTD: This concept can be contained in the Regulations.]

(6) References to the Undertaking and Agreement – Any non-confidential reference to the Undertaking of the ~~Lieutenant Governor in Council~~Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous~~23~~20

~~22~~19 Requested by ~~Torys~~Dealers. For discussion.

~~23~~20 OPG would like the specific amendments related to OPG to be included in the Bill.]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

~~(1)~~ ~~in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;~~

~~(2)~~ ~~estimate IESO Funding Shortfalls for each Reference Period;~~

~~(3)~~ ~~consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;~~

(1) ~~(9)~~ consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) ~~(4)~~ if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable ~~Retail Consumer Group~~**Regulated Consumers** under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) ~~(5)~~ reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical ~~Retail~~**Regulated** Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the ~~Allocation~~Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) ~~incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:~~**require that the Financial Services Manager report annually to**

[24] ~~Awaiting input from Torys based on OPG mark-up of Financing Plan sections.~~

the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

~~a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;~~

~~c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;~~

~~d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;~~

~~e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;~~

~~f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;~~

~~g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard~~

to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(7) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(8) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(9) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(10) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(11) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(12) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(13) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(14) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(15) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(16) the basis on which any Pledge may be given or effected.

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment").

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with revenue certainty, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. **[NTD: This statement is not correct in respect of all IESO procurement contracts.]** It has been determined that the useful lives of many of the assets developed under the Green Generation Initiative will be in excess of the respective terms of their respective procurement contracts.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Regulated Consumers (the "Fair Allocation Plan"). **[NTD: There is no explanation as to why realignment is limited to Regulated Consumers.]**

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Regulated Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in

respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred to cover such a shortfall during any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services manager under the Financing Plan contemplated in this Act.

[NTD: Our strong preference is to limit the introduction to the next paragraph and move defined terms from the previous paragraphs to Article 2]

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Regulated Consumers on an equitable and cost effective basis.

Article 2 – Definitions

In this Act: **[NTD: It would be preferable to use plain language definitions in the legislation and leave the more detailed definitions to either the regulations or the agreements contemplated hereunder.]**

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period, the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of the Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including without limitation such amounts as may be prescribed.
>
> **[NTD: See section 5(11). Remove this concept globally.]**

"Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners. **[NTD: We see this, in effect, as the same thing as the IESO Successor; that is, replacement of the master Servicer.]**

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Retail Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Finance Charges for a Reference Period to Regulated Consumers. **[NTD: We understood that the Ministry accepted that the transition charge would be a volumetric rate.][NTD: Can be moved to Regulations.]**

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period.[2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee), each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis. **[NTD: Move to Regulations.]**

"Delegate" means any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act: ●. **[NTD: Why is this delegation of authority necessary? This requires further discussion and clarity as to which entity or entities that the Province can select as the Delegate; for example, it would not be acceptable for the Province to select the OEB to be the Delegate. If this is required, an acceptable delegate would be a stakeholder committee comprised of representatives from the Ministry of Energy, the OEB, the IESO, and OPG. In addition, the regulation should prescribe how the stakeholder committee would operate.]**

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest to an Absolute Assignee, in each case pursuant to a Disposition Document.

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[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[2] This would pick up adjustments based on actual collection experience, changes in the Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received **[NTD: estimated to be received? will each Electricity Distributor know?]** by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, by an Alternative Collection Agent), by the Servicer or by a Retailer, in each case to a Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act. **[NTD: The Alternative Servicer should only invoice for Transition Charges, not the entire invoice. Also, to avoid confusion, we suggest using the word "invoice" in reference to what the IESO sends out to distributors, and "bills" in reference to what distributors send out to consumers.]**

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of all Absolute Assignees: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals. **[NTD: Move this to regulation.]**

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan. **[NTD: Move this to regulation.]**

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[3]

"Financing Entity" means any entity established at the initiative of and managed by the Financial Services Manager to support the Financing Plan.[4]

"Financing Plan" means the written plan prepared by the Financial Services Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services Manager in accordance with Article 9 from time to time.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including, without limitation, each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under

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[3] There must only be one Financial Services Manager.

[4] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[5].To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month. **[NTD: Need to add the mechanism for IESO to record this shortfall because without that there is no Regulatory Asset. This IESO Funding Shortfall is the regulatory asset owned by IESO.]**

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative

[5] This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.

Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Funding Obligations due and payable by all Absolute Assignees in respect of the month.

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period in respect of a Financing Entity, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), including such amounts as may be prescribed.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount (b) the True-Up Amount in respect of the applicable True-Up Period and (c) an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province as prescribed.

[NTD: There are a number of issues with this definition. First, the word "Retail" is a source of confusion as it implies customers of licensed retailers. Really, the purpose of the term is to define the group of consumers that are eligible to receive the benefit of the Fair Hydro program and who will bear the cost of the program over the long term. We have proposed "Regulated Consumer" but you could also use the term "Eligible Consumer" or "Fair Hydro Eligible Consumer" and for purposes of the legislation to say that it is a member of a class of consumers prescribed by the regulations for purposes of the relevant section of the legislation. The regulation would then describe who is in the class. Second, it may not be appropriate to rely on the class of consumers prescribed for the purposes of s. 79.16 or under the OREC Act. Section 79.16 is the section that defines the class of RPP consumers. We understand that the "Fair Hydro Eligible Consumers" are not an identical class to that which is eligible for the RPP or for the Ontario Rebate for Electricity Consumers. For example, we have heard that Fair Hydro Eligible Consumers will (a) exclude consumers served by independent power authorities (certain remote communities not served by Hydro One Remotes), and (b) include consumers served by licensed unit sub-metering providers, licensed retailers and certain consumers served directly by the IESO (which may or may not be captured by the classes under 79.16 or OREC). Third, it is not clear why consumers with contracts with retailers who use retailer consolidated billing are removed from the first part of the definition but then added back into the second part of the definition. Fourth, Retailers do not necessarily have physical electricity assets that would be connected to the grid. Some just sell or offer contracts for electricity. As such, the first few lines after (b) are problematic. Fifth, the phrase "purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets" does not make sense. A consumer does not purchase generation services from a transmitter or distributor. Rather, a consumer receives distribution services from a distributor. In addition to charging for its distribution services, the distributor also charges the associated

transmission costs and commodity costs associated with the volumes delivered. Those commodity costs are the price of the electricity itself and are almost entirely made up of the amounts determined under the global adjustment. Sixth, the phrase "whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO" does not make sense. Transmission assets are owned and operated by transmitters. Distribution assets are owned and operated by distributors. The IESO does not own but does administer and direct the operation of the transmission system.]

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which Servicer deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the Business Day **[NTD: Not defined.]** preceding each Settlement Date. **[NTD: Move to Regulations. Remittances will be in accordance with the current rules.]**

"Repayment Obligation" means an obligation to repay or to provide for the repayment (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

"Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last Business Day of any month].

"Transition Charge" means, the amount recoverable from a Regulated Consumer in respect of a Reference Period, being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[NTD: This needs to be grossed up to account for variability associated with expected uncollectables and remittance delays.]** **[NTD: Do not need to create parallel process. The definition should be linked to the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** by the Absolute Assignees upon the collection of a Transition Charge paid by or on behalf of a Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, , plus (c) the Collected Amount Adjustment for such related True-Up Period. **[NTD: need to discuss how this will work for our true-up. What about prior period shortages? An example of how this works needs to be provided.]**

"True-Up Period" means, in relation to a Reference Period, the immediately preceding Reference Period.

"Undertaking of Her Majesty in right of Ontario" means the undertaking of Her Majesty in right of Ontario given under Section 11(2).

Article 3 – Transition Charges

(1) **Regulated Consumer Obligation to Pay a Transition Charge** – Each Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Regulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Regulated Consumers** – Until paid, a Transition Charge charged to a Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the

Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[6] debt obligation owing by the Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Regulated Consumer under the Electricity Invoice or otherwise.[7]

(3) No Set-Off or Reduction – A Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) Allocation of Regulated Consumer Payments – If an Electricity Distributor receives a payment made by or on behalf of a Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be subject to rights and benefits that are no less favourable than the treatment accorded to other amounts payable to the IESO by the Electricity Distributor.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges? – [NTD: Include specifics regarding the true-up of the charges and the process for the true-up, but move to Regulations. The True-Up Mechanism should require the Transition Charges to be reviewed and adjusted semi-annually to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Funding Obligations, provided that in some cases it may need to be adjusted more frequently than semi-annually, e.g., as part of a refinancing.]

(7) Commencement of Invoicing and Collection of Transition Charges – [NTD: Please confirm that as drafted, Transition Charges will begin on the Measurement Date.]

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[6] Determine if this is critical for rating and markets. Logistics under consideration.

[7] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

Article 4 – Invoicing of Transition Charges [NTD: Move Article 4 sections (1) to (4) to Regulations. Also note, these sections remain subject to further due diligence by the Dealers.]

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Regulated Consumer. **[NTD: Must capture bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors][NTD: This provision also needs to address the inclusion of Transition Charges in invoices from the IESO to the LDC, consistent with the current process of how the IESO bills LDCs.]**

(2) **Calculation of the Period Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall calculate the Period Finance Charge applicable to the Reference Period having regard to such amounts specified by the Servicer, which calculations, information and amounts shall be accepted by the OEB and shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) **Calculation and Attribution of Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall apply the Attribution Methodology to determine the allocation of the Transition Charge for each Regulated Consumer. **[NTD: We think the OEB would be determining the Fair Hydro recovery rate (on a volumetric basis) that distributors would then be required to charge to consumers]**

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the Transition Charges to be specified in the Electricity Invoices to be issued to each Regulated Consumer who is served by the Electricity Distributor.

(5) **Adjustments** – The amount of any Transition Charge charged to a Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.

(8) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor. Any Electricity Distributor that is replaced under this Section 4(8) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to the Alternative Servicer and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit the Alternative Servicer to perform such obligations and duties on behalf of the Regulatory Asset Owners. **[NTD: We would expect the IESO to manage this in accordance with its normal business practices.]**

(9) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard. **[NTD: We would like to see the sections on "Standing" to bring an action to remain in the legislation (as opposed to being moved to the regulations as we believe we previously suggested) as we see those provisions as part of ensuring a rigorous enforcement scheme for the Financing Entity (and so something that should be difficult for the Province to change going forward).]**

(10) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(11) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances [NTD: Move Article 5 sections (3), (6), (9), (12), (13) and (14) to Regulations.]

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Servicer, collect amounts owing by Regulated Consumers in respect of Transition Charges charged to such Regulated Consumers in

Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent all in accordance with the Regulations. **[NTD: The obligation to collect and remit the Transition Charge should be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]**

(2) **Segregation of Transition Charge Collections** – An Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[8] **[NTD: Determine if this is critical for rating and markets or if segregation can occur in the hands of the IESO]** Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or its Pledgee.

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all amounts invoiced by the IESO on account of the Transition Charge in respect of the related Reference Period to or to the account of Servicer or if applicable the Alternative Collection Agent. **[NTD: It is the Dealers expectation that the Transition Charge will be paid on the same basis as other amounts invoiced by the IESO, failing which, they will need to be remitted daily.]**

(4) **Duty to Collect Electricity Distributor Remittances** – Servicer or if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, accept and collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Regulated Consumers that pay their Electricity Invoices directly to IESO on the same basis as it accepts and collects other charges from such Regulated Consumers.[9]

(5) **Segregation of Electricity Distributor Remittances** – Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or Pledgee.

(6) **Servicer Remittances** – On each Settlement Date[10], Servicer shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month.

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[8] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[9] Consider building this obligation into a deemed condition of licence for the IESO.

[10] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successors** – IESO Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[11], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Regulated Consumers connected to such person's distribution system assets; (b) allocate partial payments by Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest. **[NTD: Such acquisition of a distribution system would require the person to be an electricity distributor; consider deleting since this is covered off by Section 5(7).]**

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **Not Used. [NTD: The Servicer should manage this process.**]

(12) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Regulated Consumer, any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, Servicer,

[11] This is in anticipation of a possible future restructuring of the distribution system.

Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[12]

(13) **Sequestration** – If any Electricity Distributor, Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable.[13]

[NTD: Suggest considering a more typical remedy such as the ability to appoint a receiver. Concept should be moved to Regulations.]

(14) Regulations – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset

[NTD: We believe that the statute should impose a time limit on the ability of IESO to create additional Regulatory Assets under this Act. It is our expectation that this will be no later than 10 years after the commencement of the program.]

[NTD: In addition, additional language is required to address the acquisition of the Regulatory Asset by the Financing Entity, including reference to the consideration being provided for it, funding upfront costs.]

[NTD: The sale of Regulatory Assets must be restricted to Financing Entities controlled by a single entity (initially, OPG).]

[NTD: For greater certainty, a Financing Entity will not be required to purchase Regulatory Assets from IESO.]

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[12] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

[13] Consider adding or substituting this provision for a right to appoint a receiver.

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of a Regulatory Asset Owner to record its portion of the Regulatory Asset in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Regulated Consumer to pay the Transition Charges charged to the Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; **[NTD: Do we really want and need the ability for the Financing Entities to chase after individual consumers?] [NTD: This should be the right to provide notices to the OEB of the amounts required for recovery, which the OEB would then be required to accept for purposes of determining the amount of Transition Charges to be charged to consumers]**

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

e. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of Servicer or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

f. the right to enforce the duties and obligations of Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

g. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

h. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

i. all Related Rights; and

j. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations and Additional Funding Charges have been paid in full.

(2) **Validity of Dispositions** – A Disposition by IESO of all or any part of the IESO Funding Shortfall to an Absolute Assignee, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under the IESO Funding Shortfall or Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of the IESO Funding Shortfall or an Absolute Assignee's right, title and interest in, to and under an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in the IESO Funding Shortfall or Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights under the IESO Funding Shortfall or Investment Interest arising after such Disposition. **[NTD: Subject to review by Osler/dealers.]**

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – A Pledge by an Absolute Assignee may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the

Pledge. No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[14] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement. **[NTD: Move to Regulations.]**

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[14] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

Article 7 – Establishment of the Fair Allocation Plan[15] [NTD: Move entire Article 7 to Regulations, other than 7(1) and 7(2).]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, by written declaration, designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with **[the Regulations]**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]

- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]

- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The share of Future Fair Share of Green Transition Benefits allocable to a particular Regulated Consumer in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to such Regulated Consumer over such Reference Period, other than in exceptional circumstances.

3. The Fair Allocation Plan should specify the Reference Periods for the purpose of allocating Future Fair Share of Green Transition Benefits among Regulated Consumers on a relative basis over time.

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15 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

(3) **Attribution Methodology** – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Finance Charges across the Regulated Consumers. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges. **[NTD: Can the methodology be adjusted outside an amendment? If so, the rating agencies need to understand the limits of any adjustment.]**

(4) **Amendments of the Fair Allocation Plan** – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation, and (c) not impair any Regulatory Asset, outstanding Funding Obligation or any Transition Charges. **[NTD: If the Fair Allocation Plan is amended, there should be no further Regulatory Assets until the revised Fair Allocation Plan and corresponding Financing Plan have been approved.]**

Article 8 – The IESO Funding Shortfall

(1) **Recording of IESO Funding Shortfall** -- IESO will record any IESO Funding Shortfall in its books.

(2) **Dispositions** – IESO may effect a Disposition of all or any part of the IESO Funding Shortfall to an Absolute Assignee if (a) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (b) the Financial Services Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing Plan.

(3) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any IESO Funding Shortfall subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

Article 9 – The Financing Plan [NTD: Move all of Article 9 to Regulations other than 9(1).]

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Manager shall be authorized to prepare, implement and amend a financing plan for the Financing Entities and propose the adoption of such financing plan as the Financing Plan for the purposes of this Act. The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.

(2) Principles and Parameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions having regard to the principles and parameters set forth in Schedule 3.

(3) OEB Approval – Any Additional Funding Charge payable to the Financial Services Manager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.

(4) Review of Financing Plan – The [OEB] shall undertake an annual review of the records maintained by the Financial Services Manager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan. **[NTD: We would prefer that this be dealt with by an attestation prepared by an officer of the Financial Services Manager.]**

(5) Replacement of the Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Manager under the Financing Plan. If the Financial Services Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services Manager. Any replacement must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.

(6) Obligation to Apply IESO Remittances – The Financial Services Manager shall ensure that amounts transferred to it under Article 5, as agent for and on behalf of the Absolute Assignees, or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose. **[NTD: This can be dealt with by contract.]**

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Manager, the OEB or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount.

(8) Incurrences are Binding – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner in incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters[16]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][17]

Article 11 – Undertaking of the Her Majesty in right of Ontario[18]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – Her Majesty in right of Ontario shall not:

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[16] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[17] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[18] Under consideration, including the dealers' request for a "servicer guarantee" and a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes.

In the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), either the Province must step in and payout the debt or there must be the right to recover the debt from ratepayers as it becomes due, notwithstanding the intended rate cut.

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment, amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.[19]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid. **[NTD: This concept can be contained in the Regulations.]**

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional

[19] Requested by Dealers. For discussion.

Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[20]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

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[20] OPG would like the specific amendments related to OPG to be included in the Bill.]

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(2) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(3) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation **[having regard to the application of the Attribution Methodology][NTD: Are the words in square brackets necessary?]**);

(4) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use diligent efforts to manage Finance Amounts to be borne by Ratepayers;

(5) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(6) require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.

RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

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All - please find attached a revised draft of the summary legislation circulated by Blakes on April 10 which reflects consolidated comments from OPG and the dealers (and their respective counsel). Ple

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RE_ _Fair Hydro Act_ Legislative Summary (Discussion Draft).rtf

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Subject: RE: "Fair Hydro Act" Legislative Summary (Discussion Draft)
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To: Smith, Elliot [ESmith@osler.com]
CC: Feldman, Michael [mfeldman@torys.com]; JACKSON, ADAM [ADAM.JACKSON@blakes.com]; Peter Hamilton (PHamilton@stikeman.com) [PHamilton@stikeman.com]; LEE John -TREASURY [john.s.lee@opg.com]; RYFA Ken -TREASURY [ken.ryfa@opg.com]; WONG Leslie -LAWDIV [leslie.wong@opg.com]; MCAULEY Tyler -LAWDIV [tyler.mcauley@opg.com]; WILSON, JUDY [JUDY.WILSON@blakes.com]; STOKES, BRYSON [BRYSON.STOKES@blakes.com]; Hill, Krista [khill@torys.com]; Ramchandani, Rima [rramchandani@torys.com]; Keizer, Charles [ckeizer@torys.com]; Myers, Jonathan [jmyers@torys.com]; Emes, Aaron [aemes@torys.com]; Mansoori, Nina [nmansoori@torys.com]; Wortsman, Jerald [jwortsman@torys.com]; Bomhof, Scott [sbomhof@torys.com]; Estey, Bill [bestey@torys.com]; Watson, Gwen [gwatson@torys.com]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Alan Hibben [alan.hibben@rogers.com]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; O'Brian, Adam [aobrian@hunton.com]; Fitzpatrick, Michael F. [MFitzpatrick@hunton.com]; VINER, JON [JON.VINER@blakes.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Sebastiano, Rocco [RSebastiano@osler.com]; Michael.Boll@ieso.ca [Michael.Boll@ieso.ca]; GZacher@stikeman.com [GZacher@stikeman.com]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Johnson, Paul (ENERGY/MEDEI/MRI) [Paul.Johnson3@ontario.ca]; Kwan, Ronald (OFA) [Ronald.Kwan@ofina.on.ca]; He, Gavin (OFA) [Gavin.He@ofina.on.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]; kim.marshall@ieso.ca [kim.marshall@ieso.ca]; Cox, Hilary (ENERGY) [Hilary.Cox@ontario.ca]; Hilloowala, Maharukh [Maharukh.Hilloowala@tdsecurities.com]; Wolff, Michael [Michael.Wolff@tdsecurities.com]; Holloway, Harold [Harold.Holloway@tdsecurities.com]; Akman, Steven [Steven.Akman@tdsecurities.com]; Manii, David [david.manii@tdsecurities.com]; Nevison, Gary [Gary.Nevison@tdsecurities.com]; Niehaus, Katrina [Katrina.Niehaus@gs.com]; Maciel, Andrew [Andrew.Maciel@cibc.com]; Persaud, Donnie - Debt Capital Markets [Donnie.Persaud@cibc.com]; Adalja, Sunil [Sunil.Adalja@cibc.com]; Alvi, Shariq [Shariq.Alvi@cibc.com]; Benaiah, Ian [ian.benaiah@rbccm.com]; Fullerton, Rick [RFullerton@osler.com]; Collins, Patrick J [Patrick.Collins@gs.com]; Mullen, Max M. [Max.Mullen@gs.com]; Delaney, Brian [Brian.Delaney@gs.com]; Hong, Yoomin [yoomin.hong@gs.com]; Raman, Akila [Akila.Raman@gs.com]; King, Richard [rking@osler.com]; Innes, Michael [MInnes@osler.com]; Milligan, Peter [PMilligan@osler.com]
Subject: Re: "Fair Hydro Act" Legislative Summary (Discussion Draft)
Date: Tuesday, April 11, 2017 13:54:01
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Elliot, in the interest of time, it may make sense for me to walk you through where your items have been addressed. Steve

Stephen R. Ashbourne
Partner
stephen.ashbourne@blakes.com<mailto:stephen.

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OAG ref to IESO acctg.rtf

From: Petsche, Nadine (TBS) []
To: Picard, Michel [mpicard@kpmg.ca]
Subject: OAG ref to IESO acctg
Date: Thursday, April 13, 2017 15:47:46

Hi Michel. We met with the OAG today and they happened to mention that IESO's f/s are now reflecting US GAAP. I wonder, in light of the adoption of IFRS for OPG and H1, wondering if there might be a potential concern with that messaging? N

Ontario Fair Hydro Plan.rtf

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Ontario Fair Hydro Plan
Date: Saturday, April 15, 2017 22:06:10
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Ontario Fair Hydro Plan.rtf

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
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CC: 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Ontario Fair Hydro Plan
Date: Saturday, April 15, 2017 22:06:10
Attachment 1: Fair Hydro Act (April 15 2017) Consultationv4.docx
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Attachment 3: Excerpt EA OEBA Consequential Amendments.docx
Attachment 4: TOR_2528-#23107566-v13-_Fair_Hydro_Act_.docx
Attachment 5: TOR_2528-#23107566-vpdf-_Fair_Hydro_Act_.pdf

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

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Fair Hydro Act (April 15 2017) Consultationv4.pdf

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Confidential Draft

A proposal to create Legislation.

Intergenerational Fairness in Hydro Rates Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix including renewable energy, and to removing barriers to and promoting opportunities for renewable energy projects.

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing the generation of electrical energy and the production therefrom.

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating facilities in a manner that allocates the costs of and benefits from these investments fairly among present and future consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means…

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in renewable energy projects [which use cleaner sources of energy],

(b) removing barriers to and promoting opportunities for renewable energy projects, and

(c) promoting a green economy [including conservation and demand management]; ("French")

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"electricity vendor"[1] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"Fair Allocation Plan" means a plan prepared under section X; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. or such other entity as may be prescribed; ("French")

"Financing Plan" means a plan prepared under section X; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means [O. Reg. 95/05 definition];] ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")

"invoice amount" means the sum of the following amounts:

1. The commodity price of the electricity used during the invoice period.

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. Any adjustment required under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

[1] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a), or such shorter period as may be set out in a Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of the owner of an investment asset by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset; ("French")

[NOTE: CURRENT PROPOSAL IS THAT THE REGULATORY ASSET WILL REPRESENT THE RIGHT OF RECOVERY. UPON A TRANSFER OF AN INVESTMENT INTEREST, THE QUANTUM OF THE RIGHT OF RECOVERY FOR THE REGULATORY ASSET WILL BE REDUCED. THE TRANSFER OF AN INVESTMENT INTEREST WILL RESULT IN IESO RELINQISHING ANY INTEREST IN THE TRANSFERRED INVESTMENT INTEREST, AND WILL RESULT IN THE TRANSFEREE ACQUIRING THE RIGHT OF RECOVERY OF AN INTEREST IN THE CLEAN ENERGY ADJUSTMENTS DETERMINED BY REFERENCE TO FINANCE AMOUNTS INCURRED BY OR ON BEHALF OF THE TRANSFEREE.]

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

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(b) such other person as may be prescribed ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"weekday means [O. Reg. 95/05 definition]; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

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Intention of the Legislature[2]

(5) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

2. (1) The purposes of this Act are,[3]

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy initiative that accrue over time and will continue to benefit present and future electricity consumers in the Province;

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[4] and

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

Crown bound

3. This Act binds the Crown.

[2] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[3] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.
[4] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

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Protection and guarantee of scheme
Prohibition

4. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an owner of an investment asset;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[5]

IESO obligations

(5) If the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

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[5] Note to translator: See s. 9 of the Public Authorities Protection Act.

PART II
FAIR ADJUSTMENT PERIOD

Application of Part

5. This Part applies in respect of the five year period beginning on May 1, 2017 and ending on April 30, 2022.

[NOTE: THIS IS A ROUGH ADAPTATION OF THE "FAIR ADJUSTMENT" CONCEPT. FOR YEARS 2 TO 5, THE LGIC WILL PASS A REGULATION TO LIMIT THE INCREASE TO REDUCED HYDRO BILLS TO REFLECT A FURTHER "FAIR ADJUSTMENT". THE SUM OF ALL FAIR ADJUSTMENTS WILL CORRESPOND TO THE SUM (TIME VALUE ADJUSTED) OF THE PAYMENTS BY PAST RATEPAYERS OF MORE THAN THEIR FAIR SHARE OF THE GREEN COSTS (I.E., AS A RESULT OF THE EXISTING AMORTIZATION RATE OF GREEN COSTS THROUGH THE GA CALCULATION). THE VALUE OF THOSE PAST OVER-PAYMENTS WILL BE A LIMIT ON THE TOTAL AMOUNT OF FAIR ADJUSTMENTS. THE CONCEPT IS MORE FLEXIBILE THAN THE SUGGESTION HERE, WHICH RELATES ONLY TO THE FIRST 5 YEARS – ALTHOUGH THAT IS CERTAINLY THE CURRENT FOCUS. THE IDEA FOR NOW IS THAT THE ACT WILL REDUCE HYDRO BILLS FOR THE FIRST YEAR, AND EACH OF THE FOLLOWING 4 YEARS BY REGULATION – IN AGGREGATE EQUAL TO THE PAST OVER-CHARGES. TO ENSURE THAT THE INCURRENCE OF FUNDING OBLIGATIONS AND CORRESPONDING FINANCE AMOUNTS DO NOT CONFLICT WITH THE FAIR ADJUSTMENT (AND REDUCED HYDRO RATES), THERE WILL BE A MORATORIUM ON CLEAN ENERGY ADJUSTMENTS DURING THE FIRST 5 YEARS (ON BOTH IESO CHARGE THROUGH RECOVERIES AND IN RESPECT OF FINANCE AMOUNTS PAYABLE DURING THESE FIRST 5 YEARS – PROVIDED THAT IF THE LGIC DOES NOT ULTIMATELY DETERMINE THAT A FAIR ADJUSTMENT WILL APPLY IN A YEAR, THE BALANCE, UNDER THE FAP, WILL BE RECOVERABLE BY WAY OF A PASS-THROUGH OF FINANCE AMOUNTS /IESO RECOVERIES. THE IDEA WILL BE THAT THE LGIC WILL DETERMINE THE AMOUNT OF A FAIR ADJUSTMENT PRIOR TO THE RELEVANT PERIOD TO WHICH IT APPLIES. NOTE THAT THE PAST-OVERPAYMENTS WILL BE FACTORED INTO THE FAP ON A GO FORWARD BASIS, IN ADDITION TO THE CONTINUING GREEN COSTS – AND AMORTIZED OVER THE LONGER PERIOD. THE FOLLOWING PROVISION ADDRESSES ONLY THE FIRST YEAR OF THE FAIR ADJUSTMENT.]

Determination of rates, first twelve months

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative consumer by applying the method set out in subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[Note: Query whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the follow method applies:[6]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. In determining the rates, the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends,

        A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

        B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

[6] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

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ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. On and after May 1, 2018, the Board shall determine the rate for electricity payable by a specified consumer in the following manner:

1. Determine the rate by applying the steps set out in section 6.

2. Adjust the rate determined under paragraph 1 for inflation in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT PERIOD

Application of Part

8x. This Part applies in respect of the period beginning on May 1, 2022 and ending on April 30, 2047.

[NOTE: CONSISTENT WITH THE EARLIER NOTE, THE MORATORIUM IS LIFTED IF THE LGIC DETERMINES THAT NO FAIR ADJUSTMENT WILL APPLY, IN WHICH CASE CEAs WILL APPLY DURING THE FIRST 5 YEARS. THE DIVISION OF TIME CONTEMPLATED IN THIS DRAFT IS MORE INFLEXIBLE THAN WE HAVE ENVISIONED]

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

[NOTE: MODIFY TO REFLECT THAT THE PAYMENT IS MADE TO AN EV, AS AGENT FOR THE INVESTMENT ASSET OWNERS]

Limitation

(1.1) No clean energy adjustment is payable by a specified consumer on a day before May 1, 2022. [NOTE: MODIFY TO REFLECT EARLIER NOTES]

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Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether payment of the amounts is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due;

(b) whether the payments relate to funding obligations that were incurred in a manner that did not comply with the Financing Plan; and [NOTE: UNDER CONSIDERATION. SEEMS OVERBROAD]

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to the investment asset owners in respect of their respective interests in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise. [NOTE: ENFORCEMENT WILL BE LIMITED UNDER THE ACT, SO THAT INVESTMENT ASSET OWNERS CAN'T SERVE NOTICES ON RATEPAYERS DIRECTLY, OTHER THAN THROUGH A SPECIFIED AGENT AND PROCESS – SEE BELOW]

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is an error in calculations made by the electricity vendor.

Determination of clean energy adjustment

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers. . [NOTE: THE AMOUNTS WILL BE CALCULATED AS FOLLOWS: (1) FSM (FOR ALL IAOs) WILL INFORM OEB OF PERIOD FINANCE AMOUNTS FOR THE REFERENCE PERIOD (IE ESTIMATE OF FAs PLUS PAST TRUE UP ALLOCATION) (2) OEB WILL ATTRIBUTE THAT AGGREGATE AMOUNT

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BASED ON RPP-LIKE RATE DETERMINATION FOR CUSTOMERS OF THE RELEVANT CLASSES (3) OEB WILL TELL EVs THE RATES APPLICABLE TO THEIR CUSTOMERS, SO THAT THE FULL AMOUNT IN (1) IS RECOVERED (BASED ON EXPECTED COLLECTION RATES AND NONE PAYMENTS)]

True up amount

(2) The Ontario Energy Board may adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination. [NOTE: THIS IS ONLY A PARTIAL DESCRIPTION OF THE TRUE UP. SEE EARLIER DRAFTING INSTRUCTION FOR SUGGESTED APPROACH – I.E., DESCRIBE BROADLY THE NATURE OF THE CALCULATION AND THEN SPECIFY THE CALCULATION IN A DETAILED CALCULATION TO BE INCLUDED IN A REGULATION]

Same, regulations

(3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment.

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period. [NOTE: WE ARE NOT SURE THERE IS A ROLE FOR IESO. WE THOUGHT THE PERIOD FINANCE AMOUNTS WOULD BE FORWARED BY FSM TO OEB DIRECTLY]

IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustments in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make reasonably diligent efforts to collect clean energy adjustments from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:

1. Amounts remitted from accounts established under section 31.

2. Payments made by specified consumers directly to the IESO as electricity vendor, in respect of clean energy adjustments.

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Deposit

(4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1). [NOTE: CONSIDER FEASIBILITY OF DAILY SEGREGATION/ REMITTANCES]

Same, held in trust

(2) The amounts collected are deemed to be held in trust for the investment asset owner.

IESO to remit

(5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations.

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall [in accordance with the regulations?] determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations.

Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under X.

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Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of clean energy adjustments.

2. Portions of payments by specified consumers that are allocated to clean energy adjustments under subsection 30 (2).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of clean energy adjustments to the IESO for the benefit of the investment asset owner in accordance with the regulations.

Payment re regulatory asset

(x) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the difference is payable to the IESO by the specified consumers.

[NOTE: REQUIRES FURTHER CONSIDERATION.]

PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

Fair Allocation Plan

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 as of a specified day among specified consumers for the purposes of this Act, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan to take effect on the specified day.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

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Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a specified day,

[NOTE: THE IDEA IS THAT THE EXPECTED FUTURE GREEN COSTS WILL BE INCLUDED AS COSTS, AND RATHER THAN AMORTIZING THEM BASED ON THE TERMS OF THE POWER CONTRACTS, THE COSTS WILL BE AMORTIZED AND PASSED THROUGH BASED ON A MORE ACCURATE AMORTIZATION SCHEDULE TIED MORE TO THE COSTS AND BENEFITS OF THE GREEN PLAN OVER THE NEXT 30 YEARS. IN ADDITION, TO THE EXTENT THAT THERE HAVE BEEN OVER-CHARGES (BASED ON THE SHORT AMORTIZATION OF GREEN COSTS) SINCE 2005, THOSE OVERAGES WILL BE ADDED TO THE AMOUNT OF THE FAP COSTS TO BE AMORTIZED OVER THE FUTURE – I.E., THE FUTURE GENERATIONS WOULD HAVE BENEFITED FROM AN ARTIFICALLY LOW SHARE OF THE COSTS SINCE THE RATEPAYERS FOR 2005 – 2017 PAID TOO MUCH, SO WE SHOULD BE ABLE TO ADD THOSE TO THE FUTURE GROUPS AND RECOGNIZE A FAIR ADJUSTMENT FOR CURRENT RATEPAYERS]

(a) the costs incurred by the IESO before that day or expected to be incurred by the IESO on or after that day in relation to,

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(ii) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before that day or expected to be incurred on or after that day. (“French”)

C.C.Draft

Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan, the Minister shall have regard to the following principles:

1. The amounts should not be allocated in respect of any period of time after April 30, 2047.

1.1 At no time should the Fair Allocation Plan impair any investment asset, outstanding funding obligation or clean energy adjustment.

2. The share of the amounts allocated to specified consumers who receive an invoice in respect of a reference period should be proportionate to a reasonable assessment of the benefits derived by those consumers during that reference period.

3. The specified consumers to whom an invoice is issued during a reference period should not bear an unreasonably disproportionate share of the amounts allocated.

4. Adjustments should be made over time if the Minister is of the opinion that specified consumers have paid more than is reasonably proportionate.

5. Allocation of amounts should be determined for each reference period.

6. A reasonable estimate of the rate of inflation should be applied [in accordance with the regulations?].

Compliance

8.2 The IESO and the Financial Services Manager shall not, at any time, exceed the limits set out in the applicable Fair Allocation Plan.

[NOTE: THIS IS TOO STRONG. THE IDEA IS THAT IESO'S RIGHT OF RECOVERY WILL BE LIMITED IN A REFERENCE PERIOD BY THE FAP AMOUNT FOR THE PERIOD, MINUS THE FINANCE AMOUNTS FOR THE PERIOD. IN THIS WAY, THE IESO WILL BE ENTITLED TO PASS-THROUGH RECOVERIES IN A WAY THAT AFFECTS THE HYDRO BILLS OF EACH REFERENCE PERIOD RATEPAYERS IN A WAY THAT TRACKS THE FAP. SIMILARLY, IF IESO HAS TRANSFERRED ITS RECOVERY RIGHTS TO A IAO, THEN THE RELATED CEAs FOR THAT IAO WILL BE INSIDE THE FAP – AGAIN, SO THAT THE RATEPAYERS OF THAT PERIOD DO NOT BEAR A DISPROPORTIONATE BURDEN FOR THOSE COSTS. THESE CONCEPTS ARE REFLECTED IN THE MECHANICS DEALING WITH IESO RECOVERIES AND PASSING THROUGH CEAs, AND SO THIS SECTION CAN PROBABLY BE REMOVED]

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FINANCING PLAN

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost-effective and consistent with the Fair Allocation Plan.

Amendments to approved plan

(2) The financial services manager may propose amendments to the Financing Plan at any time.

[NOTE: THE FINANCING PLAN IS SUPPOSED TO BE FLEXIBLE, UNLIKE THE FAP. FORMAL AMENDMENTS WOULD MAKE THIS TOO RIGID. THE FSM SHOULD KEEP RECORDS OF THE FP OVERTIME, SO THAT FUNDING DECISIONS CAN BE DETERMINED BASED ON THE PRINCIPLES AND THERE IS A MEASURE OF ACCOUNTABILITY FOR THE FSM, INSOFAR AS THE RECORD-KEEPING WILL ALLOW THE MINISTER TO DO A PERIODIC CHECK TO MAKE SURE THAT FUNDING OBLIGATIONS WERE INCURRED IN MATERIAL CONFORMITY WITH THE FSM'S EVOLVING FP. THE CONCEPT OF THE FP IS TO CREATE DISCIPLINE, THOUGHFULNESS AND SOME MEASURE OF ACCOUNTABILITY FOR FSM IN MAKING FINDING DECISIONS.]

Compliance with Plan

11.1 The Financial Services Manager shall comply with the Financing Plan.

[NOTE: PROBABLY TOO RIGID A STATEMENT – SEE ABOVE. ALSO, OPG SEEMS TO HAVE ACCOUNTING ISSUES WITH THIS SORT OF MANDATORY DIRECTION – NEED TO CONFIRM]

Contents of plan

12. (1) The Financing Plan shall be prepared in accordance with the regulations and shall include such matters as may be prescribed, which may include the following:

1. A description of one or more transfers that may be made in respect of the regulatory asset established under Part **.

2. A description of the basis upon which funding obligations may be incurred in a manner that is consistent with the applicable Fair Allocation Plan.

3. A description of the funding obligations mentioned in paragraph 2, which may include the following:

    i. Indebtedness.

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ii. Payment obligations arising under or in respect of derivatives.

iii. Payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies.

iv. Refinancing an existing funding obligation by applying the net proceeds obtained by incurring other funding obligations.

[NOTE: PRINCIPLES AND PARAMETERS ARE UNDER CONSIDERATION AND WILL BE INCLUDED IN THE REGULATION.]

Limitation

(1.1) The Financing Plan shall not provide for the payment of the clean energy adjustment by specified consumers before May 1, 2022. [NOTE: WOULD PREFER TO SAY (1) NO CEAs IN THE FIRST 5 YEARS UNTIL, FOR A YEAR, THE LGIC CONFIRMS THAT THERE WILL NOT BE A FAIR ADJUSTMENT FOR THAT YEAR. SEE MECHANICS, ABOVE.]

Special purpose financing entities

(2) If the Financial Services Manager is a prescribed entity, the Financing Plan may, in accordance with the regulations, provide for the establishment by that entity of one or more special purpose financing entities that may incur funding obligations.

[Note: I understand that OPG doesn't need authority to establish a SPV beyond existing OPG authority under the EA, but do you still want something like subs. (2) for an entity other than OPG? It almost makes it look like OPG is not authorized to do so, since the provision singles out prescribed entities. Need to consider further]

[NOTE: THIS CONCEPT SHOULD BE MOVED TO THE REGULATION]

Limit on liquidation, etc. of [special purpose funding entities]

(3) The Financing Plan shall not provide for a [special purpose funding entity] tbe be liquidated, dissolved or voluntarily wound-up until at least one year after all of the funding obligations the entity has incurred have been satisfied. [NOTE: MOVE TO THE REGULATION]

Prohibition

(3) The Financing Plan shall not provide for funding obligations to be incurred with any recourse to any assets of the electricity vendors, the IESO, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

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Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan that is made after the funding obligation has been incurred.

[Note: Consider Article 8 (9) entitled "incurrences are binding" -- I believe we have already stated in the Part dealing with the regulatory asset that the rights are enforceable etc. even if charges have been imposed in a manner that does not follow the Financing Plan. Is more drafting required?]

PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.

[Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall"?* Does that convey the right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount recovered in respect of a reference period may not exceed the amount by which the [fair allocation] in respect of a reference period exceeds the amount of the clean energy adjustment for the reference period. [NOTE: CONSIDER IF THIS SHOULD BE A MAXIMUM OR A MANDATORY FLOW-THROUGH. IF THE IESO RECOVERIES PLUS CEAs FOR A PERIOD ARE LESS THAN THE FAIR ALLOCATION FOR A PERIOD, THEN THE RATEPAYERS OF THE PERIOD WILL BENEFIT FROM A LESSER SHARE OF THE COSTS THAN WOULD BE INDICATED BY THE FAP]
2. No part of the funding shortfall shall be recovered before May 1, 2022. [NOTE: TOO RIGID. SEE CONCEPT OF FAIR ADJUSTMENT, ABOVE]

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books. [NOTE: THIS SHOULD ALSO INCLUDE ADJUSTMENTS WHEN THERE IS A TRANSFER OR RECOVERY – I.E., THE REGULATORY ASSET AMOUNT RECORDED SHOULD BE REDUCED]

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Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[Note: Should the value of any consideration received as part of a transfer be reflected in this section?]

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

[NOTE: FUNDING SHORTFALL DESCRIPTION MAY ALSO RELFECT ADJUSTMENT BASED ON ESTIMATE TO ACTUAL FROM EARLIER MONTH]

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

1. The prospective owner of the investment asset to be acquired through the transfer shall pay to the IESO an amount equal to all or part of the IESO funding shortfall. [NOTE: INVESTMENT ASSET TO BE BASED ON FACE VALUE SO THAT THE IESO RECOVERY IS DOLLAR-FOR-DOLLAR. THIS MEANS THAT ACCRUALS WILL BE NEEDED FOR INITIAL PERIOD, RATHER THAN THE TRUST BUYING INVESTMENT INTERESTS AT A DISCOUNT AND HOLDING BACK ISSUE PROCEEDS TO FUND THOSE AMOUNTS.]

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2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the AGGREGATE IESO funding shortfall in its books.

3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset

Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

[NOTE: DEEMING LANGUAGE TO ADDRESS TRANSFER AND CONVEYANCE IS UNDER CONSIDERATION.]

[NOTE: THE ASSET TRANSFERRED BY IESO WILL BE A RIGHT OF RECOVERY, BY REFERENCE TO CEAs. THE ASSET ACQUIRED WILL BE AN "INVESTMENT INTEREST", BEING A SHARE (THE TERMS AND ENTITLEMENTS OF WHICH WILL BE DETERMINED UNDER A COLLECTIVE RIGHTS AGREEMENT) OF THE RIGHTS AND RELATED PROCEEDS FROM THE RIGHT TO BILL, ETC., CEAs. THE SUM OF ALL INVESTMENT INTERESTS WILL BE THE "INVESTMENT ASSET".]

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

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5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(3) An investment asset is not affected by failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(4) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment asset owner or an owner of distribution system assets in the Province; [NOTE: IF THE MECHANICS FOR CASH FLOWS ADOPT THE PRE-EXISTING METHODS AND TERMS AMONG IESO, LDCs AND RATEPAYERS, THIS PROVISION WILL NEED TO RECOGNIZE THAT THOSE TERMS WILL PREVAIL AND NOT BE AFFECTED BY THE NEUTERING OF SET-OFF, ETC.]

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); [NOTE: CONSIDER IN CONTEXT OF FEDERAL BANKRUPTCY POWERS]

(c) by any affiliate or successor of a person mentioned in clause (a).

Transfer of investment asset

24. The investment asset owner may transfer all or a portion of its rights and interests in an investment asset to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

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Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer. [NOTE: ADDRESSES POSSIBLE RECHARACTERIZATION CONSIDERATIONS. MARKET WILL EXPECT TO SEE THIS GIVEN SECURITIZATION CONCEPTS IN PLAY.]

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.

Administration of investment asset

26. (1) The Financial Services Manager shall administer an investment asset on behalf of the owner of the investment asset. [NOTE: TO BE ELABORATED]

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager. [NOTE: TO BE ELABORATED]

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Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.

[Note: Additional content relating to the PPSA has not yet been addressed in any detail. Please review all subsections that contain the (x) below and advise what is needed. Some of this content was already covered by some of the numbered subsections in this draft.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

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Same

(x) A pledgee shall have a perfected security interest in a related investment interest, including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the investment interest and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx].

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

34. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

35.2 [Note: Still to be drafted:
If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect clean energy adjustments, defaults on any required remittance of Clean energy adjustment Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by a Regulatory Asset Owner or Pledgee and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the Clean energy adjustment Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Regulatory Asset Owner or Pledgee.] [Such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or other person or entity authorized to collect Clean energy adjustments, as applicable.]

Successors

37. [Note: Articles 4 (6) and (7) and Articles 5 (7) and (8) are rules about successors to distributors and the IESO being bound by specific requirements. Still to be drafted.]

Choice of law

37.1 The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

38. The provisions of this Act [and the regulations?] apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

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No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

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[7] FLS - see s. 51 of the Electricity Act, 1998

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.1) to enter into agreements or arrangements with [any special purpose financing entities established under (name of new Fair Hydro Act?)];

(q.2) to engage in activities related to making payments to and receiving payments from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required under that Act, and to engage in related settlement activities;

(q.3) to engage in activities related to the transfer of the regulatory asset created under [(name of new Fair Hydro Act?)], which activities may include,

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset to [any special purpose financing entities established under (name of new Fair Hydro Act?)];

(iii) transferring the regulatory asset to third parties;

(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];

201x. Subsection 53.1 (1) of the Act would be repealed and the following substituted:

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, the following:

1. Owning and operating generation facilities.
2. Establishing, operating and supervising the activities of [any special purpose financing entities established under (name of new Fair Hydro Act?)].

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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3. Providing financial and other support to the IESO in its activities under the [name of new Fair Hydro Act?].

4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.

5. Providing equity, not exceeding the prescribed amount, to support the financing capacity [any special purpose financing entities established under (name of new Fair Hydro Act?)].

[Note: Still to draft:
-for the new Fair Hydro Bill: *if OPG is the Financial Services Manager, it shall be required to provide an accounting of the amounts it charges the trust for the financing entity to the OEB 60 days in advance of the commencement of the fiscal year for the OPG trust/special purpose vehicle*]

Subsidiaries

(1.1) Ontario Power Generation Inc. may create one or more subsidiaries in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

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AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1) - instructions on pp. 8-9 of Rider instructions rec'd April 14th]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

[NOTE: CEAs WILL BE DETERMINED BASED ON AN ESTIMATE OF COSTS AND REPAYMENTS FOR AN UPCOMING PERIOD, AND BE TRUED UP TO ACTUAL COSTS AND REPYAMENTS IN THE NEXT FOLLOWING PERIOD. THESE MECHANICS CAN BE SEEN IN THE SUMMARY DOCUMENT – "PERIOD FINANCE AMOUNTS" AND SECONDARY DEFINITIONS. THIS FORMULAIC APPROACH IS PREFERRED TO ESTABLISH A SUM CERTAIN OF THE DEBT REPRESENTED BY THE CEAs, ONCE BILLED. IT MAY BE USEFUL TO CREATE A DEFINITION TO ENCOMPASS ALL CEAs FOR A PERIOD, SINCE A CEA IS THE AMOUNT BILLED TO A PARTICULAR CUSTOMER]

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by owners of an investment asset [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

[NOTE THAT SHOULD LIMIT CONCEPT OF RESERVE DEPOSITS AS INCURRENCES IF IT WOULD MEAN THAT THE PROCEEDS FROM A TRANSFER WOULD BE REDUCED FROM FACE VALUE WITH THE RESULT THAT IESO WOULD BE TRANSFERRING IAs AT A DISCOUNT]

2. The sum of all funding costs for the reference period, as determined under section 2 to this Schedule.

3. The sum of all amounts payable by or on behalf of owners of investment assets to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

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[Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]
[Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable by owners of investment assets for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[Note: Para. 5 is based on the definition of "additional funding charges".]

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of owners of investment assets during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the owners of investment assets during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

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3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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Concordance - summary to bill (April 15, 2017).pdf

CONCORDANCE

Blakes Discussion Document	Draft Bill – April 15, 2017 (numbers correspond to numbers in the draft, even though numbering in the draft is imperfect)
Article 1 – Purpose	Preamble s. 2 Purpose
Article 2 – Definitions	s. 1 Definitions
Article 3 – Transition Charges	
s. 3(1) Regulated Consumer Obligation to Pay a Transition Charge	s. 9x(1)
s. 3(2) Indebtedness of Regulated Consumers	s. 9x(4), (5)
s. 3(3) No set-off or Reduction	s. 23.1(4)
s. 3(4) Allocation of Regulated Consumer Payments	s. 14x(2)
s. 3(5) Transition Charges are Irrevocable	s.10x(1)
s. 3(6) True Up of Transition Charges	s. 11x(2)
Article 4 – Invoicing of Transition Charges	
s. 4(1) Inclusion of Transition Charges in Electricity Invoices	s. 13(2)
s. 4(2) Calculation of the Period Transition Charge	s. 11x(1), (2), Schedule 1
s. 4(3) Basis for Attributing Transition Charges	s. 11x(1)
s. 4(4) Notice of Transition Charges	s. 11(4)
s. 4(5) Adjustments	s. 10x(2)
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Excerpt EA OEBA Consequential Amendments.pdf

EXCERPTS FROM THE ELECTRICITY ACT AND ONTARIO ENERGY BOARD ACT

RELATED TO CONSEQUENTIAL AMENDMENTS

Electricity Act, 1998

Purposes of *Electricity Act, 1998*

1. The purposes of this Act include the following:

(a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;

(a.1) to establish a mechanism for energy planning;

(b) to encourage electricity conservation and the efficient use of electricity in a manner consistent with the policies of the Government of Ontario;

(c) to facilitate load management in a manner consistent with the policies of the Government of Ontario;

(d) to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(e) to provide generators, retailers, market participants and consumers with non-discriminatory access to transmission and distribution systems in Ontario;

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(g.1) to facilitate the alteration of ownership structures of publicly-owned corporations that transmit, distribute or retail electricity;

(g.2) to facilitate the disposition, in whole or in part, of the Crown's interest in corporations that transmit, distribute or retail electricity, and to make the proceeds of any such disposition available to be appropriated for any Government of Ontario purpose;

(h) to ensure that Ontario Hydro's debt is repaid in a prudent manner and that the burden of debt repayment is fairly distributed;

(i) to facilitate the maintenance of a financially viable electricity industry; and

(j) to protect corridor land so that it remains available for uses that benefit the public, while recognizing the primacy of transmission uses. 2004, c. 23, Sched. A, s. 1; 2014, c. 7, Sched. 7, s. 1; 2015, c. 20, Sched. 9, s. 1; 2016, c. 10, Sched. 2, s. 1.

Objects of the IESO

6 (1) The objects of the IESO are,

(a) to exercise the powers and perform the duties assigned to it under this Act, the regulations, directions, the market rules and its licence;

(b) to enter into agreements with transmitters to give it authority to direct the operation of their transmission systems;

(c) to direct the operation and maintain the reliability of the IESO-controlled grid to promote the purposes of this Act;

(d) to participate in the development by any standards authority of criteria and standards relating to the reliability of the integrated power system;

(e) to establish and enforce criteria and standards relating to the reliability of the integrated power system;

(f) to work with the responsible authorities outside of Ontario to co-ordinate the IESO's activities with the activities of those authorities;

(g) to operate the IESO-administered markets to promote the purposes of this Act;

(h) to engage in activities related to contracting for the procurement of electricity supply, electricity capacity, electricity storage, transmission systems or any part of such systems and conservation resources;

(i) to engage in activities related to settlements, payments under a contract entered into under the authority of this Act and payments provided for under this Act or the *Ontario Energy Board Act, 1998*;

(j) to engage in activities in support of the goal of ensuring adequate, reliable and secure electricity supply and resources in Ontario;

(k) to forecast electricity demand and the adequacy and reliability of electricity resources for Ontario for the short term, medium term and long term;

(l) to conduct independent planning for electricity generation, demand management, conservation and transmission;

(m) to engage in activities to facilitate the diversification of sources of electricity supply by promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources;

(n) to engage in activities in support of system-wide goals for the amount of electricity to be produced from different energy sources;

(o) to engage in activities that facilitate load management;

(p) to engage in activities that promote electricity conservation and the efficient use of electricity;

(q) to assist the Board by facilitating stability in rates for certain types of consumers;

(r) to collect and make public information relating to the short term, medium term and long term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs; and

(s) to engage in such other objects as may be prescribed by the regulations. 2014, c. 7, Sched. 7, s. 3 (1); 2016, c. 10, Sched. 2, s. 3.

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, owning and operating generation facilities. 2002, c. 1, Sched. A, s. 11.

Status

(2) Ontario Power Generation Inc. and its subsidiaries are not agents of Her Majesty for any purpose, despite the *Crown Agency Act*. 2002, c. 1, Sched. A, s. 11.

Rights of the Minister

53.2 The Minister, on behalf of Her Majesty in right of Ontario, may acquire and hold shares of Ontario Power Generation Inc. 2002, c. 1, Sched. A, s. 11.

Corporations to hold shares

53.3 (1) The Lieutenant Governor in Council may cause corporations to be incorporated under the *Business Corporations Act* for the purpose of acquiring and holding shares in Ontario Power Generation Inc. 2002, c. 1, Sched. A, s. 11.

Same

(2) Shares in a corporation incorporated pursuant to subsection (1) may be acquired and held in the name of Her Majesty in right of Ontario by a member of the Executive Council designated by the Lieutenant Governor in Council. 2002, c. 1, Sched. A, s. 11.

Crown agent

(3) A corporation incorporated pursuant to subsection (1) is an agent of Her Majesty for all purposes. 2002, c. 1, Sched. A, s. 11.

Dividends paid to Crown agent

(4) If an agent of Her Majesty in right of Ontario is paid dividends in respect of shares of Ontario Power Generation Inc., the agent shall pay the dividends to the Financial Corporation, less any amount that it considers is required to pay obligations it has assumed under clause 122 (1) (a). 2002, c. 1, Sched. A, s. 11.

Reporting requirements

53.4 (1) Ontario Power Generation Inc. shall, within 90 days after the end of every fiscal year, submit to the Minister an annual report on its affairs during that fiscal year, signed by the chair of the board of directors. 2002, c. 1, Sched. A, s. 11.

Same

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 2002, c. 1, Sched. A, s. 11.

Same

(3) Ontario Power Generation Inc. may give its annual report to other persons before the Minister complies with subsection (2). 2002, c. 1, Sched. A, s. 11.

Additional reports and information

(4) Ontario Power Generation Inc. shall give such other reports and information to the Minister of Finance or to the Minister as each of them may require from time to time. 2002, c. 1, Sched. A, s. 11.

Residual power of the Crown

53.5 Nothing in this Part restricts the powers of Her Majesty in right of Ontario or any member of the Executive Council at common law or under any Act, whether as a shareholder or otherwise. 2002, c. 1, Sched. A, s. 11.

[. . .]

Payments in lieu of federal corporate tax

89 (1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 149 (1) of the *Income Tax Act* (Canada) from the payment of tax under that Act, it shall pay to the Financial Corporation in respect of each taxation year an amount equal to the amount of the tax that it would be liable to pay under that Act if it were a corporation to which that subsection did not apply. 1998, c. 15, Sched. A, s. 89 (1); 2002, c. 1, Sched. A, s. 15 (1); 2007, c. 7, Sched. 12, s. 2.

Corridor land

(1.1) The amount payable under subsection (1) by a person or entity from whom corridor land is transferred by section 114.2 shall be determined, for the taxation year in which the transfer occurs and for subsequent taxation years, as if the transfer did not occur. 2002, c. 1, Sched. A, s. 15 (2).

Payments to Minister of Finance

(2) After Part V is repealed under section 84.1, all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 89 (2); 2000, c. 42, s. 31.

Commencement of new taxation year

(3) A corporation that is required to make payments under this section shall be deemed, for the purposes of this section, to commence a new taxation year on the day this section comes into force.

Payments in lieu of provincial corporate tax

90 (1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 57 (1) of the *Corporations Tax Act* from the payment of tax under that Act for a taxation year that ends before January 1, 2009, it shall pay to the Financial Corporation in respect of each taxation year ending before that day an amount equal to the total amount of tax that it would be liable to pay under Parts II, II.1 and III of that Act for that year if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (3).

Same

(1.0.1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 27 (2) of the *Taxation Act, 2007* from the payment of tax under that Act for a taxation year that ends after December 31, 2008, it shall pay to the Financial Corporation in respect of each taxation year ending after that day an amount equal to the total amount of tax that it would be liable to pay under Divisions B, C and E of Part III of that Act for the taxation year if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (3).

Corridor land

(1.1) The amount payable under subsection (1) by a person or entity from whom corridor land is transferred by section 114.2 shall be determined, for the taxation year in which the transfer occurs and for subsequent taxation years, as if the transfer did not occur. 2002, c. 1, Sched. A, s. 16 (2).

Payments to Minister of Finance

(2) After Part V is repealed under section 84.1, all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 90 (2); 2000, c. 42, s. 32.

Commencement of new taxation year

(3) A corporation that is required to make payments under this section shall be deemed, for the purposes of this section, to commence a new taxation year on the day this section comes into force. 1998, c. 15, Sched. A, s. 90 (3).

Ontario Energy Board Act, 1998

1 (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

1.1 To promote the education of consumers.

2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.

4. To facilitate the implementation of a smart grid in Ontario.

5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1; 2015, c. 29, s. 7.

Licence conditions

70 (1) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. 1998, c. 15, Sched. B, s. 70 (1).

Approvals, etc., with or without holding hearing

(1.1) The Board may, with or without a hearing, grant an approval, consent or make a determination that may be required for any of the matters provided for in a licensee's licence. 2009, c. 12, Sched. D, s. 10.

Examples of conditions

(2) The conditions of a licence may include provisions,

(a) specifying the period of time during which the licence will be in effect;

(b) requiring the licensee to provide, in the manner and form determined by the Board, such information as the Board may require;

(c) requiring the licensee to enter into agreements with other persons on specified terms (including terms for a specified duration) approved by the Board relating to its trading or operations or for the connection to or use of any lines or plant owned or operated by the licensee or the other party to the agreement;

(d) governing the conduct of the licensee, including the conduct of,

(i) a transmitter or distributor as that conduct relates to its affiliates,

(ii) a distributor as that conduct relates to a retailer,

(ii.1) a distributor or suite meter provider as such conduct relates to,

(A) the disconnection of the supply of electricity to a consumer, including the manner in which and the time within which the disconnection takes place or is to take place, and with respect to a low-volume consumer, periods during which the disconnection may not take place,

(B) the manner, timing and form in which the notice under subsection 31 (2) of the *Electricity Act, 1998* is to be provided to the consumer, and

(C) subject to the regulations, the manner and circumstances in which security is to be provided or not to be provided by a consumer to a distributor or suite meter provider, including,

(1) the interest rate to be applied to amounts held on deposit and payable by the distributor or suite meter provider to the consumer for the amounts,

(2) the manner and time or times by which the amounts held on deposit may or must be paid or set-off against amounts otherwise due or payable by the consumer,

(3) the circumstances in which security need not be provided or in which specific arrangements in respect of security may or must be provided by the distributor or suite meter provider to the consumer, and

(4) such other matters as the Board may determine in respect of security deposits,

(iii) a retailer, and

(iv) a generator, retailer or person licensed to engage in an activity described in clause 57 (f) or an affiliate of that person as that conduct relates to the abuse or possible abuse of market power;

(d.1) governing conditions relating to any matter prescribed by regulation in respect of retailers of electricity in relation to the retailing of electricity, subject to any regulations made under this Act;

(e) specifying methods or techniques to be applied in determining the licensee's rates;

(f) requiring the licensee to maintain specified accounting records, prepare accounts according to specified principles and maintain organizational units or separate accounts for separate businesses in order to prohibit subsidies between separate businesses;

(g) specifying performance standards, targets and criteria;

(h) specifying connection or retailing obligations to enable reasonable demands for electricity to be met;

(i) specifying information reporting requirements relating to the source of electricity and emissions caused by the generation of electricity;

(j) requiring the licensee to expand or reinforce its transmission or distribution system in accordance with market rules in such a manner as the IESO or the Board may determine;

(k) requiring the licensee to enter into an agreement with the IESO that gives the IESO the authority to direct operations of the licensee's transmission system;

(l) REPEALED: 2016, c. 10, Sched. 2, s. 15.

(m) requiring licensees, where a directive has been issued under section 28.2, to implement such steps or such processes as the Board or the directive requires in order to address risks or liabilities associated with customer billing and payment cycles in respect of the cost of electricity at the retail and at the wholesale levels and risks or liabilities associated with non-payment or default by a consumer or retailer. 1998, c. 15, Sched. B, s. 70 (2); 2003, c. 3, s. 47 (1); 2004, c. 23, Sched. B, s. 11 (1-3); 2010, c. 8, s. 38 (10, 11); 2016, c. 10, Sched. 2, s. 15; 2017, c. 1, s. 2 (1).

Deemed conditions of licences, transmitters and distributors

(2.1) Every licence issued to a transmitter or distributor shall be deemed to contain the following conditions:

1. The licensee is required to provide, in accordance with such rules as may be prescribed by regulation and in the manner mandated by the market rules or by the Board, priority connection access to its transmission system or distribution system for renewable energy generation facilities that meet the requirements prescribed by regulation made under subsection 26 (1.1) of the *Electricity Act, 1998*.
2. The licensee is required to prepare plans, in the manner and at the times mandated by the Board or as prescribed by regulation and to file them with the Board for approval for,

i. the expansion or reinforcement of the licensee's transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and

ii. the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system.

3. The licensee is required, in accordance with a plan referred to in paragraph 2 that has been approved by the Board or in such other manner and at such other times as mandated by the Board or prescribed by regulation,

i. to expand or reinforce its transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and

ii. to make investments for the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system. 2009, c. 12, Sched. D, s. 10.

Deemed condition of licences, unit sub-meter provider, *Ontario Clean Energy Benefit Act, 2010*

(2.2) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Clean Energy Benefit Act, 2010* and the regulations made under it. 2010, c. 26, Sched. 13, s. 17 (2).

Deemed condition of licences, unit sub-meter provider, *Ontario Rebate for Electricity Consumers Act, 2016*

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Rebate for Electricity Consumers Act, 2016* and the regulations made under it. 2016, c. 19, s. 17 (2).

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment").

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with revenue certainty, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. It has been determined that the useful lives of many of the assets developed under the Green Generation Initiative will be in excess of the respective terms of their respective procurement contracts.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Regulated Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Regulated Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred to cover such a shortfall during any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in future periods. In order for IESO to obtain a reliable and committed source

of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services manager under the Financing Plan contemplated in this Act.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Regulated Consumers on an equitable and cost effective basis.

Article 2 – Definitions

In this Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of any Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including without limitation such amounts as may be prescribed.
>
> "Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.
>
> "Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Regulated Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Finance Charges for a Reference Period to Regulated Consumers.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period and minus [(c) the amounts by which amounts remitted by Electricity Distributors pursuant to Section 5(4) exceeded the corresponding amount of Transition Charges Actually paid by Regulated Consumers.][2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee), each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.

"Delegate" means any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act: ●[3].

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition (or, in the case of the IESO Funding Shortfall, a release by IESO of its right to recover such amount in order to enable an Absolute Assignee to recover such amount) of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest, in each case to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the

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[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[2] This is intended to pick up adjustments based on actual collection experience, changes in the Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc. The actual calculation needs work.

[3] Placeholder for delegation once deterermined.

Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.[4]

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, by an Alternative Collection Agent), by the Servicer or by a Retailer, in each case to a Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act.

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of any Absolute Assignee: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

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[4] Suggestion is that LDCs remit based on estimates and then true-up, based on current arrangements for remittances by LDCs to IESO. *

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means any entity established in accordance with the Financing Plan to be an Absolute Assignee and that is managed by the Financial Services Manager.[6]

"Financing Plan" means the written plan prepared by the Financial Services Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services Manager in accordance with Article 9 from time to time.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

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[5] There must only be one Financial Services Manager.

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month.To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount received by IESO in accordance with its right to recover IESO Funding Shortfalls pursuant to section 25.33 of the Electricity Act and Ontario Regulation 430/04, as amended, and "IESO Recoveries" means, collectively, all such amounts received by IESO.[7]

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Regulatory Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, minus (b) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (c) the IESO Recoveries received by IESO prior to the day.

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[7] IESO will be entitled to record the IESO Funding Shortfall amount in a variance account. The OEB will eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act , with an applicable OEB accounting order. See Article 8 for corresponding adjustments based on Dispositions. These will need to be tied together.

“IESO Successor” means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province’s electricity system.

“Investment Interest” means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition.

“Investment Remittance” means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

“Measurement Date” means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

“Net Funding Costs” means, for a Reference Period, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of any Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), and such other or different amounts as may be prescribed.

“OEB” means the Ontario Energy Board, together with its successors.

“OPG” means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

“Over-Assessed Amount” means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

“Period Finance Charges” means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount (b) the True-Up Amount in respect of the applicable True-Up Period and (c) [an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).]

“Pledge” means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

“Pledgee” means a person to whom an Absolute Assignee grants a Pledge.

“Program End Date” means •, [2047].

“Province” means the Province of Ontario.

“Redemption Amount” means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional

amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province [as prescribed][8].

"Regulated Consumer Group" means, in relation to a Reference Period, the Regulated Consumers who receive Electricity Invoices during the Reference Period.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which Servicer deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the business day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

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[8] To be included in the legislation once settled.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

["Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.]

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last business day of any month].

"Transition Charge" means, the amount recoverable from a Regulated Consumer in respect of a Reference Period[9], being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[Note that this allocation will be based on the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** upon the collection of a Transition Charge paid by or on behalf of a Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.[10]

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[9] Note that Transition Charges will be calculated by reference to Funding Obligations and Finance Amounts incurred under the Financing Plan. The directive will be that no payment obligations will be incurred for payment before 2022, to accommodate the "Fair Adjustment".

[10] True-up calculation is under consideration. In this summary, a calculated true-up amount is contemplated to be included in the Period Finance Amount calculation, in order to achieve a sum certain and actionable debt. The suggestion is that the true-up mechanism be based generally on a calculation process to be described in the Regulation, which would require Transition Charges to be reviewed and adjusted semi-annually (or more frequently) to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Finance Amounts. It has been proposed that the scope of the true-up will exclude any 'leakage' at the Financing Entity Level (e.g., entity-level tax; litigation; losses) but will include shortfalls that are currently socialized through the LDC/IESO system. Note that the proposal

"True-Up Period" means, in relation to a Reference Period, the immediately preceding Reference Period.[11]

"Undertaking of Her Majesty in right of Ontario" means the undertaking of Her Majesty in right of Ontario given under Section 11(2).[12]

Article 3 – Transition Charges

(1) **Regulated Consumer Obligation to Pay a Transition Charge** – Each Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Regulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Regulated Consumers** – Until paid, a Transition Charge charged to a Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[13] debt obligation owing by the Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Regulated Consumer under the Electricity Invoice or otherwise.[14]

(3) **No Set-Off or Reduction** – A Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Regulated Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

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to include a section detailing the true-up mechanism (Oslers 3(6) has not been included here since the outcome of the calculation is already built into the Period Finance Amount concept.

[11] Timing of calculation under consideration, given that amount will need to be reflected in customer invoices.

[12] Under consideration.

[13] Determine if this is critical for rating and markets. Logistics under consideration.

[14] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges – [See True-Up Amount].

Article 4 – Invoicing of Transition Charges

(1) Inclusion of Transition Charges in Electricity Invoices – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice[15] issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Regulated Consumer.

(2) Calculation of the Period Finance Charge – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, the Financial Services Manager on behalf of each Absolute Assignee shall calculate the Period Finance Charge applicable to the Reference Period having regard to such amounts specified by the Servicer, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) Basis for Attributing Transition Charges – Not later than 25 days prior to the first day of a Reference Period, the OEB shall determine a [Fair Hydro Recovery Rate] (on a volumetric basis) on which Electricity Distributors will attribute Transition Charges to consumers under 4(4).

(4) Notice of Transition Charges – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any

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[15] Intention is to include bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors and to address the inclusion of Transition Charges in the paperwork from the IESO to the LDC in a manner that is consistent with the current process of how the IESO bills LDCs.

Alternative Servicer of the [Fair Hydro Recovery Rate] to be applied by the Electiricy Distributor to attribute Transition Charges to each Regulated Consumer who is served by the Electricity Distributor for inclusion in the Electricity Invoices to be issued to the Regulated Consumers.

(5) **Adjustments** – The amount of any Transition Charge charged to a Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, IESO shall perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4. Any Electricity Distributor that is replaced under this Section 4(7) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to IESO and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit IESO or a person designated by IESO to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(8) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(9) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(10) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Servicer, undertake commercially reasonable efforts to collect amounts owing by Regulated Consumers in respect of Transition Charges charged to such Regulated Consumers in Electricity Invoices issued by the

Electricity Distributor or if applicable such Alternative Collection Agent, all in accordance with the Regulations. [16]

(2) **Segregation of Transition Charge Collections** – If prescribed, an Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[17] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or a Pledgee.[18]

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all [Transition Charge Collections received by it from Regulated Consumers] [amounts invoiced to it by the IESO on account of Transition Charges][19] in respect of the related Reference Period to or to the account of Servicer or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – Servicer or if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, accept and undertake commercially reasonable efforts to collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Regulated Consumers that pay their Electricity Invoices directly to IESO, all in accordance with the Regulations.

(5) **Segregation of Electricity Distributor Remittances** – Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or any Pledgee.

(6) **Servicer Remittances** – On each Settlement Date[20], Servicer shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to

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[16] Note that the obligation to collect and remit the Transition Charge will be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]

[17] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[18] Consider whether there is a more efficient way to treat collections through the existing LDC/IESO processes. Intention is to provide scope in the Regulations.

[19] Dealer suggestion under consideration. Impact on LDCs and parallel commercial arrangements to be assessed.

[20] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successors** – IESO Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[21], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Regulated Consumers connected to such person's distribution system assets; (b) allocate partial payments by Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Regulated Consumer, any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[22]

(12) **Sequestration** – If any Electricity Distributor, Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of

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[21] This is in anticipation of a possible future restructuring of the distribution system.

[22] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall (i) order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable and (ii) appoint a receiver to take control of the amounts sequestered.[23]

(13) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset[24]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of a Regulatory Asset Owner to record its Investment Interest in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Regulated Consumer to pay the Transition Charges charged to the Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of Servicer or if applicable the Alternative

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[23] Consider adding or substituting this provision for a right to appoint a receiver.

[24] It is anticipated that Investment Interests will only be sold to Financing Entities controlled by OPG. Sales will occur on a negotiated basis, and deal-specific covenants will be included in transaction documents – to supplement these arrangements.

Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

e. the right to enforce the duties and obligations of Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

f. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

g. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

h. all Related Rights; and

i. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations have been paid in full.

(2) **Validity of Dispositions** – A Disposition by IESO of its right to recover all or any part of the IESO Funding Shortfall to an Absolute Assignee, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under IESO's right to recover the IESO Funding Shortfall or the Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of IESO's right to recover the IESO Funding Shortfall or an Absolute Assignee's right, title and interest in, to and under an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in IESO's right to recover the IESO Funding Shortfall or the

Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights to recover the IESO Funding Shortfall or under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – A Pledge by an Absolute Assignee may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest in respect of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[25] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner or Pledgee to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

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[25] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[26]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, by written declaration, designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with [the Regulations]**.**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Regulated Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Regulated Consumer in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to such Regulated Consumer over such Reference Period, other than in exceptional circumstances.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Regulated Consumer Group and any future Regulated Consumer Group at a particular time should not exceed the Estimated Future Green Transition

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26 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Regulated Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Regulated Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Regulated Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Regulated Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Regulated Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Regulated Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Finance Charges across the Regulated Consumers. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges.

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation, (b) comply with any restrictions or limitations specified with respect thereto in any Funding

Obligation, and (c) not impair any Regulatory Asset, outstanding Funding Obligations or any Transition Charges.[27]

Article 8 – The IESO Funding Shortfall

(1) Recording of IESO Funding Shortfall – Subject to 8(3), IESO will record any IESO Funding Shortfall [in its books] [in a variance account established in accordance with section 25.33 of the Electricity Act / Ontario Regulation 430/04, as amended].

(2) Adjustments – IESO will record it [its books][its variance account] all adjustments to the IESO Regulatory Asset Amount from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(3) Limitation on Additions – Subject to 8(3), IESO shall not record additions to the IESO Regulatory Asset Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(4) Dispositions – IESO may effect a Disposition of its right to recover all or any part of the IESO Regulatory Asset Amount to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (c) the Financial Services Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing Plan.

(5) No Continuing Interest in any Investment Interest – IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of, any IESO Regulatory Asset Amount that is subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

(6) IESO Recoveries – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) of any IESO Recoveries.

Article 9 – The Financing Plan

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services Manager shall be authorized to prepare, implement and amend a financing plan [for the Financing Entities] and propose the adoption of such financing plan as the Financing Plan for the purposes of this Act. [The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.]

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[27] It is anticipated that the terms of any rated financing will restrict further issuances pending a RAC in relation to any changes to the FAP.

(2) Principles and Parameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions, having regard to the principles and parameters set forth in Schedule 3.

(3) OEB Approval – [Any Additional Funding Charge payable to the Financial Services Manager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.][28]

(4) Review of Financing Plan – The [OEB shall undertake an annual review of the records maintained by the Financial Services Manager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.] [29]

(5) Replacement of the Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Manager under the Financing Plan. If the Financial Services Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services Manager. [Any replacement financial services manager must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.]

(6) Obligation to Apply IESO Remittances – The Financial Services Manager shall ensure that amounts transferred to it [under Article 5, as agent for and on behalf of the Absolute Assignees], or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Manager, the OEB or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount.

(8) Incurrences are Binding – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner of incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

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[28] Under consideration.

[29] Under consideration.

[Article 10 – Compliance Matters[30]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][31]

Article 11 – Undertaking of the Her Majesty in right of Ontario[32]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – Her Majesty in right of Ontario shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

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[30] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[31] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[32] Under consideration, including the dealers' request for (1) a "servicer guarantee" (2) a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes and (3) in the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), a covenant by the Province to step in and payout the debt or to recover the debt from ratepayers as it becomes due, notwithstanding the intended Fair Adjustment.

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment, amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.[33]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

[33] Requested by Dealers. For discussion.

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[34]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by

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[34] OPG would like the specific amendments related to OPG to be included in the Bill.]

any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(4) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(5) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(6) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation);

(7) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use [diligent efforts to manage Finance Amounts to be borne by Ratepayers];

(8) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(9) [require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.]

(10) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(11) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(12) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(13) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(14) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(15) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(16) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(17) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(18) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(19) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(20) the basis on which any Pledge may be given or effected.

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]

- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]

- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The ~~imputed~~out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). ~~The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.~~

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative~~, which may be higher than prevailing market price for electricity. These differences~~. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with ~~long-term price~~revenue certainty~~ for electricity~~, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. ~~In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts.~~ It has been determined that the useful lives of many of the assets ~~encouraged by~~developed under the Green Generation Initiative will be ~~well~~ in excess of the respective terms of ~~the related~~their respective procurement contracts~~, and in many cases may extend over more than one generation of electricity consumers~~.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective ~~durations~~terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to ~~Retail~~Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such ~~Retail~~Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future ~~Retail~~Regulated Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the ~~Retail~~Regulated Consumers of a particular time period

should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Retail~~Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred ~~by IESO~~ to cover such a shortfall during ~~one~~any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in ~~one or more~~ future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on ~~Retail~~Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services ~~agent~~manager under the Financing Plan contemplated in this Act. ~~The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.~~

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Retail~~Regulated Consumers on an equitable and cost effective basis.

Article 2 ~~-~~ Definitions

In this Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services ~~Agent~~Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period ~~in respect of an Absolute Assignee,~~ the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of ~~the~~any Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including ~~(without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the~~

~~Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan~~without limitation such amounts as may be prescribed.

~~"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1]~~

"Alternative ~~Collection Agent~~Servicer" means a person appointed under Section ~~5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners."Alternative Servicer" means a person appointed under Section~~ 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to ~~Retail~~Regulated Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"~~[2]~~[1] means the methodology specified in the Fair Allocation Plan for allocating the Period ~~Transition~~Finance Charges for a Reference Period to ~~individual Retail~~Regulated Consumers~~ of the applicable Retail Consumer Group based on its Allocation Factor~~.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services ~~Agent~~Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period~~.~~[3] and minus [(c) the amounts by which amounts remitted by Electricity

~~[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.~~

~~[2]~~[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

Distributors pursuant to Section 5(4) exceeded the corresponding amount of Transition Charges Actually paid by Regulated Consumers.][2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) ~~and~~, each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means ~~the~~any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act; ●[3].

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition ~~of an Investment Interest~~(or, in the case of the IESO Funding Shortfall, a release by IESO of its right to recover such amount in order to enable an Absolute Assignee to recover such amount) of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest, in each case to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which ~~a Regulatory Asset Owner~~IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means~~, in respect of a Service Area, the~~ a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, ~~1998~~* ~~in respect of such Service Area,~~*1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to ~~IESO~~Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.[4]

"Electricity Invoice" means an invoice issued by ~~any of a~~an Electricity Distributor (or in its stead, by an Alternative ~~Servicer~~Collection Agent), by the Servicer or by a Retailer, in each case to a ~~Retail~~Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to ~~a distribution network in the~~such Electricity Distributor's ~~designated Service Area~~distribution system and in respect of applicable Transition Charges to be charged to the ~~Retail~~Regulated Consumer under this Act.

[32] This ~~would~~is intended to pick up adjustments based on actual collection experience, changes in the ~~retail consumer~~Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc. The actual calculation needs work.

[4] ~~Consider adding the Financial Services Agent and the Servicer as parties.~~

[3] Placeholder for delegation once deterermined.

[4] Suggestion is that LDCs remit based on estimates and then true-up, based on current arrangements for remittances by LDCs to IESO. *

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services ~~Agent~~Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to ~~any Retail Consumer Group~~Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to ~~Retail~~Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to ~~Retail~~Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of ~~the~~any Absolute Assignee: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services ~~Agent~~Manager" means OPG or, following any Replacement Event involving OPG, such other person ~~or persons~~ who may be appointed as the ~~Financial Services Agent~~financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

[5] ~~Discuss whether to accommodate multiple~~There must only be one Financial Services ~~Agents. MOE to consider~~Manager.

"Financing Entity" means ~~an~~any entity established in accordance with the Financing Plan to ~~acquire all or an interest in the Regulatory Asset as~~be an Absolute Assignee and ~~to enter into Funding Obligations to finance such acquisition under the Financing Plan~~that is managed by the Financial Services Manager.[6]

"Financing Plan" means the written plan prepared by the Financial Services ~~Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied,~~Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services ~~Agent~~Manager in ~~compliance~~accordance with Article 9 from time to time.

~~"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.~~

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

or in respect of derivatives; payment obligations owing to service providers, Financial Services ~~Agents~~Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.~~

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

~~"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.~~

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act*~~.~~ in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

~~"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.~~

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]~~; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount~~

[7] ~~This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.~~

~~of any subsequent shortfall for the month in which the inaccuracy is identified. .~~To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount ~~remitted to IESO (including~~received by IESO ~~retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b)~~in accordance with its right to recover IESO Funding Shortfalls pursuant to section 25.33 of the Electricity Act and Ontario Regulation 430/04, as amended, and "IESO Recoveries" means, collectively, all such amounts received by IESO.[7]

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO ~~Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest."IESO Retained~~Regulatory Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, ~~plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c~~minus (b) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (~~d~~c) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition~~, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document~~.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

[7] IESO will be entitled to record the IESO Funding Shortfall amount in a variance account. The OEB will eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act , with an applicable OEB accounting order. See Article 8 for corresponding adjustments based on Dispositions. These will need to be tied together.

~~"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.~~

~~"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.~~

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of any Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), and such other or different amounts as may be prescribed.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount ~~and~~ (b) the True-Up Amount in respect of the ~~immediately preceding Reference Period. "Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.~~ applicable True-Up Period and (c) [an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).]

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional

amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) ~~June~~October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

~~"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.~~

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province [as prescribed][8].

"Regulated Consumer Group" means, in relation to a Reference Period, the Regulated Consumers who receive Electricity Invoices during the Reference Period.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of ~~the IESO Retained Interest and~~ each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which ~~IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent~~Servicer deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means ~~each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b)~~ each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively ~~IESO and~~ each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such ~~Regulatory Asset~~Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to ~~IESO~~Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the ~~Business Day~~business day preceding each Settlement Date.

[8] To be included in the legislation once settled.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

~~"Retail Consumer" means:~~

~~(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and~~

~~(b) present and future Retailers who use Retailer Consolidated Billing,~~

~~and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.~~

~~"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.~~

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

[["Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.]]

~~"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.~~

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last ~~Business Day~~business day of any month].

"Transition Charge" means, ~~for a Retail~~the amount recoverable from a Regulated Consumer in respect of a Reference Period~~, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the~~

~~applicable Reference Period Length.~~[9], being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[Note that this allocation will be based on the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** upon the collection of a Transition Charge paid by or on behalf of a ~~Retail~~Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services ~~Agent~~Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, ~~minus (b) the Actual Finance Amount for such related True-Up Period,~~ plus (c) the Collected Amount Adjustment for such related True-Up Period.[10]

"True-Up Period" means, in relation to a Reference Period, the ~~period from and including the [30th] day~~ immediately preceding ~~the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the~~ Reference Period.[11]

"Undertaking of ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario" means the undertaking of ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario given under Section 11(2).[12]

Article 3 – Transition Charges

(1) **~~Retail~~Regulated Consumer Obligation to Pay a Transition Charge** – Each ~~Retail~~Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such ~~Retail~~Regulated Consumer by its Electricity Distributor

[9] Note that Transition Charges will be calculated by reference to Funding Obligations and Finance Amounts incurred under the Financing Plan. The directive will be that no payment obligations will be incurred for payment before 2022, to accommodate the "Fair Adjustment".

[10] True-up calculation is under consideration. In this summary, a calculated true-up amount is contemplated to be included in the Period Finance Amount calculation, in order to achieve a sum certain and actionable debt. The suggestion is that the true-up mechanism be based generally on a calculation process to be described in the Regulation, which would require Transition Charges to be reviewed and adjusted semi-annually (or more frequently) to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Finance Amounts. It has been proposed that the scope of the true-up will exclude any 'leakage' at the Financing Entity Level (e.g., entity-level tax; litigation; losses) but will include shortfalls that are currently socialized through the LDC/IESO system. Note that the proposal to include a section detailing the true-up mechanism (Oslers 3(6) has not been included here since the outcome of the calculation is already built into the Period Finance Amount concept.

[11] Timing of calculation under consideration, given that amount will need to be reflected in customer invoices.

[12] Under consideration.

or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) Indebtedness of ~~Retail~~Regulated Consumers – Until paid, a Transition Charge charged to a ~~Retail~~Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the ~~Retail~~Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[~~8~~13] debt obligation owing by the ~~Retail~~Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the ~~Retail~~Regulated Consumer under the Electricity Invoice or otherwise.[~~9~~14]

(3) No Set-Off or Reduction – A ~~Retail~~Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such ~~Retail~~Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) Allocation of ~~Retail~~Regulated Consumer Payments – If an Electricity Distributor receives a payment made by or on behalf of a ~~Retail~~Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations ~~incurred under the Financing Plan~~ (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether ~~or not~~ the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether ~~or not~~ the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges – [See True-Up Amount].

Article 4 – Invoicing of Transition Charges

[~~8~~13] Determine if this is critical for rating and markets. Logistics under consideration.

[~~9~~14] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Retail~~Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice[15] issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Retail~~Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Retail~~Regulated Consumer.

(2) **Calculation of the Period ~~Transition~~Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services ~~Agent~~Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period~~. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day~~. Not later than one month prior to the first day of a Reference Period, the ~~OEB~~Financial Services Manager on behalf of each Absolute Assignee shall calculate the Period ~~Transition~~Finance Charge applicable to the Reference Period ~~based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on~~having regard to such amounts specified by ~~IESO or Successor IESO~~the Servicer, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) ~~**Calculation and Attribution of**~~**Basis for Attributing Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall ~~apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group~~determine a [Fair Hydro Recovery Rate] (on a volumetric basis) on which Electricity Distributors will attribute Transition Charges to consumers under 4(4).

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the [Fair Hydro Recovery Rate] to be applied by the Electricy Distributor to attribute Transition Charges to ~~be specified~~each Regulated Consumer who is served by the Electricity Distributor for inclusion in the Electricity Invoices to be issued to ~~each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.~~the Regulated Consumers.

(5) **Adjustments** – The amount of any Transition Charge charged to a ~~Retail~~Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to

[15] Intention is to include bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors and to address the inclusion of Transition Charges in the paperwork from the IESO to the LDC in a manner that is consistent with the current process of how the IESO bills LDCs.

the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

~~(7)~~ ~~**IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.~~

(7) ~~(8)~~ **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, ~~the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to~~IESO shall perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article ~~4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor.~~ 4. Any Electricity Distributor that is replaced under this Section 4(~~8~~7) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to ~~the Alternative Servicer~~IESO and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit ~~the Alternative Servicer~~IESO or a person designated by IESO to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(8) ~~(9)~~ **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Retail~~Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(9) ~~(10)~~ **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(10) ~~(11)~~ **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to ~~Retail~~Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the ~~Regulatory Asset Owners~~Servicer, undertake ~~[diligent]~~[commercially reasonable~~]~~[10] efforts to collect amounts owing by ~~Retail~~Regulated Consumers in respect of Transition Charges charged to such ~~Retail~~Regulated

~~[10] Mirror collection "standard of care" under applicable legislation.~~

Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent~~.~~, all in accordance with the Regulations. [16]

(2) **Segregation of Transition Charge Collections** – ~~An~~If prescribed, an Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Retail~~Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.~~11~~[17] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners~~.~~ or a Pledgee.[18]

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all [Transition Charge Collections received by it from ~~Retail~~Regulated Consumers] [amounts invoiced to it by the IESO on account of Transition Charges][19] in respect of the related Reference Period to or to the account of ~~IESO~~Servicer or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – ~~IESO~~Servicer or if applicable any Alternative ~~Collection Agent~~Servicer shall, as an agent of the Regulatory Asset Owners, accept and undertake ~~[diligent]~~[commercially reasonable~~]~~ efforts to ~~accept and~~ collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Retail~~Regulated Consumers that pay their Electricity Invoices directly to IESO, all in accordance with the Regulations.~~12~~

(5) **Segregation of Electricity Distributor Remittances** – ~~IESO~~Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, ~~IESO~~Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or any Pledgee.

(6) **~~IESO~~Servicer Remittances** – On each Settlement Date~~13~~[20], ~~IESO and if applicable the Alternative Collection Agent~~Servicer shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~ to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month~~ and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date~~.

[16] Note that the obligation to collect and remit the Transition Charge will be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]

~~11~~[17] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[18] Consider whether there is a more efficient way to treat collections through the existing LDC/IESO processes. Intention is to provide scope in the Regulations.

[19] Dealer suggestion under consideration. Impact on LDCs and parallel commercial arrangements to be assessed.

~~12 Consider building this obligation into a deemed condition of licence for the IESO.~~

~~13~~[20] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO ~~Successor~~Successors** – IESO ~~Successor~~Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[~~14~~21], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Retail~~Regulated Consumers ~~in its applicable service area, including all consumers~~ connected to ~~the electricity~~such person's distribution system assets ~~and taking electric delivery service located within such service area~~; (b) allocate partial payments by ~~Retail~~Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from ~~Retail~~Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article ~~5.~~5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

~~(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final~~

[~~14~~21] This is in anticipation of a possible future restructuring of the distribution system.

~~effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.~~

(11) ~~(12)~~ **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any ~~Retail~~Regulated Consumer, any Electricity Distributor, ~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, ~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.~~15~~22

(12) ~~(13)~~ **Sequestration** – If any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall (i) order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable~~.~~16 and (ii) appoint a receiver to take control of the amounts sequestered.23

(13) ~~(14)~~ **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to ~~IESO~~Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset24

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of ~~IESO (i)~~a Regulatory Asset Owner to record its ~~IESO Retained~~Investment Interest in its accounts~~ in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b)~~;

~~15~~22 Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Retail~~Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

~~16~~23 Consider adding or substituting this provision for a right to appoint a receiver.

24 It is anticipated that Investment Interests will only be sold to Financing Entities controlled by OPG. Sales will occur on a negotiated basis, and deal-specific covenants will be included in transaction documents – to supplement these arrangements.

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Retail~~Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each ~~Retail~~Regulated Consumer to pay the Transition Charges charged to the ~~Retail~~Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

~~**d.** the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;~~

d. ~~**e.**~~ the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of ~~IESO~~Servicer or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

e. ~~**f.**~~ the right to enforce the duties and obligations of ~~IESO~~Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

f. ~~**g.**~~ the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

g. ~~**h.**~~ all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

h. ~~**i.**~~ all Related Rights; and

i. ~~**j.**~~ all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and

notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations have been paid in full.

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a~~A Disposition ~~that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by~~by IESO of its right to recover all or any part of the IESO Funding Shortfall to an Absolute Assignee ~~made under the Financing Plan~~, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under ~~the applicable~~IESO's right to recover the IESO Funding Shortfall or the Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of ~~the Regulatory Asset Owner's applicable~~IESO's right to recover the IESO Funding Shortfall or an Absolute Assignee's right, title~~,~~ and interest in, to and under ~~the Regulatory Asset~~an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in IESO's right to recover the IESO Funding Shortfall or the Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights to recover the IESO Funding Shortfall or under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a~~A Pledge by an Absolute Assignee may be made to secure any ~~related~~ Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. ~~Other than as required by the Financing Plan, no~~No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest in respect of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[17][25] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a~~A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner or Pledgee to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~, in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18][26]

(1) Adoption of the Fair Allocation Plan – The Delegate may, ~~[~~by written declaration,~~]~~ designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair

[17][25] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

[18][26] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with ~~Section 7(4).~~[the Regulations].

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future ~~Retail Consumer Groups~~Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable ~~Retail~~Regulated Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular ~~Retail~~Regulated Consumer ~~Group~~ in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to ~~the Retail~~such Regulated Consumer ~~Group~~ over such Reference Period~~.~~, other than in exceptional circumstances.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a ~~Retail~~Regulated Consumer Group and any future ~~Retail~~Regulated Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future ~~Retail~~Regulated Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future ~~Retail~~Regulated Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future ~~Retail~~Regulated Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate ~~Retail~~Regulated Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such ~~Retail~~Regulated Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair

Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more ~~Retail~~Regulated Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period ~~Transition~~Finance Charges across the ~~Retail~~Regulated Consumers~~ of a particular Retail Consumer Group~~. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges.

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation~~ and~~, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation~~.~~, and (c) not impair any Regulatory Asset, outstanding Funding Obligations or any Transition Charges.[27]

Article 8 – The IESO ~~Retained Interest~~Funding Shortfall

(1) Recording of IESO Funding Shortfall – Subject to 8(3), IESO will record any IESO Funding Shortfall [in its books] [in a variance account established in accordance with section 25.33 of the Electricity Act / Ontario Regulation 430/04, as amended].

(2) ~~(1) Maintain Books of Account~~ ~~– IESO may maintain books of account to record the IESO Retained Interest~~**Adjustments** – IESO will record it [its books][its variance account] all adjustments to the IESO Regulatory Asset Amount ~~and all adjustments thereto~~ from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(3) ~~(2)~~ Limitation on Additions – Subject to 8(3), IESO shall not record additions to the IESO ~~Retained Interest~~ Regulatory Asset Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(4) ~~(3)~~ Dispositions – IESO may effect a Disposition of its right to recover all or any part of the IESO Regulatory Asset Amount to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (c) the Financial Services ~~Agent~~Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing

[27] It is anticipated that the terms of any rated financing will restrict further issuances pending a RAC in relation to any changes to the FAP.

Plan; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(5) (4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest, or maintain any right to recover all or any part of, any IESO Regulatory Asset Amount that is subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to of any IESO under Section 5(6)(b) Recoveries.

Article 9 – The Financing Plan

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Agent Manager shall be authorized to prepare, implement and amend a financing plan [for the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare Entities] and propose the adoption of such financing plan as the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan. for the purposes of this Act. [The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.]

(2) **Terms Principles and Conditions Parameters of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have, having regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation. 3.

(3) **OEB Approval** – [Any Additional Funding Charge payable to or for the benefit of the Financial Services Manager in respect of services provided by the Financial Services Agent Manager (other than third party costs) shall be subject to review and approval by the OEB.][28]

(4) **OEB Review of Financing Plan** – The [OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent Manager for the purpose of

[28] Under consideration.

confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.][29]

(5) Replacement of the ~~Administrative Agent~~Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the ~~Administrative Agent~~Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services ~~Agent~~Manager under the Financing Plan. If the Financial Services ~~Agent~~Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services~~.~~ Manager. [Any replacement financial services manager must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.]

(6) Obligation to Apply IESO Remittances – The Financial Services ~~Agent~~Manager shall ensure that amounts transferred to it [under Article 5, as agent for and on behalf of the Absolute Assignees], or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services ~~Agent~~Manager, the OEB~~, the Province or the Lieutenant Governor in Council~~ or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. ~~[All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]~~

(8) Incurrences are Binding – ~~Notwithstanding anything to the contrary in this Act, each~~Each Disposition made to or by an Absolute Assignee ~~and~~, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding ~~for the purposes of this Act~~, including in determining the amount of related Transition Charges, ~~despite~~notwithstanding any ~~impairment or defect resulting from such failure~~defect in the manner of incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters~~19~~30

[29] Under consideration.

~~19~~30 As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services ~~Agent~~Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services ~~Agent~~Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.]~~20~~31

Article 11 – Undertaking of the ~~Lieutenant Governor in Council~~[21]Her Majesty in right of Ontario[32]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – ~~The [Lieutenant Governor in Council]~~Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of ~~Retail~~Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – ~~The [Lieutenant Governor in Council]~~Her Majesty in right of Ontario shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

~~20~~31 As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as ~~Administrative Agent~~Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

~~21~~32 Under consideration, including the dealers' request for (1) a "servicer guarantee" ~~and~~(2) a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes and (3) in the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), a covenant by the Province to step in and payout the debt or to recover the debt from ratepayers as it becomes due, notwithstanding the intended Fair Adjustment.

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor ~~IESO~~ shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article ~~11.[22]~~11.[33]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the ~~Lieutenant Governor in Council~~Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

[22][33] Requested by ~~Torys~~Dealers. For discussion.

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[2334]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article,

[2334] OPG would like the specific amendments related to OPG to be included in the Bill.]

Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(4) ~~(9)~~ consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(5) ~~(4)~~ if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable ~~Retail Consumer Group~~Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(6) ~~(5)~~ reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical ~~Retail~~Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation ~~having regard to the application of the Allocation Methodology~~);

(7) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use [diligent efforts to manage Finance Amounts to be borne by Ratepayers];

(8) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(9) [require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding

[24] ~~Awaiting input from Torys based on OPG mark-up of Financing Plan sections.~~

Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.]

(10) ~~**(6)**~~ incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(11) ~~(7)~~ the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(12) ~~(8)~~ the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(13) ~~(9)~~ the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(14) ~~(10)~~ the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(15) ~~(11)~~ the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(16) ~~(12)~~ the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(17) ~~(13)~~ the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(18) ~~(14)~~ the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(19) ~~(15)~~ describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(20) ~~(16)~~ the basis on which any Pledge may be given or effected.

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]
- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]
- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

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Split/Merged cell	
Padding cell	

Statistics:	
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Deletions	369
Moved from	6
Moved to	6
Style change	0
Format changed	0
Total changes	752

Ontario Fair Hydro Plan.rtf

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
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Subject: Ontario Fair Hydro Plan
Date: Saturday, April 15, 2017 22:06:10
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Subject: Ontario Fair Hydro Plan
Date: Thursday, April 13, 2017 10:44:50

Hi Everyone,

This will be a meeting to discuss the Ontario Fair Hydro Plan (OFHP).

The meeting will be held at Blakes and the main contact on site will be Lindsay Dicks (416-863-4347 or Lindsay.Dicks@blakes.com). Please inform Lindsay if there will be additional people attending from your group because she will need to pass this information along to their security desk.

Please only forward this invitation to your respective teams if their participation is necessary for the facilitation of this meeting, as the boardroom has limited capacity.

Any materials available for this meeting will be provided in a future update.

Given that this meeting follows a holiday, if you are unable to attend in person or prefer to do so from your own office, please use the following conference call information:

Toll-free dial-in number: 1-866-633-1033
Local dial-in number: 416-212-8013
Conference ID: 3164921#

If there are any additional scheduling needs or updates, please contact Joseph Pau (416-326-1018 or Joseph.Pau@ontario.ca).

Thanks,

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From: Pau, Joseph (MEDG/MRIS) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Mary Anne Aldred' [MaryAnne.Aldred@oeb.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
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Ontario Fair Hydro Plan.rtf

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To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Mary Anne Aldred' [MaryAnne.Aldred@oeb.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Ontario Fair Hydro Plan
Date: Thursday, April 13, 2017 10:44:49

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Ontario Fair Hydro Plan.rtf

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Subject: Ontario Fair Hydro Plan
Date: Thursday, April 13, 2017 10:44:50

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To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Mary Anne Aldred' [MaryAnne.Aldred@oeb.ca]
CC: 'Myers, Jonathan' [jmyers@torys.com]
Subject: Ontario Fair Hydro Plan
Date: Tuesday, April 11, 2017 10:32:53

Update

This meeting has been moved from Blakes to Torys due to boardroom availability.

Please contact Reception or Nicole Drake (ndrake@torys.com) when you arrive to be shown to the boardroom.

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Subject: Ontario Fair Hydro Plan
Date: Saturday, April 15, 2017 22:06:10
Attachment 1: Fair Hydro Act (April 15 2017) Consultationv4.docx
Attachment 2: Concordance - summary to bill (April 15, 2017).docx
Attachment 3: Excerpt EA OEBA Consequential Amendments.docx
Attachment 4: TOR_2528-#23107566-v13-_Fair_Hydro_Act_.docx
Attachment 5: TOR_2528-#23107566-vpdf-_Fair_Hydro_Act_.pdf

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this ready for the House. The goal of sharing this document now is to further the process we have engaged in over the last weeks. In the attached, we have included notes to try to address where the drafting is not yet consistent with our thinking. These notes are neither comprehensive nor complete. They are intended only as flags and as colour to the draft. We have not forgotten the comments that you have already provided and we are continuing to working through the translation of the commercial terms we have been discussing into legislative language.

For ease of reference, included with the draft bill are the partially updated Blakes’ summary, a chart that attempts links the articles in that document to the sections of the bill (which is imperfectly numbered at best) and excerpts from the Electricity Act and the Ontario Energy Board Act, related to the consequential amendments.

In your review, please focus on the broad stroke concepts, rather than the minutia, and keep in mind the cascade of instruments that will be required – legislation first, then regulations and finally commercial agreements. We look forward to discussing the broader concepts on Monday

Carolyn Calwell

Legal Director

MAG Civil Law Division

Ministries of Energy / Economic Development & Growth /

Research, Innovation & Science / Infrastructure / Accessibility

416-212-8392

This communication may be solicitor/client privileged and contain confidential information only intended for the person(s) to whom it is addressed. Any dissemination or use of this information by others than the intended recipient(s) is prohibited. If you have received this message in error please notify the writer and permanently delete the message and all attachments. Thank you.

Fair Hydro Act (April 15 2017) Consultationv4.pdf

This confidential draft document is provided for discussion purposes only. It should not be construed as representing a position adopted by the Government of Ontario on any of the topics included or not included in this document. The notes included in this document are intended only to help facilitate a discussion of the topics to which they relate. Any potential legislation is subject to the approval of the Ontario Legislature.

Confidential Draft

A proposal to create Legislation.

Intergenerational Fairness in Hydro Rates Act, 2017, if enacted

EXPLANATORY NOTE TO BE ADDED BY LEGISLATIVE COUNSEL TO ANY FINAL BILL PRIOR TO INTRODUCTION.

[Notes re this draft:
- all numbering of provisions will need to be re-done
- will need to check all definitions to ensure (1) that they are needed; and (2) that they work properly wherever the term is used in the Bill.
- additional consequential amendments likely required still
- overall organization of provisions still TBC (for now just trying to get all of the elements drafted and will reconsider architecture later)]

Preamble

The Government of Ontario is committed to fostering the development of a clean, modern and reliable electricity system with a diverse supply mix including renewable energy, and to removing barriers to and promoting opportunities for renewable energy projects.

The Government of Ontario has established a regulatory and contractual framework related to the generation and sale of electricity to ensure significant investment in decarbonizing and modernizing the generation of electrical energy and the production therefrom.

Given the long-term benefits that future generations of Ontarians will receive from many of these investments, it is appropriate and fair to raise money in respect of these generating facilities in a manner that allocates the costs of and benefits from these investments fairly among present and future consumers.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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3. Crown bound
4. Protection and guarantee of scheme

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6. Determination of rates, first twelve months
7. Determination of rates, on and after May 1, 2018

PART III
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10. Irrevocability of clean energy adjustment
11. Determination of clean energy adjustment
12. IESO to invoice electricity vendors
13. Electricity vendor to apply rate
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15. Electricity vendor, account

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FAIR ALLOCATION PLAN

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8.0.1 Amounts to be allocated
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Confidential Draft

22. Regulatory asset established
22.1 Recording of IESO funding shortfall in books
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24. Transfer of investment asset
26. Administration of investment asset
27. Investment asset owner may grant pledge
28. Collective action required
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PART I
GENERAL

Interpretation
Definitions

1. (1) In this Act,

"clean energy adjustment" means…

"clean energy initiative" means the policies of the Government of Ontario related to,

(a) fostering the growth of and investment in renewable energy projects [which use cleaner sources of energy],

(b) removing barriers to and promoting opportunities for renewable energy projects, and

(c) promoting a green economy [including conservation and demand management]; ("French")

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"electricity vendor"[1] means the IESO, a licensed distributor, a licensed retailer or such other person as may be prescribed; ("French")

"Fair Allocation Plan" means a plan prepared under section X; ("French")

"Financial Services Manager" means Ontario Power Generation Inc. or such other entity as may be prescribed; ("French")

"Financing Plan" means a plan prepared under section X; ("French")

"funding obligation" means a payment obligation incurred by or on behalf of the regulatory asset owner or an investment asset owner under section x; ("French")

"holiday" means [O. Reg. 95/05 definition];] ("French")

"IESO" means the Independent Electricity System Operator continued under Part II of the *Electricity Act, 1998*; ("SIERE")

"investment asset" means all or part of the regulatory asset that is deemed to be an investment asset under section x; ("French")

"invoice amount" means the sum of the following amounts:

1. The commodity price of the electricity used during the invoice period.

2. The rates and charges set out in the applicable rate order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*.

3. Any adjustment required under section 25.33 of the *Electricity Act, 1998*.

4. The amount of any harmonized sales tax payable under Part IX of the *Excise Tax Act* (Canada); ("French")

"licensed distributor" means a person licensed under Part V of the *Ontario Energy Board Act, 1998* to own or operate a distribution system; ("French")

"licensed retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity; ("French")

[1] FLS - this is similar to the definition of "electricity vendor" in the Ontario Rebate for Electricity Consumers Act, 2016

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"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"prescribed" means prescribed by the regulations; ("prescrit")

"reference period" means,

(a) the period beginning on May 1, 2017 and ending on October 31, 2017,

(b) every six-month period following the period mentioned in clause (a), or such shorter period as may be set out in a Fair Allocation Plan; ("French")

"refinancing" means a repayment or repurchase of a funding obligation for cancellation by or on behalf of the owner of an investment asset by applying the net proceeds obtained by the owner incurring one or more other funding obligations; ("French")

"regulation" means a regulation made under this Act; ("règlement")

"regulatory asset" means the regulatory asset established under section X or, if any part of that regulatory asset has been transferred under this Act, the portion of the regulatory asset that is not deemed to be an investment asset; ("French")

[NOTE: CURRENT PROPOSAL IS THAT THE REGULATORY ASSET WILL REPRESENT THE RIGHT OF RECOVERY. UPON A TRANSFER OF AN INVESTMENT INTEREST, THE QUANTUM OF THE RIGHT OF RECOVERY FOR THE REGULATORY ASSET WILL BE REDUCED. THE TRANSFER OF AN INVESTMENT INTEREST WILL RESULT IN IESO RELINQISHING ANY INTEREST IN THE TRANSFERRED INVESTMENT INTEREST, AND WILL RESULT IN THE TRANSFEREE ACQUIRING THE RIGHT OF RECOVERY OF AN INTEREST IN THE CLEAN ENERGY ADJUSTMENTS DETERMINED BY REFERENCE TO FINANCE AMOUNTS INCURRED BY OR ON BEHALF OF THE TRANSFEREE.]

"representative consumer" means a consumer who meets the criteria set out in subsection (3); ("French")

"specified consumer" means,

(a) a person who has an account with an electricity vendor for the supply of electricity, receives an invoice in respect of the account and meets the criteria set out in subsection (2); or

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(b) such other person as may be prescribed ("French")

"Toronto Hydro" means Toronto Hydro-Electric System Limited; ("French")

"transfer" means an assignment, conveyance, disposition or sale; ("French")

"weekday means [O. Reg. 95/05 definition]; ("French")

Specified consumers

(2) For the purposes of clause (a) of the definition of "specified consumer" in subsection (1), the person must meet any one of the following criteria:

1. The person has a demand for electricity of 50 kilowatts or less, or such other amount as may be prescribed.

2. The person annually uses not more than 250,000 kilowatt hours of electricity, or such other amount as may be prescribed.

3. The person carries on a business that is a farming business for the purposes of the *Farm Registration and Farm Organizations Funding Act, 1993* and either holds a valid registration number assigned under that Act or the has had the obligation to file a farming business registration form waived pursuant to an order made under subsection 22 (6) of that Act.

4. The person's account with the electricity vendor relates to,

   i. a dwelling,

   ii. a property within the meaning of the *Condominium Act, 1998*,

   iii. a residential complex within the meaning of subsection 2 (1) of the *Residential Tenancies Act, 2006*, without regard to section 5 of that Act, or

   iv. a property that includes one or more housing units and that is owned or leased by a co-operative within the meaning of the *Co-operative Corporations Act*.

5. The person satisfies such criteria as may be prescribed.

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Invoice amount, exclusions

(2) For the purposes of the definition of "invoice amount" in subsection (1), an invoice amount does not include any of the following amounts:

1. The balance of any amounts carried forward from previous invoices.

2. Penalties or interest.

3. Charges that do not relate to the use of electricity.

4. Any of the following charges that may be set out in an order issued by the Ontario Energy Board under subsection 78 (3) of the *Ontario Energy Board Act, 1998*:

    i. A fixed monthly service charge payable by a generation facility within the meaning of section 56 of the *Ontario Energy Board Act, 1998* and classified as "microFIT".

    ii. A charge labelled as a "specific service charge" or "retail service charge".

    iii. A rate rider.

Representative consumer

(3) For the purposes of the definition of "representative consumer" in subsection (1), the consumer,

(a) purchases electricity directly from Toronto Hydro;

(b) has an account with Toronto Hydro that falls within a residential-rate classification as specified in a rate order made by the Board under section 78 of the Act;

(c) is invoiced by Toronto Hydro on a monthly basis;

(d) is not invoiced by Toronto Hydro for electricity on an equal monthly payment plan or an equal billing plan; and

(e) uses, on average, 750 kilowatt hours of electricity each month.

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Intention of the Legislature[2]

(5) For greater certainty, all of the provisions of this Act remain in full force and effect, even if some provisions are held to be invalid, the intention of the Legislature being to give separate and independent effect to the extent of its powers to every provision contained in this Act.

Same

(6) The fact that any provision of this Act is held to be invalid or ceases to be in effect for any reason does not affect a funding obligation that was incurred under this Act before the day that the provision was held to be invalid or ceased to be in effect.

Purpose

2. (1) The purposes of this Act are,[3]

(a) to ensure that the costs of the clean energy initiative are fairly distributed among specified customers over time;

(b) to recognize the long-term benefits of the clean energy initiative that accrue over time and will continue to benefit present and future electricity consumers in the Province;

(c) to promote the use of clean energy sources and technologies, including low carbon, alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(d) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(e) to facilitate the maintenance of a financially viable electricity industry, including by raising money in respect of sites and facilities in the Province for the generation of electrical energy and the production therefrom;[4] and

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

Crown bound

3. This Act binds the Crown.

[2] FLS: this is from the *Climate Change Mitigation and Low-carbon Economy Act, 2016*
[3] FLS: Please see the *Electricity Act, 1998* for much of the wording proposed in this section.
[4] FLS - as per the note in the Preamble on this language, please see 92A (4) of the *Constitution Act, 1867.*

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Protection and guarantee of scheme
Prohibition

4. (1) The Crown shall not do anything that would,

(a) hinder, delay, impair or prejudice the charging, collection or remittance of the clean energy adjustment;

(b) except as expressly permitted by this Act, reduce the amount of the clean energy adjustment or lower the priority of the clean energy adjustment over other debts; or

(c) adversely affect an investment asset or a funding obligation.

Clarification with respect to regulations

(2) For greater certainty, the things prohibited under subsection (1) include the making or approving of a regulation under this Act.

Agreements for compensation

(3) The Minister may enter into agreements for the purposes of guaranteeing that compensation will be paid to an investment asset owner for losses suffered as a result of,

(a) a contravention of subsection (1);

(b) a change in law that would adversely affect the rights under this Act of an owner of an investment asset;

(c) approval by the Lieutenant Governor in Council of a Fair Allocation Plan, or an amendment to a Fair Allocation Plan, that fails to recognize the principles set out in section x; or

(d) a final determination by a court of final jurisdiction rendering invalid or ineffective all or any of the provisions of this Act.[5]

IESO obligations

(5) If the IESO fails to carry out its obligations under this Act for any reason, including because the IESO is dissolved or restructured or because it becomes insolvent, the Government of Ontario shall carry out those obligations or ensure they are carried out by another appropriate entity.

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[5] Note to translator: See s. 9 of the Public Authorities Protection Act.

PART II
FAIR ADJUSTMENT PERIOD

Application of Part

5. This Part applies in respect of the five year period beginning on May 1, 2017 and ending on April 30, 2022.

[NOTE: THIS IS A ROUGH ADAPTATION OF THE "FAIR ADJUSTMENT" CONCEPT. FOR YEARS 2 TO 5, THE LGIC WILL PASS A REGULATION TO LIMIT THE INCREASE TO REDUCED HYDRO BILLS TO REFLECT A FURTHER "FAIR ADJUSTMENT". THE SUM OF ALL FAIR ADJUSTMENTS WILL CORRESPOND TO THE SUM (TIME VALUE ADJUSTED) OF THE PAYMENTS BY PAST RATEPAYERS OF MORE THAN THEIR FAIR SHARE OF THE GREEN COSTS (I.E., AS A RESULT OF THE EXISTING AMORTIZATION RATE OF GREEN COSTS THROUGH THE GA CALCULATION). THE VALUE OF THOSE PAST OVER-PAYMENTS WILL BE A LIMIT ON THE TOTAL AMOUNT OF FAIR ADJUSTMENTS. THE CONCEPT IS MORE FLEXIBILE THAN THE SUGGESTION HERE, WHICH RELATES ONLY TO THE FIRST 5 YEARS – ALTHOUGH THAT IS CERTAINLY THE CURRENT FOCUS. THE IDEA FOR NOW IS THAT THE ACT WILL REDUCE HYDRO BILLS FOR THE FIRST YEAR, AND EACH OF THE FOLLOWING 4 YEARS BY REGULATION – IN AGGREGATE EQUAL TO THE PAST OVER-CHARGES. TO ENSURE THAT THE INCURRENCE OF FUNDING OBLIGATIONS AND CORRESPONDING FINANCE AMOUNTS DO NOT CONFLICT WITH THE FAIR ADJUSTMENT (AND REDUCED HYDRO RATES), THERE WILL BE A MORATORIUM ON CLEAN ENERGY ADJUSTMENTS DURING THE FIRST 5 YEARS (ON BOTH IESO CHARGE THROUGH RECOVERIES AND IN RESPECT OF FINANCE AMOUNTS PAYABLE DURING THESE FIRST 5 YEARS – PROVIDED THAT IF THE LGIC DOES NOT ULTIMATELY DETERMINE THAT A FAIR ADJUSTMENT WILL APPLY IN A YEAR, THE BALANCE, UNDER THE FAP, WILL BE RECOVERABLE BY WAY OF A PASS-THROUGH OF FINANCE AMOUNTS /IESO RECOVERIES. THE IDEA WILL BE THAT THE LGIC WILL DETERMINE THE AMOUNT OF A FAIR ADJUSTMENT PRIOR TO THE RELEVANT PERIOD TO WHICH IT APPLIES. NOTE THAT THE PAST-OVERPAYMENTS WILL BE FACTORED INTO THE FAP ON A GO FORWARD BASIS, IN ADDITION TO THE CONTINUING GREEN COSTS – AND AMORTIZED OVER THE LONGER PERIOD. THE FOLLOWING PROVISION ADDRESSES ONLY THE FIRST YEAR OF THE FAIR ADJUSTMENT.]

Determination of rates, first twelve months

6. (1) The Ontario Energy Board shall determine the rate for electricity payable by a specified consumer for the period beginning on May 1, 2017 and ending on April 30, 2018 in the following manner:

1. Determine the average rate payable by a representative consumer by applying the method set out in subsection (2).

2. Determine the average monthly invoice amount that would be payable by a representative consumer under the rate determined under paragraph 1.

3. Determine the amount that is [# tbc] per cent less than the monthly invoice amount determined under paragraph 2.

4. Determine the average rate payable by a representative consumer that would result in the monthly invoice amount mentioned in paragraph 3 for a representative consumer.

[Note: Query whether 79.16 of the OEBA should be replaced to clearly state that the price-setting work that the OEB does under the RPP is authorized and that the work it must do to accommodate the Fair Adjustments is also authorized going forward.]

Determination of baseline, average rate

(2) For the purposes of paragraph 1 of subsection (1), the follow method applies:[6]

1. The Board shall determine rates in a manner that is consistent with the Standard Supply Service Code issued by the Board.

2. In determining the rates, the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect those costs.

3. The Board shall set an off-peak period associated with the regulated price referred to as RPEMOFF in section 3.4 of the "Standard Supply Service Code for Electricity Distributors" issued by the Board,

    i. that begins no later than 7 p.m. on every weekday and ends,

        A. no earlier than 7 a.m. on the next day if the next day is a weekday, or

        B. no earlier than 12 a.m. on the next day if the next day is Saturday, Sunday or a holiday, and

[6] FLS: Please see section 6 of O. Reg. 95/05 (a bilingual reg).

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ii. that begins no later than 12 a.m. on every Saturday, Sunday and holiday and ends no earlier than,

A. 12 a.m. on the next day, if the next day is Saturday, Sunday or a holiday, or

B. 7 a.m. on the next day if the next day is a weekday.

Determination of rates, on and after May 1, 2018

7. On and after May 1, 2018, the Board shall determine the rate for electricity payable by a specified consumer in the following manner:

1. Determine the rate by applying the steps set out in section 6.

2. Adjust the rate determined under paragraph 1 for inflation in accordance with the regulations.

PART III
CLEAN ENERGY ADJUSTMENT PERIOD

Application of Part

8x. This Part applies in respect of the period beginning on May 1, 2022 and ending on April 30, 2047.

[NOTE: CONSISTENT WITH THE EARLIER NOTE, THE MORATORIUM IS LIFTED IF THE LGIC DETERMINES THAT NO FAIR ADJUSTMENT WILL APPLY, IN WHICH CASE CEAs WILL APPLY DURING THE FIRST 5 YEARS. THE DIVISION OF TIME CONTEMPLATED IN THIS DRAFT IS MORE INFLEXIBLE THAN WE HAVE ENVISIONED]

Specified consumers to pay clean energy adjustment

9x. (1) Subject to subsection (1.1), upon receipt of an invoice that includes a clean energy adjustment, a specified consumer shall pay the clean energy adjustment to the electricity vendor in accordance with such terms of payment as may be specified in the invoice, which may include terms relating to late payment fees and interest charges.

[NOTE: MODIFY TO REFLECT THAT THE PAYMENT IS MADE TO AN EV, AS AGENT FOR THE INVESTMENT ASSET OWNERS]

Limitation

(1.1) No clean energy adjustment is payable by a specified consumer on a day before May 1, 2022. [NOTE: MODIFY TO REFLECT EARLIER NOTES]

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Same

(2) For greater certainty, subsection (1) applies regardless of,

(a) whether payment of the amounts is inconsistent with the Fair Allocation Plan applicable at the time when the payment is due;

(b) whether the payments relate to funding obligations that were incurred in a manner that did not comply with the Financing Plan; and [NOTE: UNDER CONSIDERATION. SEEMS OVERBROAD]

Indebtedness of specified consumer

(4) An unpaid clean energy adjustment that is required to be paid by a specified consumer under this section constitutes indebtedness of the consumer to the investment asset owners in respect of their respective interests in the investment asset.

Same

(5) The indebtedness mentioned in subsection (4) is a single and separate debt obligation owed by the specified consumer and may be enforced independently from any other payment obligation or indebtedness owing by the specified consumer under the invoice or otherwise. [NOTE: ENFORCEMENT WILL BE LIMITED UNDER THE ACT, SO THAT INVESTMENT ASSET OWNERS CAN'T SERVE NOTICES ON RATEPAYERS DIRECTLY, OTHER THAN THROUGH A SPECIFIED AGENT AND PROCESS – SEE BELOW]

Irrevocability of clean energy adjustment

10x. (1) Any clean energy adjustment shown on an invoice issued to a specified consumer under this Act is determinative of the amount of indebtedness created by the adjustment and is irrevocable upon invoicing the consumer and may not be set off or by passed.

Exception

(2) Subsection (1) does not apply to the extent that there is an error in calculations made by the electricity vendor.

Determination of clean energy adjustment

11x. (1) The Ontario Energy Board shall apply the method set out in Schedule 1 to determine the amount of the clean energy adjustment payable on a monthly basis by each electricity vendor on behalf of the electricity vendor's specified consumers. . [NOTE: THE AMOUNTS WILL BE CALCULATED AS FOLLOWS: (1) FSM (FOR ALL IAOs) WILL INFORM OEB OF PERIOD FINANCE AMOUNTS FOR THE REFERENCE PERIOD (IE ESTIMATE OF FAs PLUS PAST TRUE UP ALLOCATION) (2) OEB WILL ATTRIBUTE THAT AGGREGATE AMOUNT

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BASED ON RPP-LIKE RATE DETERMINATION FOR CUSTOMERS OF THE RELEVANT CLASSES (3) OEB WILL TELL EVs THE RATES APPLICABLE TO THEIR CUSTOMERS, SO THAT THE FULL AMOUNT IN (1) IS RECOVERED (BASED ON EXPECTED COLLECTION RATES AND NONE PAYMENTS)]

True up amount

(2) The Ontario Energy Board may adjust the amount determined under Schedule 1 from time to time to address the any difference between the amount of the clean energy adjustment payable in respect of the reference period and the amount of the clean energy adjustment collected as of the date of the determination. [NOTE: THIS IS ONLY A PARTIAL DESCRIPTION OF THE TRUE UP. SEE EARLIER DRAFTING INSTRUCTION FOR SUGGESTED APPROACH – I.E., DESCRIBE BROADLY THE NATURE OF THE CALCULATION AND THEN SPECIFY THE CALCULATION IN A DETAILED CALCULATION TO BE INCLUDED IN A REGULATION]

Same, regulations

(3) The Lieutenant Governor in Council may make regulations governing the calculation under subsection (2) and how the amount is to be applied to the clean energy adjustment.

Communication to electricity vendors

(4) The Ontario Energy Board shall communicate to each electricity vendor information relating to the clean energy adjustment to be allocated by the electricity vendor to each specified consumer in respect of a reference period. [NOTE: WE ARE NOT SURE THERE IS A ROLE FOR IESO. WE THOUGHT THE PERIOD FINANCE AMOUNTS WOULD BE FORWARED BY FSM TO OEB DIRECTLY]

IESO to invoice electricity vendors

12x. (2) The IESO shall issue an invoice to each electricity vendor for the clean energy adjustments in accordance with the regulations.

IESO to collect

(3) The IESO shall, as an agent of the investment asset owner, make reasonably diligent efforts to collect clean energy adjustments from electricity vendors.

Collection account

(3.1) The IESO shall establish an account in which to record its collection of the following:

1. Amounts remitted from accounts established under section 31.

2. Payments made by specified consumers directly to the IESO as electricity vendor, in respect of clean energy adjustments.

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Deposit

(4) The IESO shall promptly deposit all amounts received in respect of clean energy adjustments into the account established under subsection (3.1). [NOTE: CONSIDER FEASIBILITY OF DAILY SEGREGATION/ REMITTANCES]

Same, held in trust

(2) The amounts collected are deemed to be held in trust for the investment asset owner.

IESO to remit

(5) The IESO shall remit amounts received in respect of clean energy adjustments to or for the benefit of the regulatory asset owner in accordance with the regulations.

Electricity vendor to apply rate

13x. (1) Each electricity vendor shall [in accordance with the regulations?] determine the proportionate share of clean energy adjustments payable on a monthly basis by each of its specified consumers.

Electricity vendor to invoice specified consumers

(2) The electricity vendor shall issue an invoice to each specified consumer for the applicable amount of clean energy adjustments in accordance with the regulations.

Electricity vendor to collect

(3) Each electricity vendor shall, as an agent of the IESO, make reasonably diligent efforts to collect clean energy adjustments from specified consumers.

Pro rating of payments

14x. (1) This section applies if,

(a) an electricity vendor receives a payment made by or on behalf of a specified consumer in respect of amounts payable under one or more invoices; and

(b) the amount paid is less than the total amount payable.

Same

(2) The electricity vendor shall allocate the payment on a pro rata basis to the clean energy adjustment and other amounts payable under the relevant invoices.

Deposit

(3) The electricity vendor shall deposit the portion of the payment allocated to clean energy adjustments into the account established under X.

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Electricity vendor, account

15x. (1) Each electricity vendor shall establish and maintain an account into which the electricity vendor deposits or receives only the following:

1. Payments by specified consumers in respect of clean energy adjustments.

2. Portions of payments by specified consumers that are allocated to clean energy adjustments under subsection 30 (2).

3. Any proceeds arising from the exercise and enforcement of any rights and interests under or in respect of the investment asset.

Held in trust

(2) The amounts required to be deposited or received into the account are deemed to be held in trust for the investment asset owner.

Remittance to IESO

(5) The electricity vendor shall remit amounts received in respect of clean energy adjustments to the IESO for the benefit of the investment asset owner in accordance with the regulations.

Payment re regulatory asset

(x) If the total clean energy adjustment payable by specified consumers in respect of a reference period is less than the amount contemplated to be payable under the applicable Fair Allocation Plan, the difference is payable to the IESO by the specified consumers.

[NOTE: REQUIRES FURTHER CONSIDERATION.]

PART IV
FAIR ALLOCATION PLAN AND FINANCING PLAN

Fair Allocation Plan

Minister to prepare plan

8. (1) In order to fairly measure and allocate amounts described in section 8.0.1 as of a specified day among specified consumers for the purposes of this Act, the Minister shall prepare and provide to the Lieutenant Governor in Council a written plan entitled the Fair Allocation Plan to take effect on the specified day.

Amendments to the plan

(2) Subject to the approval of the Lieutenant Governor in Council, the Minister may amend the Fair Allocation Plan from time to time, as the Minister considers appropriate, having regard to the requirements of this Act.

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Effective date

(3) The Fair Allocation Plan or an amendment to the plan takes effect on the day that the plan or the amendment, as the case may be, is approved by the Lieutenant Governor in Council.

Publication

(4) The Minister shall ensure that the Fair Allocation Plan and any amendments to the plan are made available to the public in a manner that the Minister considers appropriate.

Amounts to be allocated

8.0.1 The amounts referred to in subsection 8 (1) are, in relation to a specified day,

[NOTE: THE IDEA IS THAT THE EXPECTED FUTURE GREEN COSTS WILL BE INCLUDED AS COSTS, AND RATHER THAN AMORTIZING THEM BASED ON THE TERMS OF THE POWER CONTRACTS, THE COSTS WILL BE AMORTIZED AND PASSED THROUGH BASED ON A MORE ACCURATE AMORTIZATION SCHEDULE TIED MORE TO THE COSTS AND BENEFITS OF THE GREEN PLAN OVER THE NEXT 30 YEARS. IN ADDITION, TO THE EXTENT THAT THERE HAVE BEEN OVER-CHARGES (BASED ON THE SHORT AMORTIZATION OF GREEN COSTS) SINCE 2005, THOSE OVERAGES WILL BE ADDED TO THE AMOUNT OF THE FAP COSTS TO BE AMORTIZED OVER THE FUTURE – I.E., THE FUTURE GENERATIONS WOULD HAVE BENEFITED FROM AN ARTIFICALLY LOW SHARE OF THE COSTS SINCE THE RATEPAYERS FOR 2005 – 2017 PAID TOO MUCH, SO WE SHOULD BE ABLE TO ADD THOSE TO THE FUTURE GROUPS AND RECOGNIZE A FAIR ADJUSTMENT FOR CURRENT RATEPAYERS]

(a) the costs incurred by the IESO before that day or expected to be incurred by the IESO on or after that day in relation to,

(i) payments made or expected to be made under section 78.1 of the *Ontario Energy Board Act, 1998*, other than payments made under contracts with Bruce Power L.P or Bruce Power A. L.P. or their successors or assigns, and

(ii) payments made or expected to be made under section 78.5 of the *Ontario Energy Board Act, 1998*; and

(b) such other costs, benefits or amounts as may be prescribed, in respect of the clean energy initiative, made or received before that day or expected to be incurred on or after that day. (“French”)

C.C.Draft

Principles

8.1 In preparing the Fair Allocation Plan or any amendments to the plan, the Minister shall have regard to the following principles:

1. The amounts should not be allocated in respect of any period of time after April 30, 2047.

1.1 At no time should the Fair Allocation Plan impair any investment asset, outstanding funding obligation or clean energy adjustment.

2. The share of the amounts allocated to specified consumers who receive an invoice in respect of a reference period should be proportionate to a reasonable assessment of the benefits derived by those consumers during that reference period.

3. The specified consumers to whom an invoice is issued during a reference period should not bear an unreasonably disproportionate share of the amounts allocated.

4. Adjustments should be made over time if the Minister is of the opinion that specified consumers have paid more than is reasonably proportionate.

5. Allocation of amounts should be determined for each reference period.

6. A reasonable estimate of the rate of inflation should be applied [in accordance with the regulations?].

Compliance

8.2 The IESO and the Financial Services Manager shall not, at any time, exceed the limits set out in the applicable Fair Allocation Plan.

[NOTE: THIS IS TOO STRONG. THE IDEA IS THAT IESO'S RIGHT OF RECOVERY WILL BE LIMITED IN A REFERENCE PERIOD BY THE FAP AMOUNT FOR THE PERIOD, MINUS THE FINANCE AMOUNTS FOR THE PERIOD. IN THIS WAY, THE IESO WILL BE ENTITLED TO PASS-THROUGH RECOVERIES IN A WAY THAT AFFECTS THE HYDRO BILLS OF EACH REFERENCE PERIOD RATEPAYERS IN A WAY THAT TRACKS THE FAP. SIMILARLY, IF IESO HAS TRANSFERRED ITS RECOVERY RIGHTS TO A IAO, THEN THE RELATED CEAs FOR THAT IAO WILL BE INSIDE THE FAP – AGAIN, SO THAT THE RATEPAYERS OF THAT PERIOD DO NOT BEAR A DISPROPORTIONATE BURDEN FOR THOSE COSTS. THESE CONCEPTS ARE REFLECTED IN THE MECHANICS DEALING WITH IESO RECOVERIES AND PASSING THROUGH CEAs, AND SO THIS SECTION CAN PROBABLY BE REMOVED]

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FINANCING PLAN

Financial Services Manager to prepare plan

11. (1) The Financial Services Manager shall prepare and provide to the Minister a plan entitled the Financing Plan for the purpose of ensuring that decisions made under this Act are cost-effective and consistent with the Fair Allocation Plan.

Amendments to approved plan

(2) The financial services manager may propose amendments to the Financing Plan at any time.

[NOTE: THE FINANCING PLAN IS SUPPOSED TO BE FLEXIBLE, UNLIKE THE FAP. FORMAL AMENDMENTS WOULD MAKE THIS TOO RIGID. THE FSM SHOULD KEEP RECORDS OF THE FP OVERTIME, SO THAT FUNDING DECISIONS CAN BE DETERMINED BASED ON THE PRINCIPLES AND THERE IS A MEASURE OF ACCOUNTABILITY FOR THE FSM, INSOFAR AS THE RECORD-KEEPING WILL ALLOW THE MINISTER TO DO A PERIODIC CHECK TO MAKE SURE THAT FUNDING OBLIGATIONS WERE INCURRED IN MATERIAL CONFORMITY WITH THE FSM'S EVOLVING FP. THE CONCEPT OF THE FP IS TO CREATE DISCIPLINE, THOUGHFULNESS AND SOME MEASURE OF ACCOUNTABILITY FOR FSM IN MAKING FINDING DECISIONS.]

Compliance with Plan

11.1 The Financial Services Manager shall comply with the Financing Plan.

[NOTE: PROBABLY TOO RIGID A STATEMENT – SEE ABOVE. ALSO, OPG SEEMS TO HAVE ACCOUNTING ISSUES WITH THIS SORT OF MANDATORY DIRECTION – NEED TO CONFIRM]

Contents of plan

12. (1) The Financing Plan shall be prepared in accordance with the regulations and shall include such matters as may be prescribed, which may include the following:

1. A description of one or more transfers that may be made in respect of the regulatory asset established under Part **.

2. A description of the basis upon which funding obligations may be incurred in a manner that is consistent with the applicable Fair Allocation Plan.

3. A description of the funding obligations mentioned in paragraph 2, which may include the following:

    i. Indebtedness.

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ii. Payment obligations arising under or in respect of derivatives.

iii. Payment obligations owing to service providers, administrative agents, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies.

iv. Refinancing an existing funding obligation by applying the net proceeds obtained by incurring other funding obligations.

[NOTE: PRINCIPLES AND PARAMETERS ARE UNDER CONSIDERATION AND WILL BE INCLUDED IN THE REGULATION.]

Limitation

(1.1) The Financing Plan shall not provide for the payment of the clean energy adjustment by specified consumers before May 1, 2022. [NOTE: WOULD PREFER TO SAY (1) NO CEAs IN THE FIRST 5 YEARS UNTIL, FOR A YEAR, THE LGIC CONFIRMS THAT THERE WILL NOT BE A FAIR ADJUSTMENT FOR THAT YEAR. SEE MECHANICS, ABOVE.]

Special purpose financing entities

(2) If the Financial Services Manager is a prescribed entity, the Financing Plan may, in accordance with the regulations, provide for the establishment by that entity of one or more special purpose financing entities that may incur funding obligations.

[Note: I understand that OPG doesn't need authority to establish a SPV beyond existing OPG authority under the EA, but do you still want something like subs. (2) for an entity other than OPG? It almost makes it look like OPG is not authorized to do so, since the provision singles out prescribed entities. Need to consider further]

[NOTE: THIS CONCEPT SHOULD BE MOVED TO THE REGULATION]

Limit on liquidation, etc. of [special purpose funding entities]

(3) The Financing Plan shall not provide for a [special purpose funding entity] tbe be liquidated, dissolved or voluntarily wound-up until at least one year after all of the funding obligations the entity has incurred have been satisfied. [NOTE: MOVE TO THE REGULATION]

Prohibition

(3) The Financing Plan shall not provide for funding obligations to be incurred with any recourse to any assets of the electricity vendors, the IESO, the Ontario Energy Board, the Province or the Lieutenant Governor in Council, except to the extent that any of these persons or entities may be liable to perform obligations or duties arising under this Act or under the express terms of a funding obligation.

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Funding obligations unaffected by amendment to Fair Allocation Plan

(4) No change to a funding obligation shall result from an amendment to the Fair Allocation Plan that is made after the funding obligation has been incurred.

[Note: Consider Article 8 (9) entitled "incurrences are binding" -- I believe we have already stated in the Part dealing with the regulatory asset that the rights are enforceable etc. even if charges have been imposed in a manner that does not follow the Financing Plan. Is more drafting required?]

PART V
THE REGULATORY ASSET [AND INVESTMENT ASSET]

Regulatory asset established

22. (1) The IESO has property rights and interests, which together constitute a regulatory asset, in the recovery of the IESO funding shortfall.

[Note to draft - Is it sufficient to say "*property rights and interests in the recovery of the IESO funding shortfall"?* Does that convey the right to enforce other parties' obligations that would allow for the shortfall to be recovered by the IESO?]

Limitation

(1.1) The right to recover the IESO funding shortfall under subsection (1) is subject to the following limits:

1. The amount recovered in respect of a reference period may not exceed the amount by which the [fair allocation] in respect of a reference period exceeds the amount of the clean energy adjustment for the reference period. [NOTE: CONSIDER IF THIS SHOULD BE A MAXIMUM OR A MANDATORY FLOW-THROUGH. IF THE IESO RECOVERIES PLUS CEAs FOR A PERIOD ARE LESS THAN THE FAIR ALLOCATION FOR A PERIOD, THEN THE RATEPAYERS OF THE PERIOD WILL BENEFIT FROM A LESSER SHARE OF THE COSTS THAN WOULD BE INDICATED BY THE FAP]
2. No part of the funding shortfall shall be recovered before May 1, 2022. [NOTE: TOO RIGID. SEE CONCEPT OF FAIR ADJUSTMENT, ABOVE]

Same

(2) The establishment of the regulatory asset is not affected by any failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

Recording of IESO funding shortfall in books

22.1 (1) Subject to the approval by order of the Ontario Energy Board, the IESO shall record the IESO funding shortfall from time to time in its books. [NOTE: THIS SHOULD ALSO INCLUDE ADJUSTMENTS WHEN THERE IS A TRANSFER OR RECOVERY – I.E., THE REGULATORY ASSET AMOUNT RECORDED SHOULD BE REDUCED]

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Order

(2) The Ontario Energy Board may, in accordance with the regulations, by order specify how the IESO funding shortfall must be recorded.

Recording in books determinative

(3) A recording in its books is determinative of the amount of IESO funding shortfall at the time of the recording.

IESO funding shortfall

22.2 (1) The IESO shall determine the IESO funding shortfall for each month in a reference period by calculating the difference between the following amounts:

1. The sum of all invoice amounts issued to specified consumers for the month.

2. The sum of all invoice amounts that would have been issued to specified consumers for the month if paragraphs 1 and 2 of section 7.2 did not apply.

[Note: Should the value of any consideration received as part of a transfer be reflected in this section?]

Same

(2) The determination under subsection (1) shall be made based on the amount of electricity actually used by specified consumers during the reference period.

[NOTE: FUNDING SHORTFALL DESCRIPTION MAY ALSO RELFECT ADJUSTMENT BASED ON ESTIMATE TO ACTUAL FROM EARLIER MONTH]

Transfer of regulatory asset

23. (1) The IESO may transfer the regulatory asset in accordance with the Financing Plan.

Consideration

(2) The IESO may receive consideration for the transfer of the regulatory asset, subject to the following rules:

1. The prospective owner of the investment asset to be acquired through the transfer shall pay to the IESO an amount equal to all or part of the IESO funding shortfall. [NOTE: INVESTMENT ASSET TO BE BASED ON FACE VALUE SO THAT THE IESO RECOVERY IS DOLLAR-FOR-DOLLAR. THIS MEANS THAT ACCRUALS WILL BE NEEDED FOR INITIAL PERIOD, RATHER THAN THE TRUST BUYING INVESTMENT INTERESTS AT A DISCOUNT AND HOLDING BACK ISSUE PROCEEDS TO FUND THOSE AMOUNTS.]

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2. Upon receipt of the payment, the IESO shall record the payment as a reduction of the AGGREGATE IESO funding shortfall in its books.

3. Upon receipt of the payment, the IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of the transferred regulatory asset.

Investment asset

Regulatory asset deemed to be investment asset upon transfer

23.1 Upon transfer of the regulatory asset or a portion of the regulatory asset, the regulatory asset or portion is deemed to be an investment asset and is vested in the investment asset owner.

[NOTE: DEEMING LANGUAGE TO ADDRESS TRANSFER AND CONVEYANCE IS UNDER CONSIDERATION.]

[NOTE: THE ASSET TRANSFERRED BY IESO WILL BE A RIGHT OF RECOVERY, BY REFERENCE TO CEAs. THE ASSET ACQUIRED WILL BE AN "INVESTMENT INTEREST", BEING A SHARE (THE TERMS AND ENTITLEMENTS OF WHICH WILL BE DETERMINED UNDER A COLLECTIVE RIGHTS AGREEMENT) OF THE RIGHTS AND RELATED PROCEEDS FROM THE RIGHT TO BILL, ETC., CEAs. THE SUM OF ALL INVESTMENT INTERESTS WILL BE THE "INVESTMENT ASSET".]

Same

(2) An investment asset constitutes a current and irrevocable property right and interest consisting, collectively, of the following rights and interests without duplication:

1. The right to impose, bill, invoice, collect and receive the clean energy adjustment from specified consumers, including the right to determine the amount of the clean energy adjustment in accordance with this Act.

2. The right to receive and collect all amounts in respect of the clean energy adjustment that are imposed, billed and invoiced under this Act, including any amounts that all amounts in respect of the clean energy adjustment that are held by electricity vendors or other prescribed parties.

3. All rights and entitlements under such accounts as may be prescribed by regulation and all amounts on deposit in such accounts.

4. The right to enforce the duties and obligations under this Act of each electricity vendor to impose, attribute, charge, bill and invoice the clean energy adjustment.

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5. The right to enforce the duties and obligations under this Act of each electricity vendor to collect, receive and remit amounts received by it in respect of the clean energy adjustment, including all collections and the proceeds of any enforcement action undertaken by an electricity vendor to recover payment of the clean energy adjustment.

6. All rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise the regulatory asset owner's regulatory asset.

7. All revenue, collections, claims, payments, money and proceeds of or derived from the rights described in paragraphs 1 to 6, regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

Same

(3) An investment asset is not affected by failure to impose, attribute, invoice, accrue or collect the clean energy adjustment.

No set off, etc.

(4) The investment asset shall not be set off or reduced by any person in any circumstance, including,

(a) by a consumer, an electricity vendor, the IESO, an agent of the investment asset owner or an owner of distribution system assets in the Province; [NOTE: IF THE MECHANICS FOR CASH FLOWS ADOPT THE PRE-EXISTING METHODS AND TERMS AMONG IESO, LDCs AND RATEPAYERS, THIS PROVISION WILL NEED TO RECOGNIZE THAT THOSE TERMS WILL PREVAIL AND NOT BE AFFECTED BY THE NEUTERING OF SET-OFF, ETC.]

(b) in connection with any default, bankruptcy, reorganization or other insolvency proceeding of a person mentioned in clause (a); [NOTE: CONSIDER IN CONTEXT OF FEDERAL BANKRUPTCY POWERS]

(c) by any affiliate or successor of a person mentioned in clause (a).

Transfer of investment asset

24. The investment asset owner may transfer all or a portion of its rights and interests in an investment asset to any other investment asset owner, including by way of a transfer of a divided or an undivided interest, in accordance with the Financing Plan.

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Validity of transfer

25. (1) A transfer of a regulatory asset or an investment asset under this Act that is expressed to be a sale or an absolute assignment is a valid and enforceable sale and absolute assignment of the regulatory asset or investment asset, as the case may be, and confers upon the owner of the investment asset acquired a valid property right and interest in, to and under the applicable investment asset in accordance with the terms of the transfer.

Same

(2) Without limiting subsection (1), any transfer that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as an absolute transfer of IESO's right to recover the IESO funding shortfall or an investment asset owner's right, title and interest in, to and under an investment asset, as applicable (or relevant portion thereof), and not merely as a pledge thereof, and upon such absolute transfer the transferor shall retain no right, title or interest in regulatory asset or the investment asset (or relevant portion thereof) subject to the transfer, including all rights to recover the IESO funding shortfall or the investment asset arising after such transfer. [NOTE: ADDRESSES POSSIBLE RECHARACTERIZATION CONSIDERATIONS. MARKET WILL EXPECT TO SEE THIS GIVEN SECURITIZATION CONCEPTS IN PLAY.]

Deemed perfection, etc.

(3) At the time a transfer of a regulatory asset or an investment asset is made, the transfer shall be deemed to have been and shall be perfected, vested, valid and binding as against the transferor and all other persons who have claims of any kind against the transferor.

Priority of transfer, assignment, etc.

(4) Subsection (3) applies regardless of whether the persons who have claims have received notice of the transfer and the property rights and interests acquired by the owner of the investment asset shall have priority over any liens in favour of such other persons.

Administration of investment asset

26. (1) The Financial Services Manager shall administer an investment asset on behalf of the owner of the investment asset. [NOTE: TO BE ELABORATED]

Review of costs

(2) The Ontario Energy Board shall review the administrative costs of the Financial Services Manager. [NOTE: TO BE ELABORATED]

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Investment asset owner may grant pledge

27. (1) The owner of an investment asset may grant a pledge to or in favour of a person in, to and over all or a specified portion of its right, title and interest in, to and under the investment asset in connection with any funding obligation.

Types of pledge

(2) A pledge may be a lien, mortgage, charge, right of set-off or security interest.

Validity

(3) The pledge may be made to secure a funding obligation and when granted shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the person to whom the pledge is granted a valid security interest in, to and in respect of the investment asset in accordance with the terms of the pledge.

[Note: Additional content relating to the PPSA has not yet been addressed in any detail. Please review all subsections that contain the (x) below and advise what is needed. Some of this content was already covered by some of the numbered subsections in this draft.]

Perfection and priority of pledges

(x) For purposes of the *Personal Property Security Act*, the regulatory asset shall be intangible personal property and any pledge made by the owner of an investment asset in respect of a funding obligation shall, subject to the terms of the funding obligation, give rise to a security interest in respect of which that Act applies and may be perfected by filing a financing statement under that Act on that basis.

Same

(x) All provisions of the *Personal Property Security Act* shall apply to the regulatory asset on the basis that it is intangible personal property, except to the extent otherwise provided in this section.

Same

(x) All proceeds of a related [Investment Interest?] that are subject to the pledge that are received by the owner of the investment asset shall immediately be subject to the pledge, and the security interest in the proceeds shall be perfected pursuant to the *Personal Property Security Act.*

Same

(x) A pledge perfected under the *Personal Property Security Act* shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the [Investment Interest?] subject to the pledge unless the pledgee has otherwise agreed in writing.

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Same

(x) A pledgee shall have a perfected security interest in a related investment interest, including the owner of the investment asset's rights and interests in and to [the clean energy adjustment?] or other related proceeds in respect of the investment interest and that are deposited in any [which account?] or other account of any [Electricity Distributor, IESO, Alternative Servicer or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds].

Proceeds

(8) All proceeds of the investment asset that are subject to the pledge and that are received by the investment asset owner shall immediately be subject to the pledge and shall be perfected without any physical delivery of the proceeds, registration of any financing statement or any further act.

Perfection

(9) The pledge shall be a continuously perfected security interest and shall have priority over any other lien, created by operation of law or otherwise, that may subsequently attach to the property rights and interests in the investment asset subject to the Pledge, subject to the written consent of the person to whom the pledge has been granted.

Same

(10) The person to whom the pledge has been granted shall have a perfected security interest in revenues or other proceeds that are deposited in any [investment asset account] or other account of any electricity vendor, the IESO, an agent of an electricity vendor or the IESO or other person who may have commingled such revenues or other proceeds with other funds.

Collective action required

28. If the investment asset owner owns a right or interest in the investment asset that comprises less than the entire property right and interest constituted by the investment asset, the right or interest shall only be enforced by the investment asset owner collectively and in coordination with all other investment asset owners, and any agreement among that collective in furtherance of the collective action shall be valid and binding on the investment asset owner as a collective in accordance with its terms. [Note: It seems that successors may need to be addressed here. Also Pledgees have not yet been addressed in this draft.]

Exercise of rights

29. The rights of the investment asset owner to collect and enforce its rights and interests in, to and in respect of the investment asset shall be exercised in accordance with section [xx].

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PART VI
MISCELLANEOUS

Appointment of agent, invoicing or collection

34. If a prescribed circumstance applies, the Lieutenant Governor in Council may by regulation appoint a person to carry out some or all of the obligations of an electricity vendor under this Act in the place of an electricity vendor with respect to invoicing or collection.

Not Crown agent

35.1 For greater certainty, no agent appointed under this Act is an agent of the Crown for any purpose, despite the *Crown Agency Act*.

Sequestration

35.2 [Note: Still to be drafted:
If any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect clean energy adjustments, defaults on any required remittance of Clean energy adjustment Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by a Regulatory Asset Owner or Pledgee and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the Clean energy adjustment Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Regulatory Asset Owner or Pledgee.] [Such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to any Electricity Distributor, IESO, Alternative Collection Agent or any owner of distribution system assets in the Province or other person or entity authorized to collect Clean energy adjustments, as applicable.]

Successors

37. [Note: Articles 4 (6) and (7) and Articles 5 (7) and (8) are rules about successors to distributors and the IESO being bound by specific requirements. Still to be drafted.]

Choice of law

37.1 The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the regulatory asset, the clean energy adjustment or the undertaking of the Crown under section x shall be the laws of the Province.

Conflict

38. The provisions of this Act [and the regulations?] apply despite any provision of any other Act regarding the attachment, assignment or perfection, or the effect of perfection or priority of any transfer or PLEDGE,

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No further approvals, etc.

39. Despite any requirement under any Act, no approvals, notices or authorizations other than those specified in this Act are required with respect to the actions to be taken in compliance with this Act, including actions to be taken under the Financing Plan or in relation to the establishment of the Fair Allocation Plan.

Immunity

97x. (1) No action or other proceeding for damages shall be instituted against any employee of the Province, IESO, OPG or OEB for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any duty or authority under this Act.

Same

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

References in marketing materials and offering documents

98x. No person shall include, in marketing materials or offering documents relating to the financing of funding obligations, references to any rights, obligations, guarantees or undertakings arising under this section unless the prescribed requirements, if any, are satisfied.

Non-application, Financial Administration Act, s. 28[7]

99x. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction or agreement or undertaking required, permitted, contemplated or authorized, directly or indirectly, under this Act.

Regulations

100x. The Lieutenant Governor in Council may make regulations,

(b) governing the inclusion of adjustments under this Act on invoices, which may include requiring notice to be provided by electricity vendors to specified persons regarding the adjustments.

[Note: reg-making powers to be dealt with in subsequent draft]

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[7] FLS - see s. 51 of the Electricity Act, 1998

PART VII[8]
AMENDMENTS TO OTHER ACTS

ELECTRICITY ACT, 1998

200x. (1) Subsection 6 (1) of the *Electricity Act, 1998* would be amended by adding the following clauses:

(q.1) to enter into agreements or arrangements with [any special purpose financing entities established under (name of new Fair Hydro Act?)];

(q.2) to engage in activities related to making payments to and receiving payments from [any special purpose financing entities established under (name of new Fair Hydro Act?)], as required under that Act, and to engage in related settlement activities;

(q.3) to engage in activities related to the transfer of the regulatory asset created under [(name of new Fair Hydro Act?)], which activities may include,

(i) incurring liabilities in relation to the regulatory asset

(ii) transferring the regulatory asset to [any special purpose financing entities established under (name of new Fair Hydro Act?)];

(iii) transferring the regulatory asset to third parties;

(q.4) acting as a recovery agent under the [(name of new Fair Hydro Act?)];

201x. Subsection 53.1 (1) of the Act would be repealed and the following substituted:

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, the following:

1. Owning and operating generation facilities.
2. Establishing, operating and supervising the activities of [any special purpose financing entities established under (name of new Fair Hydro Act?)].

[8] FLS: These amendments are drawn from previous drafting contained in gov2016.146.e05 (which was drafted as amendments to the EA, 1998).

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3. Providing financial and other support to the IESO in its activities under the [name of new Fair Hydro Act?].

4. Engaging in such financing, borrowing, lending and related activities and transactions to support the IESO with short-term or long-term financing.

5. Providing equity, not exceeding the prescribed amount, to support the financing capacity [any special purpose financing entities established under (name of new Fair Hydro Act?)].

[Note: Still to draft:
-for the new Fair Hydro Bill: *if OPG is the Financial Services Manager, it shall be required to provide an accounting of the amounts it charges the trust for the financing entity to the OEB 60 days in advance of the commencement of the fiscal year for the OPG trust/special purpose vehicle*]

Subsidiaries

(1.1) Ontario Power Generation Inc. may create one or more subsidiaries in order to more efficiently conduct its activities or achieve its objects.

202x. Section 89 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

203x. Section 90 of the Act would be amended by adding the following subsection:

Exception

(4) The requirement in subsection (1) to pay an amount to the Financial Corporation does not apply in respect of amounts payable to Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. as a result of its functions as the Financial Services Manager under [new Act].

[Note: Drafting still to be added to the EA consequential amendments: ***All fees charged by OPG as the FSM shall be approved by the OEB before they are included in the calculation of clean energy adjustments.]***

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AMENDMENTS TO ONTARIO ENERGY BOARD ACT, 1998

204x. Subsection 1 (1) of the *Ontario Energy Board Act, 1998* would be amended by adding the following paragraph:

6. To facilitate the implementation of the [TBD - language should link up with language from new Act.]

205x. Section 71 of the Act would be amended by adding the following subsection

[Note - still need to draft new subs. 70 (2.1) - instructions on pp. 8-9 of Rider instructions rec'd April 14th]

Short Title - this proposal for legislation would, if approved by the Legislature, have a short title to be determined by Government.

Timing – this proposal for legislation would, if approved by the Legislature, come into force on a date to be established by Government.

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SCHEDULE 1
METHOD FOR DETERMINING AMOUNT OF CLEAN ENERGY ADJUSTMENT FOR REFERENCE PERIOD

[NOTE: CEAs WILL BE DETERMINED BASED ON AN ESTIMATE OF COSTS AND REPAYMENTS FOR AN UPCOMING PERIOD, AND BE TRUED UP TO ACTUAL COSTS AND REPYAMENTS IN THE NEXT FOLLOWING PERIOD. THESE MECHANICS CAN BE SEEN IN THE SUMMARY DOCUMENT – "PERIOD FINANCE AMOUNTS" AND SECONDARY DEFINITIONS. THIS FORMULAIC APPROACH IS PREFERRED TO ESTABLISH A SUM CERTAIN OF THE DEBT REPRESENTED BY THE CEAs, ONCE BILLED. IT MAY BE USEFUL TO CREATE A DEFINITION TO ENCOMPASS ALL CEAs FOR A PERIOD, SINCE A CEA IS THE AMOUNT BILLED TO A PARTICULAR CUSTOMER]

1. The amount of the clean energy adjustment for a reference period shall be determined by calculating the sum of the following:

1. The sum of all payments made by owners of an investment asset [during the reference period?] to satisfy an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase, of all or a portion of the amount advanced to the owners under a funding obligation, excluding any payment made by applying the proceeds of a refinancing.

[Note: Para. 1 is the definition of "repayment" from the Blakes doc. However, that definition include bracketed text that says: (*including making Finance Reserve Deposits).* I don't understand this because (1) Finance Reserve Deposit is listed as a separate line item in the definition of "finance amount" (see para. 4 below). In order to avoid duplication, can we exclude "finance reserve deposits" from para. 1?]

[NOTE THAT SHOULD LIMIT CONCEPT OF RESERVE DEPOSITS AS INCURRENCES IF IT WOULD MEAN THAT THE PROCEEDS FROM A TRANSFER WOULD BE REDUCED FROM FACE VALUE WITH THE RESULT THAT IESO WOULD BE TRANSFERRING IAs AT A DISCOUNT]

2. The sum of all funding costs for the reference period, as determined under section 2 to this Schedule.

3. The sum of all amounts payable by or on behalf of owners of investment assets to redeem, prepay or repurchase a funding obligation, including any premium, make-whole or other amount becoming payable under a funding obligation to give effect to the redemption, prepayment or repurchase.

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[Note: Para. 3 is the definition of "redemption amount" from the Blakes doc.]
[Note: What is meant by "make-whole" -- need some assistance in order to translate this term accurately. Do you have any examples of bilingual legislation where this term has been used?]

4. The balance of the finance reserve at the end of the reference period, as determined under section 3 to this Schedule.

5. The sum of any other amounts payable by owners of investment assets for the reference period that were incurred or committed to directly or indirectly in connection with the incurrence of funding obligations under the Financing Plan during the reference period, which may include such amounts as may be prescribed.

[Note: Para. 5 is based on the definition of "additional funding charges".]

Funding costs

2. For the purposes of paragraph 2 of section 1 to this Schedule, the funding costs for a reference period are determined by taking the following steps:

1. Calculate the aggregate of all interest and other periodic finance charges accruing, due and becoming payable or paid by or on behalf of owners of investment assets during the reference period in respect of all funding obligations, including the following:

    i. Standby commitment fees or charges paid to any lender.

    ii. Credit enhancement fees or charges paid to any credit enhancer.

    iii. Liquidity fees or charges paid to any liquidity provider.

    iv. Payments, including termination payments, made under derivatives.

    v. Deposits made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to a funding obligation.

2. Calculate the aggregate of all amounts received by or on behalf of the owners of investment assets during the reference period in respect of a funding obligation, including reimbursement of any amounts referred to in subparagraphs 1 i to v.

[Note: Para. 2 is the definition of "finance receipts" in the Blakes doc.]

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3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

Finance reserve balance

3. (1) For the purposes of paragraph 4 of section 1 to this Schedule, the balance of the finance reserve at the end of the reference period is determined by taking the following steps:

[Note: This section is a modification of the definitions provided in the Blakes document for "Finance Reserve Deposits" and "Finance Reserve Withdrawals". The proposed definition of "FR deposit" involved a subtraction of the "FR withdrawal" so the term 'deposit' was not really descriptive of a pure deposit but rather the balance.]

1. Calculate the sum of all amounts deposited [to what account?] during the reference period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of funding obligations or for related contingencies specified in the Financing Plan.

2. Calculate the sum of all amounts withdrawn from the account during the reference period from deposits previously made [e.g. during a previous reference period?] as described in paragraph 1.

3. Subtract the amount calculated under paragraph 2 from the amount calculated under paragraph 1.

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Concordance - summary to bill (April 15, 2017).pdf

CONCORDANCE

Blakes Discussion Document	Draft Bill – April 15, 2017 (numbers correspond to numbers in the draft, even though numbering in the draft is imperfect)
Article 1 – Purpose	Preamble s. 2 Purpose
Article 2 – Definitions	s. 1 Definitions
Article 3 – Transition Charges	
s. 3(1) Regulated Consumer Obligation to Pay a Transition Charge	s. 9x(1)
s. 3(2) Indebtedness of Regulated Consumers	s. 9x(4), (5)
s. 3(3) No set-off or Reduction	s. 23.1(4)
s. 3(4) Allocation of Regulated Consumer Payments	s. 14x(2)
s. 3(5) Transition Charges are Irrevocable	s.10x(1)
s. 3(6) True Up of Transition Charges	s. 11x(2)
Article 4 – Invoicing of Transition Charges	
s. 4(1) Inclusion of Transition Charges in Electricity Invoices	s. 13(2)
s. 4(2) Calculation of the Period Transition Charge	s. 11x(1), (2), Schedule 1
s. 4(3) Basis for Attributing Transition Charges	s. 11x(1)
s. 4(4) Notice of Transition Charges	s. 11(4)
s. 4(5) Adjustments	s. 10x(2)
s. 4(6) Successors of Electricity Distributors	s. 34, 37
s. 4(7) Appointment of an Alternative Servicer	s. 34, 37
s. 4(8) Absolute Assignees have Standing	To be addressed
s. 4(9) No Set-Off or Reduction	s. 23.1(4)
s. 4(10) Regulations	s. 100x
Article 5 - Collections and Remittances	
s. 5(1) Duty to Collect as Agent	s. 12(3)
s. 5(2) Segregation of Transition Charge Collections	s. 15x(1), (2)
s. 5(3) Electricity Distributor Remittances	s.15x(5)
s. 5(4) Duty to Collect Electricity Distributor Remittances	s. 12x(3.1)
s. 5(5) Segregation of Electricity Distributor Remittances	s. 12x(3.1)

s. 5(6) Servicer Remittances	s. 12x(4)
s. 5(7) Successors of Electricity Distributors	s. 34, 37
s. 5(8) IESO Successor	s. 34, 37
s. 5(9) Owners of Distribution Assets	s. 37
s. 5(10) Absolute Assignees have Standing	To be addressed
s. 5(11) No Set-off, etc.	s. 23.1(4)
s. 5(12) Sequestration	s. 35.2
s. 5(13) Regulations	s. 100x
Article 6 - The Regulatory Asset	
s. 6(1) Composition	s. 22(1) and 23.1
s. 6(2) Validity of Dispositions	s. 25(1) and s. 25(2)
s. 6(3) Perfection and Priority of Dispositions	s. 25(3) and s. 25(4)
s. 6(4) Validity of Pledges	s. 27(1) to s. 27(3)
s. 6(5) Perfection and Priority of Pledges	s. 27(6) to s. 27(10)
s. 6(6) Enforcement of Property Rights	s. 29
s. 6(7) Owners of a Specified Portion of the Regulatory Asset	s. 24
s. 6(8) Collective Action Required	s. 28
Article 7 – Establishment of the Fair Allocation Plan	
s. 7(1) Adoption of the Fair Allocation Plan	s. 8(1)
s. 7(2) Principles and Parameters	s. 8.1
s. 7(3) Attribution Methodology	s. 8.0.1
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Excerpt EA OEBA Consequential Amendments.pdf

EXCERPTS FROM THE ELECTRICITY ACT AND ONTARIO ENERGY BOARD ACT

RELATED TO CONSEQUENTIAL AMENDMENTS

Electricity Act, 1998

Purposes of *Electricity Act, 1998*

1. The purposes of this Act include the following:

(a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;

(a.1) to establish a mechanism for energy planning;

(b) to encourage electricity conservation and the efficient use of electricity in a manner consistent with the policies of the Government of Ontario;

(c) to facilitate load management in a manner consistent with the policies of the Government of Ontario;

(d) to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(e) to provide generators, retailers, market participants and consumers with non-discriminatory access to transmission and distribution systems in Ontario;

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(g.1) to facilitate the alteration of ownership structures of publicly-owned corporations that transmit, distribute or retail electricity;

(g.2) to facilitate the disposition, in whole or in part, of the Crown's interest in corporations that transmit, distribute or retail electricity, and to make the proceeds of any such disposition available to be appropriated for any Government of Ontario purpose;

(h) to ensure that Ontario Hydro's debt is repaid in a prudent manner and that the burden of debt repayment is fairly distributed;

(i) to facilitate the maintenance of a financially viable electricity industry; and

(j) to protect corridor land so that it remains available for uses that benefit the public, while recognizing the primacy of transmission uses. 2004, c. 23, Sched. A, s. 1; 2014, c. 7, Sched. 7, s. 1; 2015, c. 20, Sched. 9, s. 1; 2016, c. 10, Sched. 2, s. 1.

Objects of the IESO

6 (1) The objects of the IESO are,

(a) to exercise the powers and perform the duties assigned to it under this Act, the regulations, directions, the market rules and its licence;

(b) to enter into agreements with transmitters to give it authority to direct the operation of their transmission systems;

(c) to direct the operation and maintain the reliability of the IESO-controlled grid to promote the purposes of this Act;

(d) to participate in the development by any standards authority of criteria and standards relating to the reliability of the integrated power system;

(e) to establish and enforce criteria and standards relating to the reliability of the integrated power system;

(f) to work with the responsible authorities outside of Ontario to co-ordinate the IESO's activities with the activities of those authorities;

(g) to operate the IESO-administered markets to promote the purposes of this Act;

(h) to engage in activities related to contracting for the procurement of electricity supply, electricity capacity, electricity storage, transmission systems or any part of such systems and conservation resources;

(i) to engage in activities related to settlements, payments under a contract entered into under the authority of this Act and payments provided for under this Act or the *Ontario Energy Board Act, 1998*;

(j) to engage in activities in support of the goal of ensuring adequate, reliable and secure electricity supply and resources in Ontario;

(k) to forecast electricity demand and the adequacy and reliability of electricity resources for Ontario for the short term, medium term and long term;

(l) to conduct independent planning for electricity generation, demand management, conservation and transmission;

(m) to engage in activities to facilitate the diversification of sources of electricity supply by promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources;

(n) to engage in activities in support of system-wide goals for the amount of electricity to be produced from different energy sources;

(o) to engage in activities that facilitate load management;

(p) to engage in activities that promote electricity conservation and the efficient use of electricity;

(q) to assist the Board by facilitating stability in rates for certain types of consumers;

(r) to collect and make public information relating to the short term, medium term and long term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs; and

(s) to engage in such other objects as may be prescribed by the regulations. 2014, c. 7, Sched. 7, s. 3 (1); 2016, c. 10, Sched. 2, s. 3.

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, owning and operating generation facilities. 2002, c. 1, Sched. A, s. 11.

Status

(2) Ontario Power Generation Inc. and its subsidiaries are not agents of Her Majesty for any purpose, despite the *Crown Agency Act*. 2002, c. 1, Sched. A, s. 11.

Rights of the Minister

53.2 The Minister, on behalf of Her Majesty in right of Ontario, may acquire and hold shares of Ontario Power Generation Inc. 2002, c. 1, Sched. A, s. 11.

Corporations to hold shares

53.3 (1) The Lieutenant Governor in Council may cause corporations to be incorporated under the *Business Corporations Act* for the purpose of acquiring and holding shares in Ontario Power Generation Inc. 2002, c. 1, Sched. A, s. 11.

Same

(2) Shares in a corporation incorporated pursuant to subsection (1) may be acquired and held in the name of Her Majesty in right of Ontario by a member of the Executive Council designated by the Lieutenant Governor in Council. 2002, c. 1, Sched. A, s. 11.

Crown agent

(3) A corporation incorporated pursuant to subsection (1) is an agent of Her Majesty for all purposes. 2002, c. 1, Sched. A, s. 11.

Dividends paid to Crown agent

(4) If an agent of Her Majesty in right of Ontario is paid dividends in respect of shares of Ontario Power Generation Inc., the agent shall pay the dividends to the Financial Corporation, less any amount that it considers is required to pay obligations it has assumed under clause 122 (1) (a). 2002, c. 1, Sched. A, s. 11.

Reporting requirements

53.4 (1) Ontario Power Generation Inc. shall, within 90 days after the end of every fiscal year, submit to the Minister an annual report on its affairs during that fiscal year, signed by the chair of the board of directors. 2002, c. 1, Sched. A, s. 11.

Same

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 2002, c. 1, Sched. A, s. 11.

Same

(3) Ontario Power Generation Inc. may give its annual report to other persons before the Minister complies with subsection (2). 2002, c. 1, Sched. A, s. 11.

Additional reports and information

(4) Ontario Power Generation Inc. shall give such other reports and information to the Minister of Finance or to the Minister as each of them may require from time to time. 2002, c. 1, Sched. A, s. 11.

Residual power of the Crown

53.5 Nothing in this Part restricts the powers of Her Majesty in right of Ontario or any member of the Executive Council at common law or under any Act, whether as a shareholder or otherwise. 2002, c. 1, Sched. A, s. 11.

[. . .]

Payments in lieu of federal corporate tax

89 (1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 149 (1) of the *Income Tax Act* (Canada) from the payment of tax under that Act, it shall pay to the Financial Corporation in respect of each taxation year an amount equal to the amount of the tax that it would be liable to pay under that Act if it were a corporation to which that subsection did not apply. 1998, c. 15, Sched. A, s. 89 (1); 2002, c. 1, Sched. A, s. 15 (1); 2007, c. 7, Sched. 12, s. 2.

Corridor land

(1.1) The amount payable under subsection (1) by a person or entity from whom corridor land is transferred by section 114.2 shall be determined, for the taxation year in which the transfer occurs and for subsequent taxation years, as if the transfer did not occur. 2002, c. 1, Sched. A, s. 15 (2).

Payments to Minister of Finance

(2) After Part V is repealed under section 84.1, all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 89 (2); 2000, c. 42, s. 31.

Commencement of new taxation year

(3) A corporation that is required to make payments under this section shall be deemed, for the purposes of this section, to commence a new taxation year on the day this section comes into force.

Payments in lieu of provincial corporate tax

90 (1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 57 (1) of the *Corporations Tax Act* from the payment of tax under that Act for a taxation year that ends before January 1, 2009, it shall pay to the Financial Corporation in respect of each taxation year ending before that day an amount equal to the total amount of tax that it would be liable to pay under Parts II, II.1 and III of that Act for that year if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (3).

Same

(1.0.1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 27 (2) of the *Taxation Act, 2007* from the payment of tax under that Act for a taxation year that ends after December 31, 2008, it shall pay to the Financial Corporation in respect of each taxation year ending after that day an amount equal to the total amount of tax that it would be liable to pay under Divisions B, C and E of Part III of that Act for the taxation year if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (3).

Corridor land

(1.1) The amount payable under subsection (1) by a person or entity from whom corridor land is transferred by section 114.2 shall be determined, for the taxation year in which the transfer occurs and for subsequent taxation years, as if the transfer did not occur. 2002, c. 1, Sched. A, s. 16 (2).

Payments to Minister of Finance

(2) After Part V is repealed under section 84.1, all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 90 (2); 2000, c. 42, s. 32.

Commencement of new taxation year

(3) A corporation that is required to make payments under this section shall be deemed, for the purposes of this section, to commence a new taxation year on the day this section comes into force. 1998, c. 15, Sched. A, s. 90 (3).

Ontario Energy Board Act, 1998

1 (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.

1.1 To promote the education of consumers.

2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.

4. To facilitate the implementation of a smart grid in Ontario.

5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1; 2015, c. 29, s. 7.

Licence conditions

70 (1) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. 1998, c. 15, Sched. B, s. 70 (1).

Approvals, etc., with or without holding hearing

(1.1) The Board may, with or without a hearing, grant an approval, consent or make a determination that may be required for any of the matters provided for in a licensee's licence. 2009, c. 12, Sched. D, s. 10.

Examples of conditions

(2) The conditions of a licence may include provisions,

(a) specifying the period of time during which the licence will be in effect;

(b) requiring the licensee to provide, in the manner and form determined by the Board, such information as the Board may require;

(c) requiring the licensee to enter into agreements with other persons on specified terms (including terms for a specified duration) approved by the Board relating to its trading or operations or for the connection to or use of any lines or plant owned or operated by the licensee or the other party to the agreement;

(d) governing the conduct of the licensee, including the conduct of,

(i) a transmitter or distributor as that conduct relates to its affiliates,

(ii) a distributor as that conduct relates to a retailer,

(ii.1) a distributor or suite meter provider as such conduct relates to,

(A) the disconnection of the supply of electricity to a consumer, including the manner in which and the time within which the disconnection takes place or is to take place, and with respect to a low-volume consumer, periods during which the disconnection may not take place,

(B) the manner, timing and form in which the notice under subsection 31 (2) of the *Electricity Act, 1998* is to be provided to the consumer, and

(C) subject to the regulations, the manner and circumstances in which security is to be provided or not to be provided by a consumer to a distributor or suite meter provider, including,

(1) the interest rate to be applied to amounts held on deposit and payable by the distributor or suite meter provider to the consumer for the amounts,

(2) the manner and time or times by which the amounts held on deposit may or must be paid or set-off against amounts otherwise due or payable by the consumer,

(3) the circumstances in which security need not be provided or in which specific arrangements in respect of security may or must be provided by the distributor or suite meter provider to the consumer, and

(4) such other matters as the Board may determine in respect of security deposits,

(iii) a retailer, and

(iv) a generator, retailer or person licensed to engage in an activity described in clause 57 (f) or an affiliate of that person as that conduct relates to the abuse or possible abuse of market power;

(d.1) governing conditions relating to any matter prescribed by regulation in respect of retailers of electricity in relation to the retailing of electricity, subject to any regulations made under this Act;

(e) specifying methods or techniques to be applied in determining the licensee's rates;

(f) requiring the licensee to maintain specified accounting records, prepare accounts according to specified principles and maintain organizational units or separate accounts for separate businesses in order to prohibit subsidies between separate businesses;

(g) specifying performance standards, targets and criteria;

(h) specifying connection or retailing obligations to enable reasonable demands for electricity to be met;

(i) specifying information reporting requirements relating to the source of electricity and emissions caused by the generation of electricity;

(j) requiring the licensee to expand or reinforce its transmission or distribution system in accordance with market rules in such a manner as the IESO or the Board may determine;

(k) requiring the licensee to enter into an agreement with the IESO that gives the IESO the authority to direct operations of the licensee's transmission system;

(l) REPEALED: 2016, c. 10, Sched. 2, s. 15.

(m) requiring licensees, where a directive has been issued under section 28.2, to implement such steps or such processes as the Board or the directive requires in order to address risks or liabilities associated with customer billing and payment cycles in respect of the cost of electricity at the retail and at the wholesale levels and risks or liabilities associated with non-payment or default by a consumer or retailer. 1998, c. 15, Sched. B, s. 70 (2); 2003, c. 3, s. 47 (1); 2004, c. 23, Sched. B, s. 11 (1-3); 2010, c. 8, s. 38 (10, 11); 2016, c. 10, Sched. 2, s. 15; 2017, c. 1, s. 2 (1).

Deemed conditions of licences, transmitters and distributors

(2.1) Every licence issued to a transmitter or distributor shall be deemed to contain the following conditions:

1. The licensee is required to provide, in accordance with such rules as may be prescribed by regulation and in the manner mandated by the market rules or by the Board, priority connection access to its transmission system or distribution system for renewable energy generation facilities that meet the requirements prescribed by regulation made under subsection 26 (1.1) of the *Electricity Act, 1998*.
2. The licensee is required to prepare plans, in the manner and at the times mandated by the Board or as prescribed by regulation and to file them with the Board for approval for,

i. the expansion or reinforcement of the licensee's transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and

ii. the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system.

3. The licensee is required, in accordance with a plan referred to in paragraph 2 that has been approved by the Board or in such other manner and at such other times as mandated by the Board or prescribed by regulation,

i. to expand or reinforce its transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and

ii. to make investments for the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system. 2009, c. 12, Sched. D, s. 10.

Deemed condition of licences, unit sub-meter provider, *Ontario Clean Energy Benefit Act, 2010*

(2.2) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Clean Energy Benefit Act, 2010* and the regulations made under it. 2010, c. 26, Sched. 13, s. 17 (2).

Deemed condition of licences, unit sub-meter provider, *Ontario Rebate for Electricity Consumers Act, 2016*

(2.3) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Rebate for Electricity Consumers Act, 2016* and the regulations made under it. 2016, c. 19, s. 17 (2).

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment").

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with revenue certainty, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. It has been determined that the useful lives of many of the assets developed under the Green Generation Initiative will be in excess of the respective terms of their respective procurement contracts.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future Regulated Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the Regulated Consumers of a particular time period should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred to cover such a shortfall during any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in future periods. In order for IESO to obtain a reliable and committed source

of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services manager under the Financing Plan contemplated in this Act.

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future Regulated Consumers on an equitable and cost effective basis.

Article 2 – Definitions

In this Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of any Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including without limitation such amounts as may be prescribed.
>
> "Alternative Servicer" means a person appointed under Section 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.
>
> "Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to Regulated Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"[1] means the methodology specified in the Fair Allocation Plan for allocating the Period Finance Charges for a Reference Period to Regulated Consumers.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period and minus [(c) the amounts by which amounts remitted by Electricity Distributors pursuant to Section 5(4) exceeded the corresponding amount of Transition Charges Actually paid by Regulated Consumers.][2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee), each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.

"Delegate" means any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act: ●[3].

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition (or, in the case of the IESO Funding Shortfall, a release by IESO of its right to recover such amount in order to enable an Absolute Assignee to recover such amount) of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest, in each case to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, 1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the

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[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

[2] This is intended to pick up adjustments based on actual collection experience, changes in the Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc. The actual calculation needs work.

[3] Placeholder for delegation once deterermined.

Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.[4]

"Electricity Invoice" means an invoice issued by an Electricity Distributor (or in its stead, by an Alternative Collection Agent), by the Servicer or by a Retailer, in each case to a Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to such Electricity Distributor's distribution system and in respect of applicable Transition Charges to be charged to the Regulated Consumer under this Act.

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of any Absolute Assignee: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

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[4] Suggestion is that LDCs remit based on estimates and then true-up, based on current arrangements for remittances by LDCs to IESO. *

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services Manager" means OPG or, following any Replacement Event involving OPG, such other person who may be appointed as the financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

"Financing Entity" means any entity established in accordance with the Financing Plan to be an Absolute Assignee and that is managed by the Financial Services Manager.[6]

"Financing Plan" means the written plan prepared by the Financial Services Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services Manager in accordance with Article 9 from time to time.

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under or in respect of derivatives; payment obligations owing to service providers, Financial Services Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

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[5] There must only be one Financial Services Manager.

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act* in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month.To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount received by IESO in accordance with its right to recover IESO Funding Shortfalls pursuant to section 25.33 of the Electricity Act and Ontario Regulation 430/04, as amended, and "IESO Recoveries" means, collectively, all such amounts received by IESO.[7]

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO Regulatory Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, minus (b) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (c) the IESO Recoveries received by IESO prior to the day.

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[7] IESO will be entitled to record the IESO Funding Shortfall amount in a variance account. The OEB will eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act , with an applicable OEB accounting order. See Article 8 for corresponding adjustments based on Dispositions. These will need to be tied together.

“IESO Successor” means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province’s electricity system.

“Investment Interest” means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition.

“Investment Remittance” means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

“Measurement Date” means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

“Net Funding Costs” means, for a Reference Period, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of any Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), and such other or different amounts as may be prescribed.

“OEB” means the Ontario Energy Board, together with its successors.

“OPG” means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

“Over-Assessed Amount” means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

“Period Finance Charges” means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount (b) the True-Up Amount in respect of the applicable True-Up Period and (c) [an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).]

“Pledge” means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

“Pledgee” means a person to whom an Absolute Assignee grants a Pledge.

“Program End Date” means •, [2047].

“Province” means the Province of Ontario.

“Redemption Amount” means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional

amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province [as prescribed][8].

"Regulated Consumer Group" means, in relation to a Reference Period, the Regulated Consumers who receive Electricity Invoices during the Reference Period.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which Servicer deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the business day preceding each Settlement Date.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

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[8] To be included in the legislation once settled.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

["Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.]

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last business day of any month].

"Transition Charge" means, the amount recoverable from a Regulated Consumer in respect of a Reference Period[9], being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[Note that this allocation will be based on the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** upon the collection of a Transition Charge paid by or on behalf of a Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, plus (c) the Collected Amount Adjustment for such related True-Up Period.[10]

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[9] Note that Transition Charges will be calculated by reference to Funding Obligations and Finance Amounts incurred under the Financing Plan. The directive will be that no payment obligations will be incurred for payment before 2022, to accommodate the "Fair Adjustment".

[10] True-up calculation is under consideration. In this summary, a calculated true-up amount is contemplated to be included in the Period Finance Amount calculation, in order to achieve a sum certain and actionable debt. The suggestion is that the true-up mechanism be based generally on a calculation process to be described in the Regulation, which would require Transition Charges to be reviewed and adjusted semi-annually (or more frequently) to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Finance Amounts. It has been proposed that the scope of the true-up will exclude any 'leakage' at the Financing Entity Level (e.g., entity-level tax; litigation; losses) but will include shortfalls that are currently socialized through the LDC/IESO system. Note that the proposal

"True-Up Period" means, in relation to a Reference Period, the immediately preceding Reference Period.[11]

"Undertaking of Her Majesty in right of Ontario" means the undertaking of Her Majesty in right of Ontario given under Section 11(2).[12]

Article 3 – Transition Charges

(1) **Regulated Consumer Obligation to Pay a Transition Charge** – Each Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such Regulated Consumer by its Electricity Distributor or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) **Indebtedness of Regulated Consumers** – Until paid, a Transition Charge charged to a Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[13] debt obligation owing by the Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the Regulated Consumer under the Electricity Invoice or otherwise.[14]

(3) **No Set-Off or Reduction** – A Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) **Allocation of Regulated Consumer Payments** – If an Electricity Distributor receives a payment made by or on behalf of a Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

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to include a section detailing the true-up mechanism (Oslers 3(6) has not been included here since the outcome of the calculation is already built into the Period Finance Amount concept.

[11] Timing of calculation under consideration, given that amount will need to be reflected in customer invoices.

[12] Under consideration.

[13] Determine if this is critical for rating and markets. Logistics under consideration.

[14] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges – [See True-Up Amount].

Article 4 – Invoicing of Transition Charges

(1) Inclusion of Transition Charges in Electricity Invoices – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice[15] issued by the Electricity Distributor or if applicable by the Alternative Servicer to the Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable Regulated Consumer.

(2) Calculation of the Period Finance Charge – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period. Not later than one month prior to the first day of a Reference Period, the Financial Services Manager on behalf of each Absolute Assignee shall calculate the Period Finance Charge applicable to the Reference Period having regard to such amounts specified by the Servicer, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) Basis for Attributing Transition Charges – Not later than 25 days prior to the first day of a Reference Period, the OEB shall determine a [Fair Hydro Recovery Rate] (on a volumetric basis) on which Electricity Distributors will attribute Transition Charges to consumers under 4(4).

(4) Notice of Transition Charges – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any

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[15] Intention is to include bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors and to address the inclusion of Transition Charges in the paperwork from the IESO to the LDC in a manner that is consistent with the current process of how the IESO bills LDCs.

Alternative Servicer of the [Fair Hydro Recovery Rate] to be applied by the Electiricy Distributor to attribute Transition Charges to each Regulated Consumer who is served by the Electricity Distributor for inclusion in the Electricity Invoices to be issued to the Regulated Consumers.

(5) **Adjustments** – The amount of any Transition Charge charged to a Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

(7) **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, IESO shall perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article 4. Any Electricity Distributor that is replaced under this Section 4(7) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to IESO and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit IESO or a person designated by IESO to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(8) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(9) **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(10) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the Servicer, undertake commercially reasonable efforts to collect amounts owing by Regulated Consumers in respect of Transition Charges charged to such Regulated Consumers in Electricity Invoices issued by the

Electricity Distributor or if applicable such Alternative Collection Agent, all in accordance with the Regulations. [16]

(2) **Segregation of Transition Charge Collections** – If prescribed, an Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.[17] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or a Pledgee.[18]

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all [Transition Charge Collections received by it from Regulated Consumers] [amounts invoiced to it by the IESO on account of Transition Charges][19] in respect of the related Reference Period to or to the account of Servicer or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – Servicer or if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, accept and undertake commercially reasonable efforts to collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from Regulated Consumers that pay their Electricity Invoices directly to IESO, all in accordance with the Regulations.

(5) **Segregation of Electricity Distributor Remittances** – Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or any Pledgee.

(6) **Servicer Remittances** – On each Settlement Date[20], Servicer shall remit all amounts on deposit in its Regulatory Asset Account to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to

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[16] Note that the obligation to collect and remit the Transition Charge will be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]

[17] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[18] Consider whether there is a more efficient way to treat collections through the existing LDC/IESO processes. Intention is to provide scope in the Regulations.

[19] Dealer suggestion under consideration. Impact on LDCs and parallel commercial arrangements to be assessed.

[20] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO Successors** – IESO Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[21], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to Regulated Consumers connected to such person's distribution system assets; (b) allocate partial payments by Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article 5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(11) **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any Regulated Consumer, any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.[22]

(12) **Sequestration** – If any Electricity Distributor, Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of

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[21] This is in anticipation of a possible future restructuring of the distribution system.

[22] Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall (i) order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable and (ii) appoint a receiver to take control of the amounts sequestered.[23]

(13) **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset[24]

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of a Regulatory Asset Owner to record its Investment Interest in its accounts;

b. the right to impose, bill, invoice, collect and receive Transition Charges from Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each Regulated Consumer to pay the Transition Charges charged to the Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

d. the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of Servicer or if applicable the Alternative

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[23] Consider adding or substituting this provision for a right to appoint a receiver.

[24] It is anticipated that Investment Interests will only be sold to Financing Entities controlled by OPG. Sales will occur on a negotiated basis, and deal-specific covenants will be included in transaction documents – to supplement these arrangements.

Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

e. the right to enforce the duties and obligations of Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

f. the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

g. all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

h. all Related Rights; and

i. all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations have been paid in full.

(2) **Validity of Dispositions** – A Disposition by IESO of its right to recover all or any part of the IESO Funding Shortfall to an Absolute Assignee, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under IESO's right to recover the IESO Funding Shortfall or the Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of IESO's right to recover the IESO Funding Shortfall or an Absolute Assignee's right, title and interest in, to and under an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in IESO's right to recover the IESO Funding Shortfall or the

Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights to recover the IESO Funding Shortfall or under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – A Pledge by an Absolute Assignee may be made to secure any Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest in respect of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[25] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner or Pledgee to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

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[25] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[26]

(1) **Adoption of the Fair Allocation Plan** – The Delegate may, by written declaration, designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with [the Regulations]**.**

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable Regulated Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular Regulated Consumer in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to such Regulated Consumer over such Reference Period, other than in exceptional circumstances.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a Regulated Consumer Group and any future Regulated Consumer Group at a particular time should not exceed the Estimated Future Green Transition

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26 The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future Regulated Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future Regulated Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future Regulated Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate Regulated Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such Regulated Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more Regulated Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period Finance Charges across the Regulated Consumers. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges.

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation, (b) comply with any restrictions or limitations specified with respect thereto in any Funding

Obligation, and (c) not impair any Regulatory Asset, outstanding Funding Obligations or any Transition Charges.[27]

Article 8 – The IESO Funding Shortfall

(1) Recording of IESO Funding Shortfall – Subject to 8(3), IESO will record any IESO Funding Shortfall [in its books] [in a variance account established in accordance with section 25.33 of the Electricity Act / Ontario Regulation 430/04, as amended].

(2) Adjustments – IESO will record it [its books][its variance account] all adjustments to the IESO Regulatory Asset Amount from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(3) Limitation on Additions – Subject to 8(3), IESO shall not record additions to the IESO Regulatory Asset Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(4) Dispositions – IESO may effect a Disposition of its right to recover all or any part of the IESO Regulatory Asset Amount to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (c) the Financial Services Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing Plan.

(5) No Continuing Interest in any Investment Interest – IESO shall have no continuing right or interest in, or maintain any right to recover all or any part of, any IESO Regulatory Asset Amount that is subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party.

(6) IESO Recoveries – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) of any IESO Recoveries.

Article 9 – The Financing Plan

(1) Power to Prepare, Implement and Amend the Financing Plan – The Financial Services Manager shall be authorized to prepare, implement and amend a financing plan [for the Financing Entities] and propose the adoption of such financing plan as the Financing Plan for the purposes of this Act. [The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.]

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[27] It is anticipated that the terms of any rated financing will restrict further issuances pending a RAC in relation to any changes to the FAP.

(2) Principles and Parameters of the Financing Plan – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions, having regard to the principles and parameters set forth in Schedule 3.

(3) OEB Approval – [Any Additional Funding Charge payable to the Financial Services Manager in respect of services provided by the Financial Services Manager (other than third party costs) shall be subject to review and approval by the OEB.][28]

(4) Review of Financing Plan – The [OEB shall undertake an annual review of the records maintained by the Financial Services Manager for the purpose of confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.] [29]

(5) Replacement of the Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services Manager under the Financing Plan. If the Financial Services Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services Manager. [Any replacement financial services manager must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.]

(6) Obligation to Apply IESO Remittances – The Financial Services Manager shall ensure that amounts transferred to it [under Article 5, as agent for and on behalf of the Absolute Assignees], or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services Manager, the OEB or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount.

(8) Incurrences are Binding – Each Disposition made to or by an Absolute Assignee, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding, including in determining the amount of related Transition Charges, notwithstanding any defect in the manner of incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

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[28] Under consideration.

[29] Under consideration.

[Article 10 – Compliance Matters[30]

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.][31]

Article 11 – Undertaking of the Her Majesty in right of Ontario[32]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – Her Majesty in right of Ontario shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

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[30] As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

[31] As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

[32] Under consideration, including the dealers' request for (1) a "servicer guarantee" (2) a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes and (3) in the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), a covenant by the Province to step in and payout the debt or to recover the debt from ratepayers as it becomes due, notwithstanding the intended Fair Adjustment.

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment, amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article 11.[33]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

[33] Requested by Dealers. For discussion.

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[34]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by

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[34] OPG would like the specific amendments related to OPG to be included in the Bill.]

any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article, Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(4) consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(5) if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(6) reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation);

(7) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use [diligent efforts to manage Finance Amounts to be borne by Ratepayers];

(8) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(9) [require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.]

(10) incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(11) the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(12) the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(13) the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(14) the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(15) the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(16) the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(17) the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(18) the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(19) describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(20) the basis on which any Pledge may be given or effected.

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]

- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]

- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

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CONFIDENTIAL AND PRIVILEGED

Preliminary Draft for Discussion Purposes Only

"Fair Hydro Act"

Article 1 – Purpose

The Province has and continues to encourage the construction and development of facilities for the long-term operation and generation of electricity in the Province using sustainable, lower carbon-based technologies such as new gas-fired generation, renewable facilities, energy from waste and biomass, including under the Province's various procurement, standard offer, feed in tariff and other similar programs (the "Green Generation Initiative"). The long-term benefits of the Green Generation Initiative accrue over time and have benefited and will continue to benefit present and future electricity consumers in the Province.

The ~~imputed~~out-of-market costs of the Green Generation Initiative are currently passed through to electricity consumers by way of a monthly adjustment amount (the "Green Costs Adjustment"), which in turn forms part of the overall adjustment calculated by the Independent Electricity System Operator ("IESO") pursuant to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* (the "Global Adjustment"). ~~The Global Adjustment is included as a charge billed to electricity consumers in their monthly electricity invoices.~~

The Green Costs Adjustment is currently determined each month by reference to the amounts paid by IESO to the generators of electricity in the Province under the Green Generation Initiative~~, which may be higher than prevailing market price for electricity. These differences~~. These amounts paid by the IESO arise because IESO has entered into long-term procurement contracts with such generators in order to provide them with ~~long-term price~~revenue certainty~~ for electricity~~, and in turn to encourage the generators to develop technologies and to construct and develop facilities consistent with the Green Generation Initiative. ~~In general, whenever amounts payable under these procurement contracts exceed the market price for electricity, the Green Costs Adjustment passes through the amount of such differences as part of the monthly charge to electricity consumers. Such amount then becomes available to IESO to meet its obligations under the procurement contracts.~~ It has been determined that the useful lives of many of the assets ~~encouraged by~~developed under the Green Generation Initiative will be ~~well~~ in excess of the respective terms of ~~the related~~their respective procurement contracts~~, and in many cases may extend over more than one generation of electricity consumers~~.

Since the benefits to past, present and future electricity consumers from the Green Generation Initiative will not necessarily coincide with the costs currently attributed through the Green Costs Adjustment, based on the respective ~~durations~~terms of the applicable procurement contracts, it has been determined that the rate at which the costs associated with the Green Generation Initiative should be passed through to ~~Retail~~Regulated Consumers (as defined in Article 2) should be more closely aligned with the benefits that such ~~Retail~~Regulated Consumers have derived and are expected to derive from the Green Generation Initiative over time. This realignment will be based on general principles and parameters that establish a reasonable basis for measuring and allocating the relative costs and benefits of the Green Generation Initiative equitably across present and future ~~Retail~~Regulated Consumers (the "Fair Allocation Plan").

If the Fair Allocation Plan determines that the equitable allocation of the costs associated with the Green Generation Initiative to the ~~Retail~~Regulated Consumers of a particular time period

should be reduced below the amount that currently would be charged based on the Green Costs Adjustment, then the amount payable by such ~~Retail~~Regulated Consumers and in turn available to IESO will, in the aggregate, be less than the amount payable by the IESO to the generators in respect of such period. In this case, IESO will need to obtain funding from another source to cover such a shortfall. If a funding obligation is incurred ~~by IESO~~ to cover such a shortfall during ~~one~~any period, the repayment of such funding obligation will be required in a future period, and any related repayments, finance costs, hedging costs and other transaction costs incurred will become payable in ~~one or more~~ future periods. In order for IESO to obtain a reliable and committed source of cash flows to enable IESO to repay such funding amounts when they become due and payable, this Act imposes irrevocable and non-bypassable financial obligations on ~~Retail~~Regulated Consumers to pay amounts incurred in respect of such funding obligations when they become due and payable and establishes a right to invoice and collect such amounts. The right and interest in and to collect such financial obligations will take the form of the Regulatory Asset contemplated in this Act, which will constitute property rights and interests. Interests in the Regulatory Asset may be sold and absolutely assigned by IESO to one or more financing entities, which in turn will finance their acquired interests by incurring funding obligations. The incurrence and payment of such funding obligations will be administered on behalf of such financing entities by a financial services ~~agent~~manager under the Financing Plan contemplated in this Act. ~~The Financing Plan will seek to reasonably match the payment obligations arising under such funding obligations, to be borne by the future Retail Consumers of the period in which such payment obligations become due, with the benefits of the Green Generation Initiative allocated to such future Retail Consumers under the Fair Allocation Plan.~~

The purpose of this Act is to establish the basis upon which intergenerational fairness can be achieved by charging the costs and benefits of the Green Generation Initiative to present and future ~~Retail~~Regulated Consumers on an equitable and cost effective basis.

Article 2 ~~-~~ Definitions

In this Act:

> "Absolute Assignee" means a person to whom a Regulatory Asset Owner effects a Disposition other than as security.
>
> "Actual" means, in relation to costs, expenses or payments in respect of Funding Obligations during a Reference Period, the actual amount of such costs, expenses or payments paid or made (net of any Finance Reserve Withdrawals applied to pay such amounts), which amounts shall be recorded by the Financial Services ~~Agent~~Manager whose records shall be determinative for the purposes of this Act except to the extent of a manifest calculation error.
>
> "Additional Funding Charges" means, for a Reference Period ~~in respect of an Absolute Assignee,~~ the fees, charges, expenses, costs, indemnities, reimbursements and other amounts (including any applicable tax amounts) that are or become payable by or on behalf of ~~the~~any Absolute Assignee during the Reference Period and that were incurred or committed to directly or indirectly by the Absolute Assignee in connection with the incurrence of Funding Obligations under the Financing Plan (whether at the time of such incurrence or over the term of the Funding Obligation and whether directly or indirectly), including ~~(without duplication and without limitation): (a) any payment required under an ancillary agreement entered into by, or by the Financial Services Agent on behalf of, the~~

~~Absolute Assignee under the Financing Plan; (b) any federal, provincial or local taxes, payments in lieu of taxes, franchise fees or license fees imposed on the Absolute Assignee or incurred by on behalf of the Absolute Assignee under any obligation to pay tax gross-up amounts to counterparties under Funding Obligations; (c) any amounts payable to the Financial Services Agent, including amounts payable to its advisors and outside counsel; (d) any amounts incurred to prepare, confirm, amend and implement the Financing Plan; (e) any amounts payable to any Alternative Collection Agent or Alternative Servicer, including amounts payable to each's advisors and outside counsel; (f) any amounts incurred to make the calculations, determinations or confirmations to be made by or on behalf of the Absolute Assignee; (g) any servicing fees and expenses; (h) any trustee fees and expenses; (i) any legal fees, expenses and disbursements; (j) any accounting fees and expenses; (k) any administrative fees and expenses; (l) any manager or director fees of a Financing Entity; (m) any registration fees and expenses; (n) any placement fees, underwriting fees, fees and related issuing expenses; (o) any rating agency fees; and (p) any other related fees, charges, expenses, costs, indemnities, reimbursements and other amounts that are approved in good faith by the Financial Services Agent for recovery and payment under the Financing Plan~~without limitation such amounts as may be prescribed.

~~"Allocation Factor" means, in respect of a Retail Consumer for a Reference Period, the number (expressed as a percentage) determined in respect of the Retail Consumer by the OEB based on the application of the Attribution Methodology in respect of the Reference Period.[1]~~

"Alternative ~~Collection Agent~~Servicer" means a person appointed under Section ~~5(11) and in compliance with the requirements set out in Schedule 2 to assume the collection activities and activities of any Electricity Distributor or IESO under Article 5, as agent for and on behalf of the Regulatory Asset Owners."Alternative Servicer" means a person appointed under Section~~ 4(8) to assume the obligations of the Servicer under Article 4, as agent for and on behalf of the Regulatory Asset Owners.

"Assessed Past Green Transition Costs" means, in respect of a Measurement Date, the aggregate of the imputed costs of the Green Generation Initiative (expressed as an equivalent to current dollars), as reflected in the calculation of the Green Costs Adjustment, which have been charged to ~~Retail~~Regulated Customers through the Global Adjustment on or prior to the Measurement Date.

"Attribution Methodology"~~[2]~~[1] means the methodology specified in the Fair Allocation Plan for allocating the Period ~~Transition~~Finance Charges for a Reference Period to ~~individual Retail~~Regulated Consumers~~ of the applicable Retail Consumer Group based on its Allocation Factor~~.

"Collected Amount Adjustment" means, in respect of a True-Up Period, the amount (which may be a negative amount) calculated by the Servicer or the Financial Services ~~Agent~~Manager, as applicable, equal to (a) the Estimate of the Finance Amount for the True-Up Period, minus (b) the sum of all Transition Charge Collections for the True-Up Period~~.~~[3] and minus [(c) the amounts by which amounts remitted by Electricity

~~[1] Confirm that this will be based on forecast volumes of demand (like RPP). To the extent amounts do not get recovered due to differences between forecast and actual, those may be identified and caught by the True-Up.~~

~~[2]~~[1] This allocation may be volumetric or some combination of a flat amount and a volumetric charge. Further discussion is required. H&W has raised a concern regarding possible adverse changes after the fact and rating agency considerations. Consider whether hard-coding in the legislation makes sense.

Distributors pursuant to Section 5(4) exceeded the corresponding amount of Transition Charges Actually paid by Regulated Consumers.][2]

"Collective Rights Agreement" means an agreement among all of the Regulatory Asset Owners (including each Absolute Assignee) ~~and~~, each Pledgee, and the Financial Services Manager that governs the enforcement of their respective rights and interests in, to and under the Regulatory Asset on a coordinated and collective basis.[4]

"Delegate" means ~~the~~any of the following person or persons designated in writing from time to time by the Minister of Energy to undertake the actions and perform the responsibilities ascribed to the "Delegate" under this Act; ●[3].

"Disposition" means an assignment, transfer, conveyance, sale, contribution, set-over, exchange or other disposition ~~of an Investment Interest~~(or, in the case of the IESO Funding Shortfall, a release by IESO of its right to recover such amount in order to enable an Absolute Assignee to recover such amount) of (a) IESO's right to recover all or any portion of an IESO Funding Shortfall or (b) an Investment Interest, in each case to an Absolute Assignee pursuant to a Disposition Document.

"Disposition Document" means the agreement, deed, conveyance, instrument or other document under which ~~a Regulatory Asset Owner~~IESO or an Absolute Assignee effects a Disposition to an Absolute Assignee.

"Electricity Distributor" means~~, in respect of a Service Area, the~~ a rate regulated distributor licensed under Part V of the *Ontario Energy Board Act, ~~1998~~* ~~in respect of such Service Area,~~*1998*, together with and its successors.

"Electricity Distributor Remittances" means, for an Electricity Distributor on a Remittance Date, all Transition Charge Collections received or deemed to be received by the Electricity Distributor prior to the Remittance Date and that have not otherwise been remitted to ~~IESO~~Servicer or if applicable the Alternative Collection Agent in accordance with Section 5(3), including the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5.[4]

"Electricity Invoice" means an invoice issued by ~~any of a~~an Electricity Distributor (or in its stead, by an Alternative ~~Servicer~~Collection Agent), by the Servicer or by a Retailer, in each case to a ~~Retail~~Regulated Consumer that is served by the Electricity Distributor's distribution system in respect of electricity charges, including the cost of electricity, delivery and regulatory charges and related services and amounts incurred, assessed or charged in respect of connectivity to ~~a distribution network in the~~such Electricity Distributor's ~~designated Service Area~~distribution system and in respect of applicable Transition Charges to be charged to the ~~Retail~~Regulated Consumer under this Act.

[32] This ~~would~~is intended to pick up adjustments based on actual collection experience, changes in the ~~retail consumer~~Regulated Consumer base, changes in the actual costs (versus earlier estimates) included in the Transition Charge calculation, etc. The actual calculation needs work.

[4] ~~Consider adding the Financial Services Agent and the Servicer as parties.~~

[3] Placeholder for delegation once deterermined.

[4] Suggestion is that LDCs remit based on estimates and then true-up, based on current arrangements for remittances by LDCs to IESO. *

"Estimate" means (a) in relation to costs, expenses or payments in respect of Funding Obligations or any Finance Amount for a Reference Period, the estimated amount of such costs, expenses or payments determined by the Financial Services ~~Agent~~Manager; and (b) in relation to an assessment of the benefits of the Green Generation Initiative to ~~any Retail Consumer Group~~Regulated Consumers, the estimated value (in current dollars) of such benefits determined by the Delegate, in each case having regard to the applicable principles and parameters set out in Schedule 1, which estimated amounts shall be determinative as the applicable estimate for the purposes of this Act except to the extent of a manifest calculation error.

"Estimated Future Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that are expected to accrue to ~~Retail~~Regulated Consumers from the establishment and implementation of the Green Generation Initiative during the period from the Measurement Date to the Program-End Date.

"Estimated Past Green Transition Benefits" means, in respect of a Measurement Date, the Estimate set forth in the Fair Allocation Plan prepared in accordance with Article 7 of the aggregate value (measured in current dollars) of the benefits that have accrued to ~~Retail~~Regulated Consumers from the establishment and implementation of the Green Generation Initiative up to and including the Measurement Date.

"Fair Allocation Plan" has the meaning given in Article 1.

"Finance Amount" means, for a Reference Period ~~in respect of an Absolute Assignee~~, the sum (without duplication) of the following amounts that are or become payable during the Reference Period in respect of ~~the~~any Absolute Assignee: (a) Repayments; (b) Net Funding Costs; (c) Redemption Amounts; (d) Finance Reserve Deposits; and (e) Additional Funding Charges.

"Finance Reserve Deposits" means, for a Reference Period, the amount by which (a) deposits made or to be made during the Reference Period in order to pre-fund, collateralize, over-collateralize or establish reserves for the ultimate payment of Funding Obligations or for related contingencies specified in the Financing Plan, exceed (b) any Finance Reserve Withdrawals.

"Finance Reserve Withdrawals" means, for a Reference Period, the amount withdrawn during the Reference Period from deposits previously made to pre-fund, collateralize, over-collateralize or establish reserves for the payment of Funding Obligations or to pay amounts in respect of related contingencies that had been specified in the Financing Plan.

"Financial Services ~~Agent~~Manager" means OPG or, following any Replacement Event involving OPG, such other person ~~or persons~~ who may be appointed as the ~~Financial Services Agent~~financial services manager of the Absolute Assignees under the Financing Plan in compliance with the requirements set out in Schedule 2.[5]

[5] ~~Discuss whether to accommodate multiple~~There must only be one Financial Services ~~Agents. MOE to consider~~Manager.

"Financing Entity" means ~~an~~any entity established in accordance with the Financing Plan to ~~acquire all or an interest in the Regulatory Asset as~~be an Absolute Assignee and ~~to enter into Funding Obligations to finance such acquisition under the Financing Plan~~that is managed by the Financial Services Manager.[6]

"Financing Plan" means the written plan prepared by the Financial Services ~~Agent on behalf of each Absolute Assignee in compliance with Article 9 to set forth the basis upon which, among other things: (a) any Disposition may be made to, financed by or effected by an Absolute Assignee; (b) any Funding Obligations may be incurred by an Absolute Assignee, including any Refinancing; (c) any Pledge may be given or effected; (d) any Funding Obligations may be redeemed, prepaid, repurchased, amended or otherwise effected; (e) any obligations for Additional Funding Charges may be incurred and paid; (f) any Repayments, Funding Costs and Redemption Amounts may be paid or provided for; (g) any Finance Reserve Deposits may be made; (h) any Finance Reserve Withdrawals may be made; (i) the establishment and operation of any Financing Entity may be effected; and (j) the cash flows arising from time to time or otherwise derived from an Investment Interest may otherwise be applied,~~Manager in accordance with Article 9, as the same may be amended, amended and restated or terminated by the Financial Services ~~Agent~~Manager in ~~compliance~~accordance with Article 9 from time to time.

~~"Funding Costs" means, for a Reference Period in respect of an Absolute Assignee, the amount by which (a) the aggregate of all interest and other periodic finance charges accruing due and becoming payable or paid by or on behalf of the Absolute Assignee during the Reference Period in respect of its Funding Obligations, including any standby commitment fees or charges paid to any lender, credit enhancement fees or charges paid to any credit enhancer, liquidity fees or charges paid to any liquidity provider, amounts (including any termination payments) paid under derivatives and any deposit amount made or required to fund or replenish a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to its Funding Obligations, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of a Funding Obligation, including from any reimbursement of standby commitment fees or charges paid by a lender, any reimbursement of credit enhancement fees or charges paid by any credit enhancer, any reimbursement of liquidity fees or charges paid by any liquidity provider, any amounts (including any termination payments) paid to the Absolute Assignee under derivatives and any Finance Reserve Withdrawal made or required to be made from a debt service reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the payment of the Funding Costs payable in respect of a Funding Obligation for the Reference Period.~~

"Funding Obligation" means, in respect of an Absolute Assignee, each payment obligation (including each obligation to pay: principal, interest, premiums and other financing charge payments; pass-through payments; payment obligations arising under

[6] MOE to confirm that the legislation will provide that any Financing Entity that is a wholly-owned subsidiary of OPG (1) would not be subject to Part VI of the *Electricity Act* (Ontario) and (2) in the case of any Financing Entity that is a trust, any income of such trust (for purposes of the *Income Tax Act* (Canada) or the *Taxation Act, 2007* Ontario)) which is paid or made payable to OPG or a wholly-owned subsidiary of OPG as a beneficiary of such trust will not be taken into account in calculating the amount of a payment required to be made by OPG (or such subsidiary) by section 89 or 90 of the Electricity Act.

or in respect of derivatives; payment obligations owing to service providers, Financial Services ~~Agents~~Managers, finance entity intermediaries, capital markets intermediaries, advisors, lenders, credit enhancement providers, liquidity providers, disbursement counterparties, regulatory agencies and rating agencies; and all Additional Funding Charges) incurred by or on behalf of the Absolute Assignee under the Financing Plan, including any Refinancing of another such payment obligation incurred by or on behalf of such Absolute Assignee.

"Future Fair Share of Green Transition Benefits" means, in respect of a Measurement Date, the sum of (a) the Over-Assessed Amount; and (b) the Estimated Future Green Transition Benefits, in each case as of the Measurement Date.

~~"Generator" means a generator of electricity that is subject to the *Electricity Act, 1998*.~~

"Global Adjustment" has the meaning given in Article 1.

"Green Costs Adjustment" has the meaning given in Article 1.

"Green Generation Initiative" has the meaning given in Article 1.

"IESO" means the Independent Electricity System Operator created pursuant to Part II of the *Electricity Act, 1998*.

~~"IESO Available Amount" means, for a Reference Period, the lesser of (a) the amount (if any) by which (i) the Maximum Transition Charge Amount for the Reference Period, exceeds (ii) Period Finance Amount for the Reference Period, and (b) the IESO Retained Interest Amount as of the [35th] day prior to the first day of a Reference Period plus any IESO Financing Costs that are due and payable and remain unpaid as of the [35th] day prior to the first day of a Reference Period.~~

"IESO Electricity Distribution Receipts" means, for a month, the sum of all amounts payable by Electricity Distributors to IESO , during the month pursuant to section • of the *Electricity Act*~~.~~ in respect of Regulated Consumers. **[NTD: IESO indicates that it likely does not work to express in regards to "amounts payable by the LDCs" because settlement between the IESO and LDCs entails payments by LDCs to the IESO and then credits/debits by the IESO to LDCs to reflect RPP shortfalls/overages.]**

~~"IESO Financing Costs" means, for a Reference Period, the financing costs (if any) incurred by IESO pursuant to Section 8(4) in order to finance its ownership of the IESO Retained Interest during the Reference Period.~~

"IESO Funding Shortfall" means, for a month, the amount, if any, by which (a) the IESO Electricity Distribution Receipts that would be payable to IESO for the month if determined without regard to this Act and without regard to the changes made to section 25.33 of, and O.Reg. 429/4 under, the *Electricity Act* with respect to the Global Adjustment concurrently with this Act, exceeds (b) the IESO Electricity Distribution Receipts payable to IESO for the month[7]~~; provided that if the amount of any such shortfall is determined to have been based on incomplete information, variances or estimates that were inaccurate, an adjustment shall be made in determining the amount~~

[7] ~~This has been recast to recognize that the shortfall in the first 4.5 years could exceed the entire GA amount. A more refined approach to describing the concept may be considered.~~

~~of any subsequent shortfall for the month in which the inaccuracy is identified. .~~To the extent reasonably necessary to give effect to this Act, or any transaction contemplated hereby, IESO shall calculate the IESO Funding Shortfall for any month taking into account information provided by the Electricity Distributors and (i) such calculation shall be binding for all purposes; and (ii) any demonstrated inaccuracy in the calculation for any month (including any such resulting from inaccuracies in the information provided by Electricity Distributors) shall be accounted for by adjusting the IESO Funding Shortfall for a subsequent month.

"IESO Recovery" means each amount ~~remitted to IESO (including~~received by IESO ~~retaining such amount) in respect of the IESO Retained Interest pursuant to Section 5(6)(b)~~in accordance with its right to recover IESO Funding Shortfalls pursuant to section 25.33 of the Electricity Act and Ontario Regulation 430/04, as amended, and "IESO Recoveries" means, collectively, all such amounts received by IESO.[7]

"IESO Remittances" means, for a Settlement Date, all Electricity Distributor Remittances received by IESO or if applicable the Alternative Collection Agent prior to the Settlement Date and that have not otherwise been remitted to the Regulatory Asset Owners (each with respect to its Regulatory Asset) in accordance with Section 5(6), including the proceeds of any enforcement action undertaken by IESO or if applicable the Alternative Collection Agent to recover payment of amounts payable by Electricity Distributors to IESO in accordance with Article 5.

"IESO ~~Retained Interest" means IESO's right, title and ownership interest (if any) in, to and under the Regulatory Asset, which shall exclude each Investment Interest."IESO Retained~~Regulatory Interest Amount" means, on a day, (a) the sum of all IESO Funding Shortfalls incurred prior to the day, ~~plus (b) the sum of all IESO Funding Costs incurred prior to the day in accordance with Section 8(4), minus (c~~minus (b) the net proceeds received by IESO from or on behalf of each Absolute Assignee as consideration for the Disposition of each Investment Interest paid to IESO by or on behalf of such Absolute Assignee prior to the day, and minus (~~d~~c) the IESO Recoveries received by IESO prior to the day.

"IESO Successor" means the entity appointed by the Province to succeed to the rights and obligations of IESO as the entity responsible for managing the Province's electricity system.

"Investment Interest" means an ownership interest in, to or under the Regulatory Asset that is acquired by an Absolute Assignee pursuant to a Disposition~~, which ownership interest may include (without limitation) ownership of a specified portion on a divided basis of the assets comprising the Regulatory Asset and ownership of an undivided ownership interest in the Regulatory Asset, in each case as may be described in the applicable Disposition Document~~.

"Investment Remittance" means, for a month, the lesser of (a) the aggregate amount of all IESO Remittances for the month, and (b) the sum of the Finance Amounts due and payable by all Absolute Assignees in respect of the month.

[7] IESO will be entitled to record the IESO Funding Shortfall amount in a variance account. The OEB will eliminate and dispose of the variance account balance as part of the RPP adjustment process under the OEB Act , with an applicable OEB accounting order. See Article 8 for corresponding adjustments based on Dispositions. These will need to be tied together.

~~"Maximum IESO Recovery" means, for a month, the amount (if any) by which (a) the IESO Remittances for the month, exceed (b) the sum of all Finance Amounts that are due and payable by Absolute Assignees in respect of the month.~~

~~"Maximum Transition Charge Amount" means, for a Reference Period, (a) the aggregate amount of Future Fair Share of Green Transition Benefits that are allocable to the applicable Retail Consumer Group in accordance with the Fair Allocation Plan, divided by (b) the applicable Reference Period Length.~~

"Measurement Date" means [Insert relevant date around the Legislation Implementation Date] and any other date specified as such under the Fair Allocation Plan.

"Net Funding Costs" means, for a Reference Period, the amount by which (a) the aggregate of all interest, scheduled principal and other periodic finance charges accruing due and becoming payable or paid by or on behalf of any Absolute Assignee during the Reference Period in respect of its Funding Obligations, including such amounts as may be prescribed, exceeds (b) the aggregate of all amounts received by or on behalf of the Absolute Assignee during the Reference Period in respect of the Funding Obligations referred to in (a), and such other or different amounts as may be prescribed.

"OEB" means the Ontario Energy Board, together with its successors.

"OPG" means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998, together with its successors.

"Over-Assessed Amount" means, in respect of a Measurement Date, the amount (if any) by which (a) the Assessed Past Green Transition Costs, exceeds (b) the Estimated Past Green Transition Benefits, each as determined as of the Measurement Date.

"Period Finance Charges" means, for a Reference Period, the sum of (a) the Estimate of the Finance Amount ~~and~~ (b) the True-Up Amount in respect of the ~~immediately preceding Reference Period. "Period Transition Charges" means, for a Reference Period, the sum of (a) the Period Finance Charges for the Reference Period and (b) the IESO Available Amount for the Reference Period.~~ applicable True-Up Period and (c) [an adjustment amount as may be prescribed to account for estimated collection shortfalls and collection delays in respect of amounts under (a) and (b).]

"Pledge" means, in respect of an Investment Interest of an Absolute Assignee, a lien, mortgage, charge or security interest granted to or in favour of a Pledgee by the Absolute Assignee in, to and over all or a specified portion (including a specified portion on a divided basis or by way of an undivided interest) of the Investment Interest.

"Pledgee" means a person to whom an Absolute Assignee grants a Pledge.

"Program End Date" means •, [2047].

"Province" means the Province of Ontario.

"Redemption Amount" means the amount payable by or on behalf of an Absolute Assignee to redeem, prepay or repurchase a Funding Obligation incurred by or on behalf of the Absolute Assignee, including any premium, make-whole or other additional

amount becoming payable under the Funding Obligation to give effect to such redemption, prepayment or repurchase.

"Reference Period" means (a) the period from (and including) the Measurement Date to (and including) ~~June~~October 30, 2017, (b) each six month period commencing [May 1st and November 1st] thereafter and (c) any other period specified as such in the Fair Allocation Plan.

~~"Reference Period Length" means, for a Reference Period, the number of months in the Reference Period.~~

"Refinancing" means, in respect of a Funding Obligation incurred by or on behalf of an Absolute Assignee, that the Funding Obligation is repaid or repurchased for cancellation by or on behalf of the Absolute Assignee by applying the net proceeds obtained by the Absolute Assignee incurring one or more other Funding Obligations.

"Regulated Consumer" means consumers of electricity in the Province [as prescribed][8].

"Regulated Consumer Group" means, in relation to a Reference Period, the Regulated Consumers who receive Electricity Invoices during the Reference Period.

"Regulatory Asset" means the property rights and interests described in Section 6(1), which collectively is comprised of ~~the IESO Retained Interest and~~ each Investment Interest.

"Regulatory Asset Account" means (a) for an Electricity Distributor, any bank account into which the Electricity Distributor deposits or receives Transition Charge Collections; and (b) for the Servicer, any bank account into which ~~IESO deposits or receives Transition Charges, Electricity Distributor Remittances or IESO Remittances; and (c) if applicable, for the Alternative Collection Agent, any bank account into which the Alternative Collection Agent~~Servicer deposits or receives Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances.

"Regulatory Asset Owner" means ~~each of (a) IESO, as owner of (and to the extent of) the IESO Retained Interest and (b)~~ each Absolute Assignee, as owner of its Investment Interest or Investment Interests, and "Regulatory Asset Owners" means collectively ~~IESO and~~ each such Absolute Assignee, who together own the entirety of the Regulatory Asset and are required to exercise their individual rights of ownership in accordance with Section 6(7).

"Related Rights" means, with respect to a Regulatory Asset Owner's Investment Interest, all rights of any kind (whether in tort, contract or otherwise) that attach or are attendant or incidental to any of the other property rights or interests that comprise such ~~Regulatory Asset~~Investment Interest.

"Remittance Date" means, in respect of an Electricity Distributor, each day on which it is required to remit Electricity Distribution Remittances to ~~IESO~~Servicer or if applicable the Alternative Collection Agent as specified in accordance with any Funding Obligation or, if no such day is specified in accordance with any Funding Obligation, then the ~~Business Day~~business day preceding each Settlement Date.

[8] To be included in the legislation once settled.

"Repayment Obligation" means an obligation to repay, redeem or repurchase, or to provide for the repayment, redemption or repurchase (including by making a related Finance Reserve Deposit) of, all or a portion of the amount advanced to the Absolute Assignee under a Funding Obligation.

"Repayment" means a payment by an Absolute Assignee made to satisfy a Repayment Obligation, other than to the extent that the payment is made by applying the proceeds of a Refinancing or from Finance Reserve Withdrawals.

"Replacement Event" means any event specified as such in a Funding Obligation.

~~"Retail Consumer" means:~~

~~(a) present and future consumers of electricity in the Province who are (i) consumers designated under section 79.16 of[, and O.Reg 95/05 under,] the *Ontario Energy Board Act, 1998*, or (ii) hold or are deemed to hold an "eligible account" under the *Ontario Rebate for Electricity Consumers Act, 2016*, other than any such consumer who has a contract with a Retailer who uses Retailer Consolidated Billing; and~~

~~(b) present and future Retailers who use Retailer Consolidated Billing,~~

~~and each case includes all such consumers and Retailers who are connected, directly or indirectly and whether a customer of an Electricity Distributor or not, to the transmission and distribution system assets located in the Province and who are taking electric delivery service within the Province, whether or not such retail consumers produce their own electricity or purchase electric generation services from a provider of electric generation services other than the owner of the Province's transmission and distribution system assets and whether or not the transmission and distribution system assets continue to be owned or operated by Electricity Distributors or operated by IESO.~~

~~"Retail Consumer Group" means, in relation to a Reference Period, the Retail Consumers who receive Electricity Invoices during the Reference Period.~~

"Retailer" means a person who is licensed under Part V of the *Ontario Energy Board Act, 1998* to retail electricity.

[["Retailer Consolidated Billing" has the same meaning as in the *Retail Settlement Code* issued by the Ontario Energy Board.]]

~~"Service Area" means, in respect of an Electricity Distributor, the geographic area or region in which it is licensed to distribute electricity in accordance with the *Electricity Act, 1998*.~~

"Servicer" means IESO or IESO Successor, as agent for and on behalf of the Regulatory Asset Owners, for the purposes set forth in Article 4.

"Settlement Date" means the [last ~~Business Day~~business day of any month].

"Transition Charge" means, ~~for a Retail~~the amount recoverable from a Regulated Consumer in respect of a Reference Period~~, (a) the Period Transition Charge, (b) multiplied by its Allocation Factor in respect of the Reference Period, divided by (c) the~~

~~applicable Reference Period Length.~~[9], being the Period Finance Charge as allocated to such Regulated Consumer in accordance with Article 4(3) on a monthly basis. **[Note that this allocation will be based on the OEB process for determining the volumetric rate as part of the RPP process (see s. 4(2)). The OEB will determine volumetric rate based on forecast consumption, number of consumers, etc. to recover the Period Finance Charges.]**

"Transition Charge Collection" means any amount received **[or deemed by this Act to have been received]** upon the collection of a Transition Charge paid by or on behalf of a ~~Retail~~Regulated Consumer, including any proceeds arising from the exercise and enforcement of any related rights and interests under or in respect of the Regulatory Asset.

"True-Up Amount" means, in respect of a Reference Period, the amount (which may be a negative amount) calculated by the Financial Services ~~Agent~~Manager equal to (a) the Actual Finance Amount for such related True-Up Period, minus (b) the Estimate of the Finance Amount for the related True-Up Period, ~~minus (b) the Actual Finance Amount for such related True-Up Period,~~ plus (c) the Collected Amount Adjustment for such related True-Up Period.[10]

"True-Up Period" means, in relation to a Reference Period, the ~~period from and including the [30th] day~~ immediately preceding ~~the first day of the Reference Period, to but excluding the [30th] day immediately preceding the last day of the~~ Reference Period.[11]

"Undertaking of ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario" means the undertaking of ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario given under Section 11(2).[12]

Article 3 – Transition Charges

(1) **~~Retail~~Regulated Consumer Obligation to Pay a Transition Charge** – Each ~~Retail~~Regulated Consumer shall pay each Transition Charge charged to it in any Electricity Invoice issued to such ~~Retail~~Regulated Consumer by its Electricity Distributor

[9] Note that Transition Charges will be calculated by reference to Funding Obligations and Finance Amounts incurred under the Financing Plan. The directive will be that no payment obligations will be incurred for payment before 2022, to accommodate the "Fair Adjustment".

[10] True-up calculation is under consideration. In this summary, a calculated true-up amount is contemplated to be included in the Period Finance Amount calculation, in order to achieve a sum certain and actionable debt. The suggestion is that the true-up mechanism be based generally on a calculation process to be described in the Regulation, which would require Transition Charges to be reviewed and adjusted semi-annually (or more frequently) to ensure the expected recovery of amounts sufficient to timely provide all payments in respect of Finance Amounts. It has been proposed that the scope of the true-up will exclude any 'leakage' at the Financing Entity Level (e.g., entity-level tax; litigation; losses) but will include shortfalls that are currently socialized through the LDC/IESO system. Note that the proposal to include a section detailing the true-up mechanism (Oslers 3(6) has not been included here since the outcome of the calculation is already built into the Period Finance Amount concept.

[11] Timing of calculation under consideration, given that amount will need to be reflected in customer invoices.

[12] Under consideration.

or by an Alternative Servicer under Section 4(1), in each case on the terms of payment specified in the related Electricity Invoice.

(2) Indebtedness of ~~Retail~~Regulated Consumers – Until paid, a Transition Charge charged to a ~~Retail~~Regulated Consumer in an Electricity Invoice shall, together with any applicable late payment fees and finance charges arising under the terms of the Electricity Invoice with respect to such Transition Charge, constitute non-bypassable indebtedness of the ~~Retail~~Regulated Consumer to the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset. Such indebtedness shall constitute a single and separate[~~8~~13] debt obligation owing by the ~~Retail~~Regulated Consumer, which subject to Article 5 may be enforced independently from any other payment obligation or indebtedness owing by the ~~Retail~~Regulated Consumer under the Electricity Invoice or otherwise.[~~9~~14]

(3) No Set-Off or Reduction – A ~~Retail~~Regulated Consumer may not set-off or reduce (by counterclaim, defense or otherwise) the amount payable by it in respect of any Transition Charge, including any set-off against or in respect of any amount owing or becoming payable to such ~~Retail~~Regulated Consumer by its Electricity Distributor, any Regulatory Asset Owner or any other person.

(4) Allocation of ~~Retail~~Regulated Consumer Payments – If an Electricity Distributor receives a payment made by or on behalf of a ~~Retail~~Regulated Consumer in respect of amounts due and payable under one or more Electricity Invoices that is less than the total amount payable thereunder, such payment shall be allocated on a *pro rata* basis to the payment of related Transition Charges and other invoiced amounts and the amount so allocated as a payment of related Transition Charges shall be deemed to constitute a Transition Charge Collection.

(5) Transition Charges are Irrevocable – The Transition Charges arising under or in respect of Funding Obligations ~~incurred under the Financing Plan~~ (including any adjustments based on modifications to such Funding Obligations made in compliance with the Financing Plan or as a result of amendments to the Financing Plan made in accordance with Section 9(3)) are deemed to be irrevocable, final and effective without any further action, except to the extent of manifest calculation error. For greater certainty, a Transition Charge may include Finance Amounts for a Reference Period regardless of whether ~~or not~~ the payment of such Finance Amounts are inconsistent with the Fair Allocation Plan applicable at the time such payments are due and payable, and regardless of whether ~~or not~~ the related Funding Obligation was properly incurred under the Financing Plan. In no case shall a Funding Obligation incurred under the Financing Plan be affected by a subsequent amendment to the Fair Allocation Plan.

(6) True-Up of Transition Charges – [See True-Up Amount].

Article 4 – Invoicing of Transition Charges

[~~8~~13] Determine if this is critical for rating and markets. Logistics under consideration.

[~~9~~14] Torys has also suggested that deemed conditions of licenses for distributors, retailers and unit sub-metering providers, could be included as conditions, to require them to collect and remit amounts in accordance with this legislation. Consider if it is helpful to integrate the existing regulatory scheme for invoicing and collections (regarding RPP) in the legislation.

(1) **Inclusion of Transition Charges in Electricity Invoices** – Each Electricity Distributor and if applicable any Alternative Servicer shall, as an agent of the Regulatory Asset Owners, specify the Transition Charge to be charged to a ~~Retail~~Regulated Consumer pursuant to Section 4(4) in respect of a related Reference Period in each Electricity Invoice[15] issued by the Electricity Distributor or if applicable by the Alternative Servicer to the ~~Retail~~Regulated Consumer in respect of such Reference Period. Upon the inclusion of a Transition Charge in an Electricity Invoice, the obligation to pay such amount shall be binding on the applicable ~~Retail~~Regulated Consumer.

(2) **Calculation of the Period ~~Transition~~Finance Charge** – Not later than [35] days prior to the first day of a Reference Period, each Absolute Assignee (or the Financial Services ~~Agent~~Manager on its behalf) shall provide the OEB with written notice of each Estimate of a Finance Amount payable by it or on its behalf in respect of the Reference Period~~. [35] days prior to the first day of a Reference Period, IESO or Successor IESO if applicable shall specify the IESO Retained Interest Amount and any IESO Financing Costs that are due and payable and remain unpaid on such day~~. Not later than one month prior to the first day of a Reference Period, the ~~OEB~~Financial Services Manager on behalf of each Absolute Assignee shall calculate the Period ~~Transition~~Finance Charge applicable to the Reference Period ~~based on the calculations and information set forth in such written notices received from the Absolute Assignees and based on~~having regard to such amounts specified by ~~IESO or Successor IESO~~the Servicer, which calculations, information and amounts shall be determinative, except to the extent of manifest calculation error or misstatement.

(3) ~~**Calculation and Attribution of**~~**Basis for Attributing Transition Charges** – Not later than 25 days prior to the first day of a Reference Period, the OEB shall ~~apply the Attribution Methodology to determine the Allocation Factor for each Retail Consumer of the applicable Retail Consumer Group~~determine a [Fair Hydro Recovery Rate] (on a volumetric basis) on which Electricity Distributors will attribute Transition Charges to consumers under 4(4).

(4) **Notice of Transition Charges** – Not later than 20 days prior to the first day of a Reference Period, the OEB shall inform each Electricity Distributor and if applicable any Alternative Servicer of the [Fair Hydro Recovery Rate] to be applied by the Electricy Distributor to attribute Transition Charges to ~~be specified~~each Regulated Consumer who is served by the Electricity Distributor for inclusion in the Electricity Invoices to be issued to ~~each Retail Consumer of the applicable Retail Consumer Group who has a billing address in the Electricity Distributor's Service Area.~~the Regulated Consumers.

(5) **Adjustments** – The amount of any Transition Charge charged to a ~~Retail~~Regulated Consumer and specified as such in an Electricity Invoice shall be determinative of the amount of indebtedness created thereby and owing in respect of such Transition Charge, except to the extent of any manifest calculation error.

(6) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 4 in the same manner and to

[15] Intention is to include bills issued to eligible consumers served by unit sub-metering providers, retailers and the IESO – not just distributors and to address the inclusion of Transition Charges in the paperwork from the IESO to the LDC in a manner that is consistent with the current process of how the IESO bills LDCs.

the same extent as such Electricity Distributor, including the obligation under Article 4 to impose, attribute, charge, bill and invoice the Transition Charges.

~~(7)~~ ~~**IESO Successor** – Any IESO Successor shall be bound by the requirements of Article 4 and shall perform and satisfy all duties and obligations of IESO under Article 4 in the same manner and to the same extent as IESO, including the obligation to calculate and provide notice of Transition Charges.~~

(7) ~~(8)~~ **Appointment of an Alternative Servicer** – If a Replacement Event occurs in respect of any Electricity Distributor, ~~the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Servicer to~~IESO shall perform some or all of the obligations and duties required to be undertaken by such Electricity Distributor under this Article ~~4, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Servicer shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor.~~ 4. Any Electricity Distributor that is replaced under this Section 4(~~8~~7) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in the performance of such obligations and duties to ~~the Alternative Servicer~~IESO and shall take such further actions, including the execution of instruments, necessary to give full and final effect to such transfer and to permit ~~the Alternative Servicer~~IESO or a person designated by IESO to perform such obligations and duties on behalf of the Regulatory Asset Owners.

(8) ~~(9)~~ **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, IESO, the Servicer, Alternative Servicer or any other person who may be authorized to issue Electricity Invoices to ~~Retail~~Regulated Consumers for a failure to impose, attribute, charge, bill or invoice Transition Charges or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

(9) ~~(10)~~ **No Set-Off or Reduction –** No Servicer or Electricity Distributor may set off or reduce (by counterclaim, defence or otherwise) the amount payable by it pursuant to this Article 4.

(10) ~~(11)~~ **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to IESO, any Electricity Distributor or any Alternative Servicer to ensure that Transition Charges are properly charged to ~~Retail~~Regulated Consumers and specified as such in Electricity Invoices.

Article 5 – Collections and Remittances

(1) **Duty to Collect as Agent** – Electricity Distributors or if applicable any Alternative Collection Agent shall, as an agent of the ~~Regulatory Asset Owners~~Servicer, undertake ~~[diligent]~~[commercially reasonable~~]~~[10] efforts to collect amounts owing by ~~Retail~~Regulated Consumers in respect of Transition Charges charged to such ~~Retail~~Regulated

~~[10] Mirror collection "standard of care" under applicable legislation.~~

Consumers in Electricity Invoices issued by the Electricity Distributor or if applicable such Alternative Collection Agent~~.~~, all in accordance with the Regulations. [16]

(2) **Segregation of Transition Charge Collections** – ~~An~~If prescribed, an Electricity Distributor or if applicable any Alternative Collection Agent shall promptly segregate Transition Charge Collections from other payments received by it from ~~Retail~~Regulated Consumers and deposit such Transition Charge Collections into its Regulatory Asset Account.~~11~~[17] Prior to and following a deposit of Transition Charge Collections having been made into its Regulatory Asset Account, the Electricity Distributor or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners~~.~~ or a Pledgee.[18]

(3) **Electricity Distributor Remittances** – On each applicable Remittance Date, an Electricity Distributor shall remit all [Transition Charge Collections received by it from ~~Retail~~Regulated Consumers] [amounts invoiced to it by the IESO on account of Transition Charges][19] in respect of the related Reference Period to or to the account of ~~IESO~~Servicer or if applicable the Alternative Collection Agent.

(4) **Duty to Collect Electricity Distributor Remittances** – ~~IESO~~Servicer or if applicable any Alternative ~~Collection Agent~~Servicer shall, as an agent of the Regulatory Asset Owners, accept and undertake ~~[diligent]~~[commercially reasonable~~]~~ efforts to ~~accept and~~ collect Electricity Distributor Remittances from Electricity Distributors and Transition Charge Collections from ~~Retail~~Regulated Consumers that pay their Electricity Invoices directly to IESO, all in accordance with the Regulations.~~12~~

(5) **Segregation of Electricity Distributor Remittances** – ~~IESO~~Servicer and if applicable the Alternative Collection Agent shall promptly segregate Electricity Distributor Remittances from other payments received or held by it and deposit such Electricity Distributor Remittances into its Regulatory Asset Account. Prior to and following a deposit of Electricity Distributor Remittances having been made into its Regulatory Asset Account, ~~IESO~~Servicer or if applicable any Alternative Collection Agent shall hold such amounts in trust for the Regulatory Asset Owners or any Pledgee.

(6) **~~IESO~~Servicer Remittances** – On each Settlement Date~~13~~[20], ~~IESO and if applicable the Alternative Collection Agent~~Servicer shall remit all amounts on deposit in its Regulatory Asset Account ~~(a) first,~~ to or to the account of the Absolute Assignees an amount equal to the Investment Remittance for the related month~~ and (b) second, to IESO (including by IESO retaining such amount) an amount equal to the lesser of (i) the Maximum IESO Recovery for the related month and (ii) the IESO Retained Interest Amount as of the Settlement Date~~.

[16] Note that the obligation to collect and remit the Transition Charge will be included as a deemed condition of license for electricity distributors (and retailers and unit sub-metering providers).]

~~11~~[17] Consider trying to attach to existing LDC credit enhancements and provide parallel coverage for customer losses.

[18] Consider whether there is a more efficient way to treat collections through the existing LDC/IESO processes. Intention is to provide scope in the Regulations.

[19] Dealer suggestion under consideration. Impact on LDCs and parallel commercial arrangements to be assessed.

~~12 Consider building this obligation into a deemed condition of licence for the IESO.~~

~~13~~[20] Consider frequency of remittances in light of rating requirements. US rating agencies favour daily remittances.

(7) **Successors of Electricity Distributors** – Any successor of an Electricity Distributor shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of such Electricity Distributor under Article 5 in the same manner and to the same extent as such Electricity Distributor, including the obligation under Article 5 to collect Transition Charges and make remittances of Electricity Distributor Remittances.

(8) **IESO ~~Successor~~Successors** – IESO ~~Successor~~Successors shall be bound by the requirements of Article 5 and shall perform and satisfy all duties and obligations of IESO under Article 5 in the same manner and to the same extent as IESO, including the obligation to collect Transition Charge Collections, Electricity Distributor Remittances and to remit IESO Remittances.

(9) **Owners of Distribution Assets** - If any person other than an Electricity Distributor acquires distribution system assets in the Province or invoices or collects electricity distribution rates in the Province[~~14~~21], then such person shall, if requested by the Absolute Assignees, be obligated to act diligently to (a) facilitate the invoicing and collection of any Transition Charges applicable to ~~Retail~~Regulated Consumers ~~in its applicable service area, including all consumers~~ connected to ~~the electricity~~such person's distribution system assets ~~and taking electric delivery service located within such service area~~; (b) allocate partial payments by ~~Retail~~Regulated Consumers as provided in this Act; (c) exercise all enforcement rights of the Absolute Assignees for the benefit of an Absolute Assignee; and (d) remit any Transition Charge Collections to the Absolute Assignees or Pledgees, as applicable, each in accordance with its Investment Interest.

(10) **Absolute Assignees have Standing** – The Absolute Assignees, acting together in accordance with the Collective Action Agreement, may bring actions against any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent, any owner of electricity distribution system assets in the Province or any other person who may be authorized to collect electricity distribution and use charges from ~~Retail~~Regulated Consumers for a failure to collect Transition Charges, remit or collect Electricity Distributor Remittances or remit IESO Remittances, as and to the extent applicable under Article ~~5.~~5, or to otherwise comply with this Act. Any court of the Province shall have jurisdiction over any actions brought before it by the Absolute Assignees in relation to any such failure and may make any interim or final order it thinks fit in this regard.

~~(11) **Appointment of an Alternative Collection Agent** – If a Replacement Event occurs in respect of any Electricity Distributor or IESO, the Absolute Assignees shall, in accordance with the Collective Rights Agreement, be permitted, by an instrument in writing, to appoint an Alternative Collection Agent to perform some or all of the collection, segregation and remittance obligations otherwise required to be undertaken by such Electricity Distributor or IESO, as applicable, under Article 5, as and to the extent specified in such appointment. Upon acceptance of such appointment, the Alternative Collection Agent shall become obligated to perform such assumed obligations in replacement of such Electricity Distributor or IESO, as applicable. Any Electricity Distributor or IESO, as applicable, that is replaced under this Section 5(11) shall promptly transfer all rights, powers, privileges and property interests in its possession or within its control in, to and over the Regulatory Asset, including its Regulatory Asset Account, to the Alternative Collection Agent and shall take such further actions, including the execution of instruments, necessary to give full and final~~

[~~14~~21] This is in anticipation of a possible future restructuring of the distribution system.

~~effect to such transfer and to permit the Alternative Collection Agent to enforce the Regulatory Asset on behalf of the Absolute Assignees.~~

(11) ~~(12)~~ **No Set-off, etc.** - The Regulatory Asset, including rights in Transition Charges, Transition Charge Collections, and the interests of a Regulatory Asset Owner, an Absolute Assignee and a Pledgee therein, may not be setoff or reduced (including by counterclaim, surcharge or defense) by any ~~Retail~~Regulated Consumer, any Electricity Distributor, ~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or in connection with any default, bankruptcy, reorganization or other insolvency proceeding of any Electricity Distributor, ~~IESO~~Servicer, Alternative Collection Agent or any owner of distribution system assets in the Province, any affiliate or successor thereof or any other entity or otherwise.~~15~~22

(12) ~~(13)~~ **Sequestration** – If any Electricity Distributor, ~~IESO~~Servicer, the Alternative Collection Agent or any owner of distribution system assets in the Province or any other person or entity authorized to collect Transition Charges, defaults on any required remittance of Transition Charge Collections, Electricity Distribution Remittances or IESO Remittances under Article 5, any court in the Province, upon application by and of the Absolute Assignees acting collectively under the Collective Action Agreement and without limiting any other remedies otherwise available to the Absolute Assignees or Pledgees, shall (i) order the sequestration and payment of the Transition Charge Collections, Electricity Distribution Remittances and IESO Remittances, as applicable, for the benefit of the Absolute Assignees, each with respect to its Investment Interest, and the Pledgees as applicable~~.~~16 and (ii) appoint a receiver to take control of the amounts sequestered.23

(13) ~~(14)~~ **Regulations** – Regulations may be enacted for the purpose of specifying further rights, powers, privileges, duties and obligations that shall apply to ~~IESO~~Servicer, any Electricity Distributor or any Alternative Collection Agent to ensure that rights, interests, entitlements, benefits and proceeds in, to, under and from the Regulatory Asset are of fully realized by some or all of the Absolute Assignees and Pledgees.

Article 6 – The Regulatory Asset24

(1) **Composition** – The Regulatory Asset shall constitute a current and irrevocable property right and interest consisting, collectively, of the following rights and interests (without duplication):

a. the right of ~~IESO (i)~~a Regulatory Asset Owner to record its ~~IESO Retained~~Investment Interest in its accounts~~ in accordance with Section 8(1), having a stated amount from time to time equal to the IESO Retained Interest Amount; and (ii) to receive IESO Recoveries from time to time in accordance with Section 5(6)(b)~~;

~~15~~22 Consider whether it makes sense to create a "deemed collection" payment obligation on Electricity Distributors to the extent a ~~Retail~~Regulated Consumer reduces its payment of Transition Charges, despite this language. Same for Electricity Distributor Remittances and IESO Remittances.

~~16~~23 Consider adding or substituting this provision for a right to appoint a receiver.

24 It is anticipated that Investment Interests will only be sold to Financing Entities controlled by OPG. Sales will occur on a negotiated basis, and deal-specific covenants will be included in transaction documents – to supplement these arrangements.

b. the right to impose, bill, invoice, collect and receive Transition Charges from ~~Retail~~Regulated Consumers, including the right to determine the amount of Transition Charges in accordance with this Act;

c. the right to enforce the obligations and indebtedness of each ~~Retail~~Regulated Consumer to pay the Transition Charges charged to the ~~Retail~~Regulated Consumer from time to time in accordance with Article 3, together with all related late payment fees or interest charges arising in respect thereof under the related Electricity Invoices; the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;

~~**d.** the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Servicer to impose, attribute, charge, bill and invoice the Transition Charges in accordance with Article 4;~~

d. ~~**e.**~~ the right to enforce the duties and obligations of each Electricity Distributor and if applicable the Alternative Collection Agent to collect, receive and remit amounts received by it in respect of Transition Charges as Electricity Distributor Remittances to or to the account of ~~IESO~~Servicer or if applicable the Alternative Collection Agent in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by the Electricity Distributor or if applicable the Alternative Collection Agent to recover payment of Transition Charges in accordance with Article 5;

e. ~~**f.**~~ the right to enforce the duties and obligations of ~~IESO~~Servicer and if applicable the Alternative Collection Agent to collect and receive Electricity Distributor Remittances and to remit IESO Remittances to or to the accounts of the Regulatory Asset Owners, each with respect to its respective interest in the Regulatory Asset, in each case in accordance with Article 5, including all collections and the proceeds of any enforcement action undertaken by it to recover payment of Electricity Distributor Remittances in accordance with Article 5;

f. ~~**g.**~~ the right to receive and collect all Transition Charge Collections, all Electricity Distributor Remittances and all IESO Remittances in accordance with Article 5;

g. ~~**h.**~~ all rights and entitlements under each Regulatory Asset Account and all amounts on deposit in any such Regulatory Asset Account;

h. ~~**i.**~~ all Related Rights; and

i. ~~**j.**~~ all revenue, collections, claims, payments, money and proceeds of or derived from the rights described in (a) through (i), regardless of whether such revenue, collections, claims, payments and proceeds are imposed, invoiced, collected and maintained together with or commingled with other revenue, collections, claims, payments, money and proceeds.

A Regulatory Asset and the property rights and interests therein shall exist whether or not Transition Charges have been imposed, charged, invoiced, accrued or collected and

notwithstanding that the imposition, attribution, invoicing and collection of Transition Charges will depend on further actions that may not have occurred. The Regulatory Asset shall continue to exist until all Funding Obligations have been paid in full.

(2) **Validity of Dispositions** – ~~Despite any limitations or restrictions on a~~A Disposition ~~that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Disposition that may arise by operation of any applicable law of the Province, a Disposition by~~by IESO of its right to recover all or any part of the IESO Funding Shortfall to an Absolute Assignee ~~made under the Financing Plan~~, or a Disposition of all or any part of an Investment Interest by one Absolute Assignee to another Absolute Assignee made under the Financing Plan, shall be permitted and when made shall be valid and enforceable in accordance with the terms of the related Disposition Document and shall be effective to confer upon the Absolute Assignee thereof a valid property right and interest in, to and under ~~the applicable~~IESO's right to recover the IESO Funding Shortfall or the Investment Interest, as applicable (or relevant portion thereof) in accordance with the terms of such Disposition, provided that the parties to the applicable Disposition Document have expressly stated therein that such Disposition is a sale or other absolute transfer. Without limiting the foregoing, any Disposition that by its terms is intended to constitute a sale or absolute transfer shall be treated for all purposes as a true sale and absolute transfer of ~~the Regulatory Asset Owner's applicable~~IESO's right to recover the IESO Funding Shortfall or an Absolute Assignee's right, title~~,~~ and interest in, to and under ~~the Regulatory Asset~~an Investment Interest, as applicable (or relevant portion thereof), and not merely as a Pledge thereof, and upon such Disposition the assigner or seller under the applicable Disposition Document shall retain no right, title or interest in IESO's right to recover the IESO Funding Shortfall or the Investment Interest (or relevant portion thereof) subject to the Disposition, including all rights to recover the IESO Funding Shortfall or under the Investment Interest arising after such Disposition.

(3) **Perfection and Priority of Dispositions** – Any Disposition of an interest in a Regulatory Asset shall be vested, valid, binding and perfected from the time when such Disposition is made. Such Disposition shall be perfected, vested, valid and binding as against the IESO or transferring Regulatory Asset Owner, as applicable, and all other persons who have claims of any kind (whether in tort, contract or otherwise) against IESO or the transferring Regulatory Asset Owner, as the case may be, irrespective of whether such persons have notice of the Disposition and the property rights and interests acquired by the Absolute Assignee under such Disposition shall be free and clear of any liens in favour of such other persons.

(4) **Validity of Pledges** – ~~Despite any limitations or restriction on a Pledge that may arise by contract or by operation of any applicable law of the Province or any consent requirement applicable to a Pledge that may arise by operation of any applicable law of the Province, a~~A Pledge by an Absolute Assignee may be made to secure any ~~related~~ Funding Obligation and when made shall be valid and enforceable in accordance with its terms and shall be effective to confer upon the Pledgee a valid security interest in, to and in respect of the related Investment Interest in accordance with the terms of the Pledge. ~~Other than as required by the Financing Plan, no~~No consent of, or notice to, any person shall be required to give effect to a Pledge made to secure any Funding Obligation.

(5) **Perfection and Priority of Pledges** - For purposes of the *Personal Property Security Act* (the "PPSA"), the Regulatory Asset shall be intangible personal property and any Pledge made by an Absolute Assignee in respect of a Funding Obligation shall, subject to the terms thereof, give rise to a security interest in respect of which the PPSA applies, and may be perfected by filing a financing statement under the PPSA on that basis. All proceeds of a related Investment Interest that are subject to such a Pledge that are received by the Absolute Assignee shall immediately be subject to the such Pledge, and the security interest in such proceeds shall be perfected pursuant to the PPSA.[17][25] A Pledge perfected under the PPSA shall be a continuously perfected security interest and shall have priority over any other lien or security interest, created by operation of law or otherwise, that may attach to the property rights and interests in the Investment Interest subject to the Pledge unless the Pledgee has otherwise agreed in writing. ~~Subject to the terms of the Collective Action Agreement, a~~A Pledgee shall have a perfected security interest in a related Investment Interest, including the Absolute Assignee's rights and interests in and to Transition Charge Collections or other related proceeds in respect of the Investment Interest and that are deposited in any Regulatory Asset Account or other account of any Electricity Distributor, IESO, Alternative Collection Agent or other person who may have commingled such Transition Charge Collections or such other proceeds with other funds. All provisions of the PPSA shall apply to the Regulatory Asset on the basis that it is intangible personal property, except to the extent otherwise provided in this Section 6(5).

(6) **Enforcement of Property Rights** – The rights of any Regulatory Asset Owner or Pledgee to collect and enforce its rights and interests in, to or in respect of the Regulatory Asset shall be exercised in the manner set forth in Article 5.

(7) **Owners of a Specified Portion of the Regulatory Asset** – A Regulatory Asset Owner may effect a Disposition to an Absolute Assignee of a specified portion of its rights and interests in the Regulatory Asset, including by way of a Disposition of a divided or an undivided interest therein as specified in a related Disposition Document~~, in each case under the Financing Plan~~. In no circumstance may the specified portions of the rights and interests in the Regulatory Asset owned by all Regulatory Asset Owners be greater than all of the rights and interests that comprise the Regulatory Asset in the aggregate.

(8) **Collective Action Required** – If a Regulatory Asset Owner's rights and interests in the Regulatory Asset comprises less than the entire property right and interest constituted by the Regulatory Asset, such Regulatory Asset Owner shall only enforce such right and interest on a collective and coordinated basis with each other Regulatory Asset Owner in accordance with the Collective Rights Agreement.

Article 7 – Establishment of the Fair Allocation Plan[18][26]

(1) Adoption of the Fair Allocation Plan – The Delegate may, ~~[~~by written declaration,~~]~~ designate and adopt a Fair Allocation Plan in compliance with Article 7. The Fair

[17][25] Consider whether to simply leave this and have a financing statement be filed under the PPSA. This would normalize the security interest and reduce any adverse suggestion that security would not otherwise arise.

[18][26] The idea is that the Fair Allocation Plan will be set once at the outset based on the principles and parameters described here, all as applied based on information available and the reasonable expectations and discretion of the delegate at such time. If the expectations are not fulfilled (e.g., generators may choose to retire their facilities at the end of their current procurement contracts and not invest in extending service lives to secure further procurement contracts), the Fair Allocation Plan will be unaffected, unless it is specifically amended (assuming amendments will be permitted by the legislation).

Allocation Plan so designated and adopted shall be the Fair Allocation Plan for all purposes of this Act, except if amended, amended and restated or terminated by a further written declaration made by the Delegate in compliance with ~~Section 7(4).~~[the Regulations].

(2) **Principles and Parameters** – A Fair Allocation Plan shall seek to allocate Future Fair Share of Green Transition Benefits across present and future ~~Retail Consumer Groups~~Regulated Consumers on a basis that the Delegate, in its sole and absolute discretion, determines to be equitable, having regard to the following principles and parameters:

1. Future Fair Share of Green Transition Benefits should be allocated over the period ending on the Program End Date.

2. The Fair Allocation Plan should specify the Reference Periods for the purpose of identifying applicable ~~Retail~~Regulated Consumer Groups and allocating Future Fair Share of Green Transition Benefits among them on a relative basis over time.

3. The share of Future Fair Share of Green Transition Benefits allocable to a particular ~~Retail~~Regulated Consumer ~~Group~~ in respect of a Reference Period should be proportionate to a reasonable assessment of the benefits of the Green Generation Initiative to ~~the Retail~~such Regulated Consumer ~~Group~~ over such Reference Period~~.~~, other than in exceptional circumstances.

4. The share of Future Fair Share of Green Transition Benefits to be allocated to a ~~Retail~~Regulated Consumer Group and any future ~~Retail~~Regulated Consumer Group at a particular time should not exceed the Estimated Future Green Transition Benefits, measured in respect of the Reference Periods following such particular time and to the Program End Date.

5. No future ~~Retail~~Regulated Consumer Group should be allocated an unreasonably disproportionate share of Estimated Future Green Transition Benefits. Except in exceptional circumstances or in the case of any reallocation of an Over-Assessed Amount as contemplated in 7, below, the Future Fair Share of Green Transition Benefits to be allocated under a Fair Allocation Plan to any future ~~Retail~~Regulated Consumer Group should have regard to *[Insert formula if a year-over-year maximum amount is determined to be appropriate]*.

6. The time value of money should be reflected in the Fair Allocation Plan, in order to equate the relative values of the nominal allocations of Future Fair Share of Green Transition Benefits, calculated in current dollars, to future ~~Retail~~Regulated Consumer Groups over time.

7. To the extent there has been an Over-Assessed Amount, the Fair Allocation Plan may determine that an adjustment should fairly be made to rebate ~~Retail~~Regulated Consumers for such an amount, by reducing the costs otherwise attributable under the Act to such ~~Retail~~Regulated Consumers. The relative costs of the Green Generation Initiative are reflected under the Act by the attribution of Transition Charges to such Consumer Groups, based on the Financing Plan seeking to track the allocations of benefits under the Fair

Allocation Plan. Accordingly, the Maximum Transition Charge Amount determined for one or more ~~Retail~~Regulated Consumer Groups having regard to the Fair Allocation Plan otherwise applicable may be appropriately reduced to recognize the effect of the Over-Assessed Amount. In such a case, a determination to reduce the Maximum Transition Charge Amount applicable for certain related Reference Periods should have regard to the principle that the corresponding rebate should be extended to benefit the Consumer Group or Consumer Groups in closest proximity to the Legislative Implementation Date.

(3) Attribution Methodology – The Fair Allocation Plan shall specify the Attribution Methodology for the purposes of allocating the Period ~~Transition~~Finance Charges across the ~~Retail~~Regulated Consumers~~ of a particular Retail Consumer Group~~. The Attribution Methodology shall result in an attribution of such Transition Charges that is considered by the Delegate to be equitable, and may have regard to such principles and parameters as may be further set forth in a Regulation; provided that the Attribution Methodology shall not be used to limit the recovery of Transition Charges.

(4) Amendments of the Fair Allocation Plan – The Fair Allocation Plan may be amended, amended and restated or terminated by the Delegate, provided that such amendment, amendment and restatement or termination shall (a) not be inconsistent with the principles and parameters set forth in (2) or (3), above, or the Regulation~~ and~~, (b) comply with any restrictions or limitations specified with respect thereto in any Funding Obligation~~.~~, and (c) not impair any Regulatory Asset, outstanding Funding Obligations or any Transition Charges.[27]

Article 8 – The IESO ~~Retained Interest~~Funding Shortfall

(1) Recording of IESO Funding Shortfall – Subject to 8(3), IESO will record any IESO Funding Shortfall [in its books] [in a variance account established in accordance with section 25.33 of the Electricity Act / Ontario Regulation 430/04, as amended].

(2) ~~(1) Maintain Books of Account~~ ~~– IESO may maintain books of account to record the IESO Retained Interest~~**Adjustments** – IESO will record it [its books][its variance account] all adjustments to the IESO Regulatory Asset Amount ~~and all adjustments thereto~~ from time to time. Such books of account shall be determinative with respect to the amount of IESO's related regulatory asset.

(3) ~~(2)~~ Limitation on Additions – Subject to 8(3), IESO shall not record additions to the IESO ~~Retained Interest~~ Regulatory Asset Amount in respect of IESO Funding Shortfalls (a) if such additions are restricted by the terms of any Disposition Document or the Collective Action Agreement, or (b) on or after •, 2017.

(4) ~~(3)~~ Dispositions – IESO may effect a Disposition of its right to recover all or any part of the IESO Regulatory Asset Amount to an Absolute Assignee if (a) the Absolute Assignee has or will concurrently become bound by the Collective Rights Agreement; (b) the Disposition is effected pursuant to a Disposition Agreement duly executed by IESO; and (c) the Financial Services ~~Agent~~Manager confirms in writing that the Disposition complies with any restrictions or limitations specified with respect thereto in any documents evidencing the Funding Obligations and is permitted under the Financing

[27] It is anticipated that the terms of any rated financing will restrict further issuances pending a RAC in relation to any changes to the FAP.

Plan; and (d) the net proceeds payable to IESO from the sale of the related Investment Interest would not exceed the IESO Retained Interest Amount immediately before the time of such Disposition.

(5) (4) **No Continuing Interest in any Investment Interest** – IESO shall have no continuing right or interest in any Investment Interest, or maintain any right to recover all or any part of, any IESO Regulatory Asset Amount that is subject to a Disposition effected by IESO under a Disposition Document to which IESO is a party and IESO shall not assert any such right or interest or take or omit to take any action to exercise or enforce its rights or interests under the IESO Retained Interest if such action or omission would impede or obstruct the rights of any Absolute Assignee or a Pledgee to enforce its rights and interests in any Investment Interest, except if IESO is expressly permitted to take or omit to take such action, respectively, under the related Disposition Document or the Collective Rights Agreement.

(5) **IESO Financing Costs** – IESO shall be entitled in good faith to incur reasonable financing costs (including interest and other reasonable financing charges) reflecting market terms and conditions and which are payable in arrears, in order to finance its ownership of the IESO Retained Interest from time to time.

(6) **IESO Recoveries** – IESO shall, in respect of a month, be entitled to receive from IESO Remittances on a related Settlement Date the amount (if any) available to of any IESO under Section 5(6)(b) Recoveries.

Article 9 – The Financing Plan

(1) **Power to Prepare, Implement and Amend the Financing Plan** – The Financial Services Agent Manager shall be authorized to prepare, implement and amend a financing plan [for the Financing Plan. If the Financial Services Agent is unwilling or unable to prepare Entities] and propose the adoption of such financing plan as the Financing Plan, the Delegate may by written declaration designate one or more other persons who shall be authorized to prepare, implement and amend the Financing Plan. for the purposes of this Act. [The Financial Services Manager shall have the right to withdraw its financing plan as the Financing Plan at any time if it determines that implementing the Financing Plan in such manner would not be in the best interests of a Financing Entity.]

(2) **Terms Principles and Conditions Parameters of the Financing Plan** – The Financing Plan shall establish the basis for each Absolute Assignee's funding decisions. The Financing Plan shall have, having regard to the principles and parameters set forth in Schedule 3 and such other conditions and requirements as may be specified in a written declaration of the Delegate or in accordance with the Regulation. 3.

(3) **OEB Approval** – [Any Additional Funding Charge payable to or for the benefit of the Financial Services Manager in respect of services provided by the Financial Services Agent Manager (other than third party costs) shall be subject to review and approval by the OEB.][28]

(4) **OEB Review of Financing Plan** – The [OEB [shall] undertake an annual review of the records maintained by the Financial Services Agent Manager for the purpose of

[28] Under consideration.

confirming that the Funding Obligations incurred and the Finance Amounts paid by or on behalf of the Absolute Assignees were incurred and paid, respectively, in material conformity with the Financing Plan.][29]

(5) Replacement of the ~~Administrative Agent~~Financial Services Manager – If the OEB identifies deficiencies or makes recommendations in its review under Section 9(4), the ~~Administrative Agent~~Financial Services Manager shall take reasonable measures to remedy such deficiencies if remediable, and shall in any event have regard to the recommendations of the OEB in relation to further actions undertaken by the Financial Services ~~Agent~~Manager under the Financing Plan. If the Financial Services ~~Agent~~Manager is unwilling or unable to reflect such recommendations in relation to such further actions, the Delegate may by written declaration designate one or more other persons who shall thereafter become the Financial Services~~.~~ Manager. [Any replacement financial services manager must comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations.]

(6) Obligation to Apply IESO Remittances – The Financial Services ~~Agent~~Manager shall ensure that amounts transferred to it [under Article 5, as agent for and on behalf of the Absolute Assignees], or otherwise in respect of or as proceeds from an applicable Investment Interest shall only be applied or used to pay related Finance Amounts when they are due and payable and for no other purpose.

(7) Non-Recourse – The Financing Plan shall be implemented so that Funding Obligations incurred shall be without recourse to or to any assets of the Electricity Distributors, IESO, any Alternative Servicer, any Alternative Collection Agent, the Financial Services ~~Agent~~Manager, the OEB~~, the Province or the Lieutenant Governor in Council~~ or Her Majesty in right of Ontario, other than if and to the extent that such persons or entities are liable for the performance of obligations or duties arising under this Act or expressly agree to become liable pursuant to any Funding Obligation or obligation in relation to a Finance Amount. ~~[All Funding Obligations shall contain a statement to the following effect: "Neither the full faith and credit nor the taxing power of the Province of Ontario is pledged to the payment of the principal of, or interest on, this [obligation].]~~

(8) Incurrences are Binding – ~~Notwithstanding anything to the contrary in this Act, each~~Each Disposition made to or by an Absolute Assignee ~~and~~, all amounts payable or becoming due and payable by or on behalf of an Absolute Assignee under or in connection with any obligation purporting to be a Funding Obligation and each Pledge entered into by an Absolute Assignee, shall be valid and binding ~~for the purposes of this Act~~, including in determining the amount of related Transition Charges, ~~despite~~notwithstanding any ~~impairment or defect resulting from such failure~~defect in the manner of incurrence or any inconsistency with the Fair Allocation Plan or the Financing Plan.

[Article 10 – Compliance Matters~~19~~30

[29] Under consideration.

~~19~~30 As noted above, the outcome of any regulatory action undertaken by the OEB will not affect Funding Obligations that have been incurred under the Financing Plan. This Article and any potential role for the Auditor General is still under consideration.

(1) Right of the [OEB] to Inspect Books and Records - For the purpose of investigating compliance with the provisions of this Act, the OEB shall have the right, jurisdiction, power and authority to examine the books and records of *[Insert names if any]*.

(2) [OPG's Rate Settings – When setting other rates for or in respect of OPG, the OEB shall not take into account (a) the administrative or servicing fees charged by OPG as Financial Services ~~Agent~~Manager [in excess of the actual incremental costs incurred by such person of providing administrative or servicing services]; (b) the cost consequences to OPG of being the Financial Services ~~Agent~~Manager; or (c) the consequence of OPG consolidating the assets and liabilities of any Financing Entity for OPG's accounting purposes, in each case in setting any regulated payment amounts for OPG.]~~20~~31

Article 11 – Undertaking of the ~~Lieutenant Governor in Council~~[21]Her Majesty in right of Ontario[32]

(1) No Action to limit, alter, or impair or terminate Transition Charges, the Regulatory Asset or Collections – ~~The [Lieutenant Governor in Council]~~Her Majesty in right of Ontario shall not in any way take or permit (including by any agency or administrative body) any action to reduce, impair, postpone or terminate the obligation of ~~Retail~~Regulated Consumers to pay Transition Charges or to impair the Regulatory Asset or the collection or recovery of Transition Charge Collections, Electricity Distributor Remittances or IESO Remittances, either directly or indirectly, including through the introduction of any bill or the passing of any legislation or regulation having such effect. The amount of Transition Charges determined under this Act shall not be subject in any way to reduction, impairment, postponement or termination as a result of any action taken or failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario (including by any agency or administrative body), including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(2) Undertaking and Agreement – ~~The [Lieutenant Governor in Council]~~Her Majesty in right of Ontario shall not:

(a) in any way take or permit any action that limits, alters or impairs the value of any Investment Interest;

(b) except as required by the estimates and adjustments made in determining the True-up Amount, reduce, alter or impair Transition Charges that are imposed, billed, invoiced, collected and remitted for the benefit of the Absolute Assignees or any Pledgee from time to time;

~~20~~31 As an alternative to this provision, consider clarifying under s. 78.1(4) of the OEB Act (which currently gives the OEB discretion in setting payment amounts subject to O. Reg. 53/05) that the OEB in setting OPG payment amounts for prescribed generation shall not consider OPG's role as ~~Administrative Agent~~Financial Services Manager of any Financing Entities associated with the Fair Hydro initiative, perhaps with the exception of any operating fees that may be received by OPG for performing that role.

~~21~~32 Under consideration, including the dealers' request for (1) a "servicer guarantee" ~~and~~(2) a "contractual guarantee" to address a "Change of Law" or if all or a portion of the legislation is *ultra vires*, requiring (at the lenders option), the Province to pay principal and interest on the outstanding debt until maturity or payout the entire debt including any make-wholes and (3) in the event of a market disruption that renders it impossible to refinance debt when required (or where financing of amounts required to service the debt is not available because of a market disruption where the Financing Entity was relying on such further issuance of debt until the recovery is set to begin to fund interest), a covenant by the Province to step in and payout the debt or to recover the debt from ratepayers as it becomes due, notwithstanding the intended Fair Adjustment.

(c) permit the amendment, amendment and restatement or termination of the Fair Allocation Plan if such amendment , amendment and restatement or termination would adversely affect the validity or enforceability of any Funding Obligation or the rights of an Absolute Assignee or Pledgee thereunder, or would not otherwise comply with the restrictions and limitations specified in the documents evidencing the Funding Obligations,

in each case including through the introduction of any bill or the passing of any legislation or regulation having such effect.

(3) **Successor IESO** – If IESO is restructured, dissolved or becomes insolvent or is otherwise incapable of performing its obligations under this Act, an IESO Successor ~~IESO~~ shall immediately be established by Her Majesty in right of Ontario to perform such obligations.

(4) **Compensation for Failure** – Absolute Assignees shall be compensated by Her Majesty in right of Ontario for any losses suffered by them as a result of any failure by ~~the Lieutenant Governor in Council~~Her Majesty in right of Ontario to comply with its undertakings and agreements in this Article ~~11.[22]~~11.[33]

(5) **No Wind-up of Financing Entity**. No Financing Entity may be voluntarily wound up, liquidated or dissolved until one year after all of its Funding Obligations are repaid.

(6) **References to the Undertaking and Agreement** – Any non-confidential reference to the Undertaking of the ~~Lieutenant Governor in Council~~Her Majesty in right of Ontario, including in marketing materials and other documentation authorized for use by the Administrative in connection with any Funding Obligation, may be made provided that [*Add conditions to protect the Province*].

Article 12 – Regulations

Regulations may be made under this Act for the purposes described in Sections •,•,• and • and may be promulgated for any of the following purposes:

(a) to set standards and measures regarding the commercially reasonable requirements of the Province associated with an Absolute Assignee incurring Funding Obligations or becoming obligated to pay any Finance Amount, including to establish guidelines regarding all-in funding costs; permitted Additional Funding Charges; required maturities and redemption and termination rights of Funding Obligations; liquidity requirements, in each case to a Financing Plan that is consistent in its effect with the Fair Allocation Plan;

(b) to establish and empower one or more regulated entities to undertake decision-making activities with respect to this Act;

(c) to set out reasonable requirements regarding the appointment or retention of advisors, agents, service providers, contract counterparties, including in relation to 'market terms and conditions' parameters;

[22][33] Requested by ~~Torys~~Dealers. For discussion.

(d) to provide for audit and compliance standards applicable to those persons who are or may become obligated or have duties that arise under this Act [or under any Funding Obligation];

(e) to provide for any pre-vetting and approval requirements in relation to any incurrence by an Absolute Assignee of any Funding Obligation or obligation to pay any Finance Amount; and

(f) to provide for appeal and due process considerations in connection with the establishment, adoption, implementation and review of the Fair Allocation Plan or the Financing Plan.

Article 13- Miscellaneous[2334]

(1) **Choice of law** – The law governing, as applicable, the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in the Regulatory Asset, any Transition Charge or the Undertaking of the Province shall be the laws of the Province.

(2) **Conflict of law** – In the event of conflict between this Act and any other law of the Province regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any Disposition or Pledge, this Act shall govern to the extent of the conflict.

(3) **No further acts or approvals required** - Notwithstanding any provisions of any law of the Province to the contrary, no approvals, notices or authorizations other than those specified in this Act shall be required with respect to the actions to be taken in compliance with this Act, including under the Financing Plan or in relation to the establishment of the Fair Allocation Plan, and the transactions and contracts authorized in or contemplated by this Act or the Financing Plan, including the incurrence of any Funding Obligation, any Disposition, any Pledge or in the payment and performance of any attendant or incidental contract and any related expenses incurred to facilitate the preparation and implementation of the Financing Plan.

(4) **Effect of invalidity after the Incurrence of any Funding Obligation** - Effective on the date that a Funding Obligation is incurred under this Act, if any provision of this Act is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this Act that is taken by any person who is or may become obligated or have duties that arise under this Act and any such action shall remain in full force and effect.

(5) **Severability** - If any Article, Section, paragraph or subparagraph of this Act or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other Article, Section, paragraph or subparagraph of this act or its application or validity to any person, circumstance or transaction, including the irrevocability of Transition Charges, the validity of the Regulatory Asset, the incurrence of any Funding Obligation, any Disposition, any Pledge, or the collection and recovery of Transition Charge Collections. To these ends, the Legislature hereby declares that the provisions of this Act are intended to be severable and that the Legislature would have enacted this Act even if any Article,

[2334] OPG would like the specific amendments related to OPG to be included in the Bill.]

Section, paragraph or subparagraph of this Act held to be unconstitutional or invalid had not been included in this Act.

Schedule 1

Guidelines for Estimates

[To be considered.]

Schedule 2

Requirements Applicable to Alternative Invoicing Agent/ Alternative Collection Agent

[To be considered.]

Schedule 3[24]

Principles and Parameters for Establishing the Financing Plan

The following principles and parameters provide a guideline as to what a Financing Plan should address:

(1) in respect of each Reference Period, make reference to the allocations of Future Fair Share of Green Transition Benefits to each Reference Group contemplated by the Fair Allocation Plan;

(2) estimate IESO Funding Shortfalls for each Reference Period;

(3) consider alternative funding arrangements suitable to fund the estimated IESO Funding Shortfalls, including short term and/or long term Funding Obligations;

(4) ~~(9)~~ consider quantities, maturities, payment obligations, prepayment or redemption rights and such other features of Funding Obligations so that payments made for a Reference Period reasonably correspond to the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

(5) ~~(4)~~ if the anticipated amount of any Repayment (together with payments of other Finance Amounts) to be made in respect of a Reference Period would materially exceed the allocation of the costs and benefits of the Green Generation Initiative to the applicable ~~Retail Consumer Group~~Regulated Consumers under the then current Fair Allocation Plan, diligent efforts should be made to determine whether a Refinancing or deferral of such Repayment may be reasonably and cost-effectively effected based on then prevailing market terms, conditions an circumstances;

(6) ~~(5)~~ reflect the assumptions and requirements specified in any contemplated Funding Obligation (e.g., any limit on the maximum amount of Transition Charges charged to a hypothetical ~~Retail~~Regulated Consumer relative to his or her monthly electricity bill, as prescribed by any rating agency that ascribes its credit rating to or in respect of the Funding Obligation ~~having regard to the application of the Allocation Methodology~~);

(7) require the Financial Services Manager, for and on behalf of each Regulatory Asset Owner, to use [diligent efforts to manage Finance Amounts to be borne by Ratepayers];

(8) include a proposal regarding the compensation of the Financial Services Manager that reflects market terms and conditions; and

(9) [require that the Financial Services Manager report annually to the Ministry of Energy on the operation of the Financing Plan including, in particular, with respect to the amount and terms of the Funding Obligations incurred and the sufficiency of such Funding

[24] ~~Awaiting input from Torys based on OPG mark-up of Financing Plan sections.~~

Obligations for the purpose of funding the estimated Funding Shortfalls in accordance with the Fair Allocation Plan.]

(10) ~~**(6)**~~ incur Funding Obligations from time to time on the best terms available at such time for a financing transaction of the size and type contemplated, and having regarding to the following parameters:

a. whether the Absolute Assignees will require committed access to short term liquidity to cover estimated IESO Funding Shortfalls prior to incurring fixed term Funding Obligations, and the amount and repayment terms of any such required liquidity; provided that any Repayment required to be made under the terms of such short-term liquidity would not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

b. the basis upon which the Financial Services Agent will select the term to maturity of any other Funding Obligations; provided that any Repayments required to be made under the terms of such Funding Obligations should not obligate an Absolute Assignee to repay an amount in relation to a Reference Period that would have the effect of the Financing Plan permitting incurrences of Funding Obligations payable in such Reference Period that would exceed the allocations of Future Fair Share of Green Transition Benefits to the applicable Reference Group under the Fair Allocation Plan;

c. the basis upon which the interest rates applicable to such Funding Obligations would be determined;

d. the reference capital or finance market in which such Funding Obligation would be incurred, including markets outside of Canada if considered by the Financial Services Agent to be appropriate in the circumstances;

e. the currency of payments under such Funding Obligations and, if the Funding Obligations are denominated in a currency other than Canadian dollars, the basis upon which the Financial Services Agent shall cause the applicable Absolute Assignee to enter into hedging transactions to mitigate currency risk, including acceptable minimum and maximum coverage levels, having regard to the availability of related derivatives having notional amounts corresponding to the repayment and maturity profile of such Funding Obligations;

f. the basis upon which the Financial Services Agent will select counterparties under any transaction to be entered into by an Absolute Assignee, including any paying agent, servicer, cash manager, liquidity provider, hedge counterparty, account bank, lender, note trustee, security trustee, paying agent, registrar/transfer agent, financial services agent, arranger or manager;

g. the basis upon which the Financial Services Agent will manage counterparty risk, including by providing for maximum counterparty exposure limits having regard to concentration, credit and other identified risks with respect to individual counterparties or countries;

h. the basis upon which the Financial Services Agent will negotiate and settle Finance Amounts, including the amount of any Redemption Amounts, Finance Reserve Deposits and Additional Funding Charges;

(11) ~~(7)~~ the basis upon which Funding Obligations may be redeemed, prepaid, repurchased or otherwise affected, having regard for the need to minimize debt service charges and other Funding Costs, and the need to maintain a stable funding platform to finance the IESO Funding Shortfalls from time to time on a basis that is consistent with the allocations of Future Fair Share of Green Transition Benefits to applicable Reference Groups under the Fair Allocation Plan;

(12) ~~(8)~~ the basis upon which any Repayments, Funding Costs and Redemption Amounts will be paid, including any defeasance, sinking fund or through other reserves or liquidity facilities;

(13) ~~(9)~~ the basis upon which fees, charges, expenses, costs, indemnities, reimbursements and other amounts payable to or for the benefit of the Financial Services Agent and other agents and service providers to the Absolute Assignees may be determined, allocated and paid;

(14) ~~(10)~~ the timing and basis upon which Finance Reserve Deposits and Finance Reserve Withdrawals may be made;

(15) ~~(11)~~ the basis upon which any obligations for any other Additional Funding Charges may be incurred and paid;

(16) ~~(12)~~ the basis upon which the cash flows arising from time to time or otherwise derived from the Regulatory Asset may otherwise be applied, including in relation to any counterparty enforcement and realization scenario;

(17) ~~(13)~~ the transmittal to [the IESO] of information related to the amounts to be included in the determination of the Period Transition Charge for a Reference Period;

(18) ~~(14)~~ the basis upon which any Disposition may be made or effected by an Absolute Assignee, including parameters for determining the purchase price for the interest in the Regulatory Asset that is the subject matter of such Disposition, and any consents and releases that may be usefully obtained in connection with such Disposition;

(19) ~~(15)~~ describe the requirements applicable to any special purchase entity that will purchase an Investment Interest, including proposed capitalization, governance, and restrictions on their powers and activities; and

(20) ~~(16)~~ the basis on which any Pledge may be given or effected.

[NTD: E&Y will need to see the guidelines of the Fair Allocation Plan set in reference to parameters that will allow it to establish a modeling curve]

- [**Inflation period**: (between November 2017 – and April 2022) bill increases need to be capped at inflation (assumed at 2% for modeling purposes)]
- [**Transition Period**: (May 2022- April 2027) bills increased at a consistent rate which is set so that the borrowing will not exceed the Trust's capacity, which is determined by the Finance Service Manager]
- [**Amortization Period**: (May 2027-April 2047) equitable distribution of Finance Amount among Regulated Consumers]

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Rendering set	Standard

Legend:	
Insertion	
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Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	371
Deletions	369
Moved from	6
Moved to	6
Style change	0
Format changed	0
Total changes	752

Ontario Fair Hydro Plan.rtf

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) []
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]
CC: 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Ontario Fair Hydro Plan
Date: Monday, April 10, 2017 08:20:56

Update

This meeting has been extended from 2:00pm until 4:00pm.

Hi Everyone,

This will be a meeting to discuss the Ontario Fair Hydro Plan (OFHP).

The meeting will be held at Blakes and the main contact on site will be Lindsay Dicks (416-863-4347 or Lindsay.Dicks@blakes.com). Please inform Lindsay if there will be additional people attending from your group because she will need to pass this information along to their security desk.

To the representatives from OPG, please forward this meeting invitation to your respective outside counsel for their attendance.

Any materials available for this meeting will be provided in a future update.

If you are unable to attend in person, please use the following conference call information:

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Local dial-in number: 416-212-8013

Conference ID: 3164921#

If there are any additional scheduling needs or updates, please contact Joseph Pau (416-326-1018 or Joseph.Pau@ontario.ca).

Thanks,

Ontario Fair Hydro Plan.rtf

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) []
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Mary Anne Aldred' [MaryAnne.Aldred@oeb.ca]; Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Hosick, Sarah (TBS) (Sarah.Hosick@ontario.ca) [Sarah.Hosick@ontario.ca]
CC: 'Myers, Jonathan' [jmyers@torys.com]
Subject: Ontario Fair Hydro Plan
Date: Monday, April 10, 2017 15:40:34

Update

This meeting has been moved from Blakes to Torys due to boardroom availability.

Please contact Reception or Nicole Drake (ndrake@torys.com) when you arrive to be shown to the boardroom.

Hi Everyone,

This will be a meeting to discuss the Ontario Fair Hydro Plan (OFHP).

~~The meeting will be held at Blakes and the main contact on site will be Lindsay Dicks (416-863-4347 or Lindsay.Dicks@blakes.com). Please inform Lindsay if there will be additional people attending from your group because she will need to pass this information along to their security desk.~~

Please forward this meeting invitation to your respective teams for their attendance if any individuals are not included.

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Toll-free dial-in number: 1-866-633-1033
Local dial-in number: 416-212-8013
Conference ID: 3164921#

If there are any additional scheduling needs or updates, please contact Joseph Pau (416-326-1018 or Joseph.Pau@ontario.ca).

Thanks,

Ontario Fair Hydro Plan.rtf

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) []
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]
CC: 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Ontario Fair Hydro Plan
Date: Friday, April 07, 2017 18:39:22

Update

This meeting has been extended from 2:00pm until 4:00pm.

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Thanks,

Ontario Fair Hydro Plan.rtf

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To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
CC: 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
Subject: Ontario Fair Hydro Plan
Date: Saturday, April 15, 2017 22:06:10
Attachment 1: @

This message has been archived. View the original item
https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1DF5C15A266170E45894733349661D6AD1110000ctsbigdcapmvs01&SavesetId=20170516490539 6~20170416020613 0000~Z~205FD3B1FC78615A5A1A780C76768021View the original item

All - Please find attached the draft “Intergenerational Fairness in Hydro Rates Act, 2017”. A tremendous amount of work has gone into getting to this draft and much more work is required to get this

Attachments:

Fair Hydro Act (April 15 2017) Consultationv4.docx (136 KB)
https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1DF5C15A266170E45894733349661D6AD1110000ctsbigdcapmvs01&SavesetId=20170516490539 6~20170416020613 0000~Z~205FD3B1FC78615A5A1A780C76768021&AttachmentId=1Fair Hydro Act (April 15 2017) Consultationv4.docx

Concordance - summary to bill (April 15, 2017).docx (21 KB)
https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1DF5C15A266170E45894733349661D6AD1110000ctsbigdcapmvs01&SavesetId=20170516490539 6~20170416020613 0000~Z~205FD3B1FC78615A5A1A780C76768021&AttachmentId=2Concordance - summary to bill (April 15, 2017).docx

Excerpt EA OEBA Consequential Amendments.docx (34 KB)
https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1DF5C15A266170E45894733349661D6AD1110000ctsbigdcapmvs01&SavesetId=20170516490539 6~20170416020613 0000~Z~205FD3B1FC78615A5A1A780C76768021&AttachmentId=3Excerpt EA OEBA Consequential Amendments.docx

TOR_2528-#23107566-v13-_Fair_Hydro_Act_.docx (82 KB)
https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1DF5C15A266170E45894733349661D6AD1110000ctsbigdcapmvs01&SavesetId=20170516490539 6~20170416020613 0000~Z~205FD3B1FC78615A5A1A780C76768021&AttachmentId=4TOR_2528-#23107566-v13-_Fair_Hydro_Act_.docx

TOR_2528-#23107566-vpdf-_Fair_Hydro_Act_.pdf (363 KB)
https://ctsbigdcapmvs11.cihs.ad.gov.on.ca/EnterpriseVault/ViewMessage.asp?VaultId=1DF5C15A266170E45894733349661D6AD1110000ctsbigdcapmvs01&SavesetId=20170516490539 6~20170416020613 0000~Z~205FD3B1FC78615A5A1A780C76768021&AttachmentId=5TOR_2528-#23107566-vpdf-_Fair_Hydro_Act_.pdf

Ontario Fair Hydro Plan.rtf

From: Calwell, Carolyn (ENERGY/MEDEI/MRI) []
To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]
CC: 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]
Subject: Ontario Fair Hydro Plan
Date: Friday, April 07, 2017 18:39:22

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To: Calwell, Carolyn (ENERGY/MEDEI/MRI) [Carolyn.Calwell@ontario.ca]; Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Mary Anne Aldred' [MaryAnne.Aldred@oeb.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
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From: Pau, Joseph (MEDG/MRIS) []
To: Rehob, James (ENERGY) [James.Rehob@ontario.ca]; Shear, Dan (ENERGY) [Dan.Shear@ontario.ca]; Kacaba, Jennifer (ENERGY) [Jennifer.Kacaba@ontario.ca]; Nelms, Scott (MOF) [Scott.Nelms@ontario.ca]; Hume, Steen (ENERGY) [Steen.Hume@ontario.ca]; Christie, Tim (ENERGY) [Tim.Christie@ontario.ca]; Leslie.Wong@opg.com [Leslie.Wong@opg.com]; 'MCAULEY Tyler -LAWDIV' (tyler.mcauley@opg.com) [tyler.mcauley@opg.com]; John.S.Lee@opg.com [John.S.Lee@opg.com]; JUDY.WILSON@blakes.com [JUDY.WILSON@blakes.com]; Stephen.Ashbourne@blakes.com [Stephen.Ashbourne@blakes.com]; Bryson.Stokes@blakes.com [Bryson.Stokes@blakes.com]; 'Alan Hibben' (alan.hibben@rogers.com) [alan.hibben@rogers.com]; Brad.Purkis@tdsecurities.com [Brad.Purkis@tdsecurities.com]; Maharukh.Hilloowala@tdsecurities.com [Maharukh.Hilloowala@tdsecurities.com]; Michael.Wolff@tdsecurities.com [Michael.Wolff@tdsecurities.com]; Harold.Holloway@tdsecurities.com [Harold.Holloway@tdsecurities.com]; 'Niehaus, Katrina' [Katrina.Niehaus@gs.com]; 'Benaiah, Ian' [ian.benaiah@rbccm.com]; Nevison, Gary (Gary.Nevison@tdsecurities.com) [Gary.Nevison@tdsecurities.com]; Thom, Trevor (Trevor.Thom@tdsecurities.com) [Trevor.Thom@tdsecurities.com]; Akman, Steven (Steven.Akman@tdsecurities.com) [Steven.Akman@tdsecurities.com]; Thompson, Susan (Susan.Thompson@tdsecurities.com) [Susan.Thompson@tdsecurities.com]; Manii, David (david.manii@tdsecurities.com) [david.manii@tdsecurities.com]; 'Feldman, Michael' [mfeldman@torys.com]; 'Persaud, Donnie - Debt Capital Markets' [Donnie.Persaud@cibc.com]; 'Hill, Krista' [khill@torys.com]; 'Turnbull, Vickie' [vickie.turnbull@rbccm.com]; 'Dal Bello, David' [david.dalbello@rbccm.com]; 'Mansoori, Nina' [nmansoori@torys.com]; 'Sebastiano, Rocco' [RSebastiano@osler.com]; 'Fitzpatrick, Michael F.' [MFitzpatrick@hunton.com]; michael.boll@ieso.ca [michael.boll@ieso.ca]; Kim Marshall [Kim.Marshall@ieso.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; 'Glenn Zacher' [GZacher@stikeman.com]; 'O'Brian, Adam' [aobrian@hunton.com]; 'Emes, Aaron' [aemes@torys.com]; 'Peter Hamilton' [PHamilton@stikeman.com]; 'JORDA Jenny -FIN & C CTRL' [jenny.jorda@opg.com]; maryanne.aldred@ontarioenergyboard.ca [maryanne.aldred@ontarioenergyboard.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; 'Mary Anne Aldred' [MaryAnne.Aldred@oeb.ca]; 'Myers, Jonathan' [jmyers@torys.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]; Kandeepan, Ken (OFA) [Ken.Kandeepan@ofina.on.ca]; Hosick, Sarah (TBS) [Sarah.Hosick@ontario.ca]
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npp comments on V3.rtf

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To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
CC: Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]; Blake Langill (blake.w.langill@ca.ey.com) [blake.w.langill@ca.ey.com]; Suzie Gignac (suzie.r.gignac@ca.ey.com) [suzie.r.gignac@ca.ey.com]; Donaldson, Mark (MOHLTC) [Mark.Donaldson@ontario.ca]
Subject: npp comments on V3
Date: Friday, July 21, 2017 14:18:57
Attachment 1: FHP Memo - Draft V3 21-Jul-2017np .docx

Hi Lee Anne.

Just sharing my comments/feedback on the latest draft paper. Please let me know if you have any questions. Cindy has not had a chance to review, and will likely have additional comments and suggested edits.

Thanks and have a great weekend.

Nadine

FHP Memo - Draft V3 21-Jul-2017np .pdf

Disclaimer

Ernst & Young LLP (“EY”) prepared the attached Report only for the OPCD. EY did not perform its services on behalf of, or to serve the needs of, any other person or entity. Accordingly, EY expressly disclaims any duties or obligations to any other person or entity based its use of the attached Report. Any other person or entity must perform its own due diligence inquiries and procedures for all purposes, including, but not limited to, satisfying itself as to the financial condition and control environment of the Province or any of the other entities involved, as well as the appropriateness of the accounting for any particular situation addressed by the Report.

EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

Commented [OPCD1]: (comment only) For costs which will be funded through the rate base, it is important that both the balance sheet (net debt) and the statement of operations (net deficit/surplus) take into account those costs which will not have to be covered through current or future taxes.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) component of the FHP on Ontario's consolidated financial statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management, including the accounting opinions of their external accounting advisors. Given the complexity of the GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served. This accounting analysis considers currently available information, including efforts underway by the International Accounting Standards Board as related to rate regulated accounting. It also draws upon publicly available information including previous studies and bases for conclusions dealing with rate-regulated accounting, both in the public sector and the private sector.

Background

The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over the following four years.

Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices is to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for ~~15~~18-~~17~~19% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts, including interest and other costs, will be recoverable from ratepayers through future rates over an estimated 18-year period starting in approximately 2028. In other words, the impact of #1 above is fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the appropriate accounting ~~impact of~~for the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province in accordance with PSAS. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

In accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The rate setting process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to settle any such variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The IESO is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, as an agent.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying electricity, however, is greater than the MCP as certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators receive compensation for investing in clean energy infrastructure when it is relatively less economical. In these instances, the IESO (and previously the XXX) entered into contracts to pay the generators the excess costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts are currently included in the rates set by the OEB (as part of the Global Adjustment) with the intention they will be recovered from consumers in the same period they are paid to the generators. As previously noted, the complexity of the rate setting process results in variances between the amount paid to the generators and the amount collected from RPP consumers.

Under existing legislation, the IESO is required to fund any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent settlement with ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, the cost of supplying electricity to RPP consumers that is paid to generators will no longer be fully collected over a 12-month period~~, but over a longer period defined by legislation~~.

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from ratepayers over a thirty year period. ~~Deferring the recovery of these costs from the consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.~~

Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires th~~e~~at IESO ~~to~~ establish and maintain a variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream.

The Province has requested that OPG administer the deferral of the Global Adjustment under the FHP because of OPG's participation in the market, the regulatory knowledge OPG possesses and the ~~potential~~ expected ability to consolidate the accounting of the related activity ~~and accounting with~~ in the financial statements of OPG. To fulfill this role, OPG intends to establish a financing entity (OPG Trust) ~~to~~ which would have a choice to purchase the IESO's regulatory asset on a monthly basis ~~and~~ which ~~eliminate~~would eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

Commented [OPCD2]: Might generators have refurbishment costs to achieve a longer estimated service life, and how are those reflected in the model. No impact on accounting assumed.

Commented [OPCD3]: Maybe remove? Confusing. Not sure how the 30 year period was determined.

Commented [OPCD4]: RRAs have been commoditized in other markets, both in Canada and the US (more so in the US)

Commented [OPCD5]: OPG retains discretion, not required to purchase.

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. The current accounting for these entities is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for its general purpose financial statements.

Commented [OPCD6]: Suggested rewording for clarity (PSAS, PSAS+4200, IFRS).

This memo does not reconsider the classification of these existing entities (i.e. is based on the existing classification of the entities based on past published Public Accounts).

As discussed in detail in a subsequent section, OPG expects that it will control OPG Trust. If this is the case, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS. If, however, it is determined that OPG Trust is controlled by the Province, OPG Trust will either (a) be consolidated in the GRE on a line-by-line basis under PSAS if determined to be an OGO, or (b) reflected in the GRE through modified equity accounting under IFRS if determined to be a GBE.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and prepares its standalone, general purpose financial statements in accordance with PSAS, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE. Under PSAS, the entity has selected to apply PSAB accounting standards to meet its user needs. ~~Under PSAS, the IESO would also have the option of reporting based on IFRS. If the IESO were classified as a GBE, it would also report based on IFRS. Since the IESO has rate regulated balances, it would likely report using IFRS14, consistent with the IFRS related information provided by both Hydro One and OPG which are rate regulated.~~

Commented [OPCD7]: Tie to user needs (see FN 1 to table above).

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities[2] to be reflected in the financial statements. Under the new policy, the assets and liabilities recognized on the IESO's statement of financial position relating to the IESO-administered markets include cash, amounts due from market participants, interest receivable, revolving line of credit, HST receivable, amounts due to market participants and other liabilities. The IESO's statement of operations and accumulated surplus ~~financial statements~~ does not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS doesn't provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;

b) the entity has inventory risk before or after the customer order, during shipping or on return;

Commented [OPCD8]: Footnote below from a staff training module but may not be from an acctg perspective, or accurate. Consider deleting if not appropriate/accurate.

[2] The IESO itself does not buy or sell electricity. It administers the wholesale electricity market by authorizing market participants, publishing system forecasts and market information, producing statements and invoices, and performing financial settlement transactions for the markets.

c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and

d) the entity bears the customer's credit risk for the amount receivable from the customer.

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit~~, making the IESO a self-sustaining entity~~. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, which makes it a self-sustaining entity, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO's financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO's financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of the FHP Act to be a 'regulatory asset'.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in both the standalone financial statements of the IESO and the consolidated financial statements of the GRE. As discussed in a later section, the conclusion reached with respect to ~~When~~ the appropriate accounting for the FHP in the standalone financial statements of the IESO as an OGO reporting under PSAS ~~are considered in isolation, the impact of the conclusion reached on this issue would be eliminated to the extent the regulatory asset has been sold to OPG Trust by the end of the reporting period. The conclusion remains significant, however, due to its~~may impact ~~on~~ the consolidated financial statements of the GRE~~, which is discussed in a later section~~.

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Commented [OPCD9]: If was a GBE reporting IFRS, would be different; if was an OGO reporting under IFRS as of March 31st, would be different.

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As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Commented [NPP10]: Insert reference to consistency with previous treatment of OPA (2013 Terry Gabriel email).

Commented [OPCD11]: Terry's email (provided) was from OPA's perspective which referenced RRA. Not sure how helpful it may or may not be here. If not, please ignore comment.

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board.

The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes.

In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following:

Chapter 9, Section 1.2.3
Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.

The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's

expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Need details

Commented [LAP12]: Uplift charges are comprised of a number of things. To ask IESO for help to summarize succinctly.

RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to

provincial revenues and, therefore, is no longer a component of the IESO's invoice.

Wholesale Transmission Charge
This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge
When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*
- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with ~~XX~~OEB Decision and Order EB-2015-0298.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until

Commented [LAP13]: To confirm with Energy if all costs have shifted.

Commented [LAP14]: CV to determine if there is anything else to add from IESO's analysis.

Commented [LAP15]: To confirm with Energy if all costs have shifted.

depleted.

Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [NPP16]: Navigant report/other support

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

- *a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
- *b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future: *Variance account to be established, maintained* *24 (1) The IESO shall establish and maintain a variance account in which it records the following:* *1. The IESO deferral for each month.* *2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.* *3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or*

after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan (Appendix B), will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

ASC 980 is an acceptable source of guidance under PSAS[3]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

[3] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1. However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;
b) the public sector entity can control the economic resource and access to the future economic benefits; and
c) the transaction or event giving rise to the public sector entity's control has already occurred.

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity

Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

- *(a) the balance in the variance account shall be reduced by the amount of the payment;*
- *(b) the regulatory asset shall be adjusted accordingly;*
- *(c) the financing entity shall acquire a corresponding investment interest; and*
- *(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.*

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future

Commented [LAP17]: CV - Are there other examples to provide as analogies – anything in tangible capital assets?

.31 *When conditions indicate that a tangible capital asset no longer contributes to a government's ability to provide goods and services, or that the value*

.07 *When there has been a loss in value of a portfolio investment that is other than a temporary decline, the investment should be written down to recognize the loss. The write-down should be included in the statement of operations. In the case of an item in the fair value category, a reversal of any net remeasurements should be reported in the statement of remeasurement gains and losses.*

Commented [OPCD18]: See comment on OPCD 19)

consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro can be a relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

Commented [OPCD19]: CV to review wording (past does not predict future).

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29
The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

In April 2011, Torys LLP issued a letter to OPG relating to the legal basis of OPG's regulatory deferral and variance accounts which, as evidenced by the following excerpts, also takes the position that the transaction or event giving rise to the asset is the incurrence of costs for which recovery is provided for under statute:

OPG's deferral and variance accounts are established either by regulation or by orders of the Ontario Energy Board (the "OEB") through the proper exercise of its jurisdiction as the administrative tribunal responsible for regulating the electricity industry in Ontario. The establishing of such an account pursuant to regulation or the granting of approval by the OEB to establish such an account confers upon OPG a right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred.

The OEB has broad jurisdiction in setting payment amounts for OPG and it would not be reasonable for the legislature to have given the OEB the legislative power to authorize the establishment of accounts without also giving the OEB the power to dispose of the amounts recorded in such accounts, including in circumstances where there is no future output. Moreover, to interpret the applicable legislation in a manner that only allows for payment amounts on a volumetric basis is in our view unreasonable because it would not be consistent with the rules of statutory interpretation.

Commented [OPCD20]: Recovery not dependent on future output (eg. OPG would be able to recover, even if the entity stopped producing). Would similar apply to situation of declining demand?

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO's position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the

point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

Commented [OPCD21]: The paper includes references to all relevant documents to support a robust analysis. Assume this is both appropriate and acceptable.

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created

by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*
- *h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- *a) are normally employed to deliver government services;*
- *b) may be consumed in the normal course of operations; and*
- *c) are not for sale in the normal course of operations.*

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial

assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'.

In accordance with PSAS 1201.040(a), financial assets are presented separately on the statement of financial position. The IESO classifies its regulated assets (i.e., the original variance account and the regulated assets relating to unrecovered smart metering expenses and unrecovered PSAB transition items) as financial assets. Consistent with these other regulated assets, ~~The~~ the regulatory asset created under the FHP meets the definition of a financial asset in PSAS 1000.39 since it will be available to discharge existing liabilities or finance future operations. Although the regulatory asset is not available to discharge liabilities existing at the date of the statement of financial position, that is no different than, for example, accounts receivable. ~~does not meet the criteria in PSAS 1000.40 to be a financial asset as it does not represent a current contractual right to receive cash. Accordingly, the regulatory asset is a non-financial resource. As noted above, to be recognized as an asset in the financial statements a non-financial resource cannot be an intangible.~~

~~Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. While PSAS 1000.40 provides a finite list of items that represent financial assets, the guidance in PSAS 1000.41 .42 on non-financial assets is less definitive, using words like "such as" and "normally". In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'. Consistent with the treatment under U.S. GAAP, the regulatory asset is categorized as an other asset under PSAS and recognized in the financial statements as a non-financial asset.~~

By recognizing the regulatory asset as a financial asset, the FHP will have a neutral impact on both the Province's net debt and accumulated deficit, which ~~is~~appears appropriate and aligned ~~consistent~~ with the intent of guidance in PSAS 1100, Financial statement objectives:

Financial statements should present information to describe the government's financial position at the end of the accounting period. Such information should be useful in evaluating:

a) the government's ability to finance its activities and to meet its liabilities and contractual obligations; and
b) *the government's ability to provide future services.*

A government's net debt is an important indicator of a government's financial position, highlighting the financial affordability of future government service provision. A net debt position represents a "lien" on the ability of the government to apply financial resources and future revenues to provide services. Non-financial assets are added to net debt to calculate the other indicator of a government's financial position — its accumulated surplus or deficit. Non-financial assets are "prepaid service potential". Reporting a government's recognized non-financial resources as part of its financial position provides

Commented [OPCD22]: REVIEW

Commented [OPCD23]: Would inserting reference to precedents of RRA commoditizing be helpful?

information necessary for a more complete understanding of a government's debt position, financial position and future operating requirements.

Governments provide public services and redistribute wealth for a variety of social and economic purposes. To meet those objectives, governments need information about the cost of services and the affordability of services. An understanding of the extent of the financial "lien" the government has on its ability to provide future services as a result of past transactions and events is essential information. Governments also need to have an appreciation of the magnitude of the total economic resources they have on hand to deliver services. A government's net financial resources / net debt position, assessed in combination with the non-financial resources position of the government, provides a measure of the net recognized economic resources available to the government at the financial statement date to provide services in the future.

If the regulatory asset is not recognized as a financial asset, the Province's net debt will increase significantly, suggesting that the Province has a much higher future revenue requirement. This would be inaccurate, however, since the regulatory asset is going to be recovered under statute from electricity consumers, not taxpayers.

Commented [OPCD24]: If not recognized, then impact on annual surplus/deficit is significant as well, and under Balanced Budget Legislation would have material impacts which would be contrary to the public interest (based on ON's practice of defining balanced budget based on PSAS).

……

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS, depends on whether the regulatory asset is eligible for recognition as an asset for accounting purposes under PSAS. To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes. The following table illustrates the journal entries to be booked by the IESO under both scenarios:

Scenario A – Regulated Asset			**Scenario B – Not a Regulated Asset**		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Asset	(100)	CR	Gain	(100)

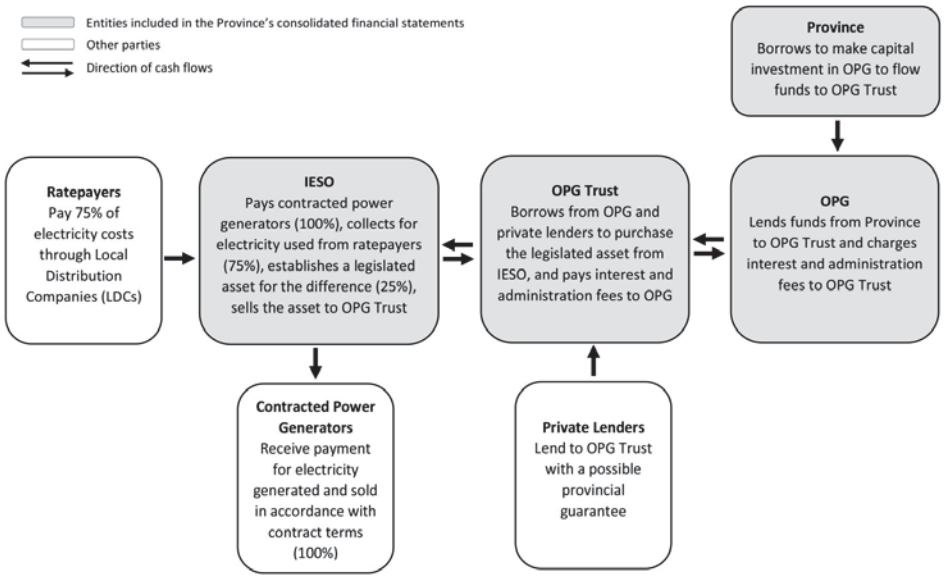
Commented [OPCD25]: Consider inserting 2 additional lines for impact on net debt and impact on annual surplus/deficit? If not sold by the end of the year, will have a loss on the IESO f/s and the province's f/s.

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized

as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

APPENDIX A

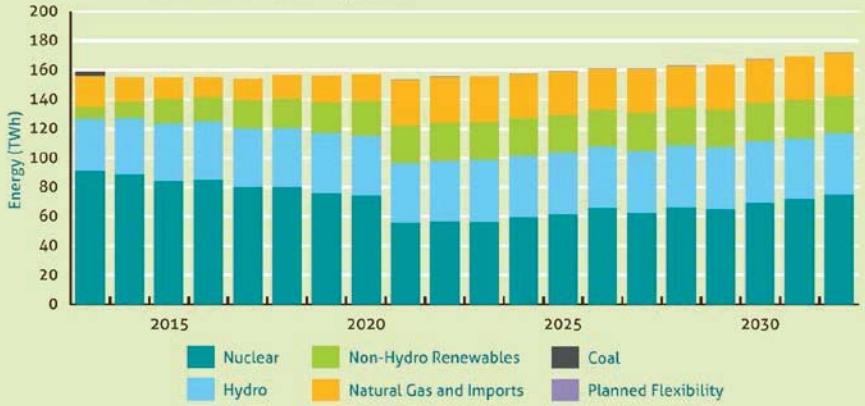
Proposed Legislated Transaction Structure
Prepared by the Office of the Auditor General of Ontario



Commented [OPCD26]: Can chart be expanded to include impact on CFS (consolidation of IESO reflecting RRA on CFS, Interest Income from OPG through revenue of GBE will help to offset borrowing costs incurred by Province on equity injection).

APPENDIX B

Figure 19: Ontario's Forecast Electricity Production (TWh)



Notes: The Planned Flexibility identified in Figure 19 is required to meet peak requirements and represents less than 1 TWh of energy per year. Forecasting of electricity production includes the expectation of imports and exports of electricity in all years. Imports and exports are an important component in managing the operation of the electricity system. As a result, electricity production forecast exceeds the forecast Ontario consumer demand.

npp comments on V3.rtf

From: Petsche, Nadine (TBS) []
To: LeeAnne.Probert@ca.ey.com [LeeAnne.Probert@ca.ey.com]
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Subject: npp comments on V3
Date: Friday, July 21, 2017 14:18:57
Attachment 1: FHP Memo - Draft V3 21-Jul-2017np .docx

Hi Lee Anne.

Just sharing my comments/feedback on the latest draft paper. Please let me know if you have any questions. Cindy has not had a chance to review, and will likely have additional comments and suggested edits.

Thanks and have a great weekend.

Nadine

FHP Memo - Draft V3 21-Jul-2017np .pdf

Disclaimer

Ernst & Young LLP (“EY”) prepared the attached Report only for the OPCD. EY did not perform its services on behalf of, or to serve the needs of, any other person or entity. Accordingly, EY expressly disclaims any duties or obligations to any other person or entity based its use of the attached Report. Any other person or entity must perform its own due diligence inquiries and procedures for all purposes, including, but not limited to, satisfying itself as to the financial condition and control environment of the Province or any of the other entities involved, as well as the appropriateness of the accounting for any particular situation addressed by the Report.

EY did not perform an audit, review, examination or other form of attestation (as those terms are defined by the CPA Canada) of the financial statements of the Province or any other entities involved. Accordingly, EY did not express any form of assurance on the accounting matters, financial statements, any financial or other information or internal controls of the Province or any of the other entities involved. EY did not conclude on the appropriate accounting treatment based on specific facts or recommend which accounting policy/treatment the Province or any of the other entities involved should select or adopt.

The observations relating to accounting matters that EY provided to the OPCD were designed to assist them in reaching their own conclusions and do not constitute our concurrence with or support of the accounting or reporting of the Province or the other entities involved. The Province and the other entities involved are each responsible for the preparation of their own financial statements, including all of the judgments inherent in preparing them.

Introduction

Ontario's consolidated financial reports are prepared in accordance with the accounting principles for governments recommended by the Public Sector Accounting Board (PSAB) of the Chartered Professional Accountants of Canada (CPA Canada). In order to meet the needs of users, including the legislature and the public, for accountability in government reporting and decision making, it is essential that public sector financial statements reflect the economic substance of the government's activities.

Commented [OPCD1]: (comment only) For costs which will be funded through the rate base, it is important that both the balance sheet (net debt) and the statement of operations (net deficit/surplus) take into account those costs which will not have to be covered through current or future taxes.

In March 2017, the Government of Ontario (the Province) announced its Fair Hydro Plan (FHP). In assessing the appropriate accounting treatment for the Global Adjustment refinancing (GA Refinancing) component of the FHP on Ontario's consolidated financial statements, the Office of the Provincial Controller considered the authoritative guidance issued by PSAB, as well as the accounting assessments of the Independent Electricity System Operator (IESO) and Ontario Power Generation (OPG) management, including the accounting opinions of their external accounting advisors. Given the complexity of the GA Refinancing structure, the exercise of professional judgement is necessary to ensure that key financial reporting objectives of transparency and accountability are best served. This accounting analysis considers currently available information, including efforts underway by the International Accounting Standards Board as related to rate regulated accounting. It also draws upon publicly available information including previous studies and bases for conclusions dealing with rate-regulated accounting, both in the public sector and the private sector.

Background

The FHP will reduce electricity bills for Regulated Price Plan (RPP) customers (as well as those non-RPP consumers who receive the 8% rebate as specified in the Ontario Rebate for Electricity Act, 2016) by approximately 25% for a period of one year, starting in the summer of 2017, and limit the increase in electricity bills to the rate of inflation over the following four years.

Because distribution rates vary across the province and customers use different amounts of electricity, the goal in calculating the new RPP electricity prices is to achieve a 25% reduction for a "proxy" customer, which is established under the Fair Hydro Act, 2017 (FHP Act) as a residential customer of Toronto Hydro who uses 750 kWh of electricity a month, pays time-of-use RPP electricity prices and has the time-of-use consumption profile of a typical residential customer.

The measures that make up the 25% average reduction include:

1. Spreading the cost of Ontario's clean energy investments over the expected lifecycle of the generation infrastructure assets. This is expected to account for ~~15~~18-~~17~~19% of the overall reduction.
2. Shifting the cost of the Ontario Electricity Support Program (OESP) and Rural or Remote Rate Protection (RRRP) program from ratepayers to taxpayer-funded programs.
3. An 8% rebate equal to the provincial portion of the HST, which took effect on January 1, 2017.

Under the first measure, the Province will borrow funds to pay a portion of current electricity costs, thereby temporarily reducing the amount paid by eligible ratepayers. The deferred amounts, including interest and other costs, will be recoverable from ratepayers through future rates over an estimated 18-year period starting in approximately 2028. In other words, the impact of #1 above is fully borne by the ratepayers – it is a shift in the timing of payment for the clean energy investments, while the impacts of #2 and #3 are reducing the cost to the ratepayer, but at the cost of the taxpayer.

Objective

The objective of this memo is to assess the appropriate accounting ~~impact of~~for the first measure of the FHP (i.e. deferred recovery of clean energy costs) on the consolidated financial statements of the Province in accordance with PSAS. **[NTD – Consider if document should discuss #2 and #3. This would contrast the different treatment by the Province]**

Background

The Ontario Energy Board (OEB) has been established by the Province to be Ontario's independent energy regulator.

In accordance with Section 78(3.1) of the Ontario Energy Board Act, 1998 (the OEB Act), the OEB is responsible for determining electricity commodity prices for RPP consumers. Section 78(3.3) of the OEB Act requires the OEB to forecast the cost of electricity used by RPP consumers and ensure the prices they are charged reflect that cost. The rate setting process is highly complex and involves numerous forecasts and estimates. As a result, the OEB regulatory framework allows for variances between the actual cost of supplying electricity and the amount collected from RPP consumers.

In setting the rates for RPP consumers, Section 78(3.3) of the OEB Act requires the OEB to settle any such variances through rates over a 12-month period. This is achieved through a price adjustment charged or credited to RPP consumers. This adjustment forms part of the Global Adjustment paid by consumers.

The IESO is the administrator of Ontario's wholesale electricity market. The IESO settles the market with all participants, as an agent.

As part of its role as market administrator, the IESO calculates the market price for electricity (the Market Clearing Price, or MCP) by running the bids and offers of the market participants through an algorithm. The actual cost of supplying electricity, however, is greater than the MCP as certain generators are paid additional amounts relating to the cost of clean energy initiatives they have undertaken. From a government policy perspective, decisions as to what is in the best interest of the public regarding electricity generation in Ontario are not based solely on economics, they are also influenced by environmental, social and political factors. Accordingly, generators receive compensation for investing in clean energy infrastructure when it is relatively less economical. In these instances, the IESO (and previously the XXX) entered into contracts to pay the generators the excess costs (plus a reasonable rate of return thereon) over an extended period of time, typically 20 years. The amounts paid to the generators under the terms of these contracts are currently included in the rates set by the OEB (as part of the Global Adjustment) with the intention they will be recovered from consumers in the same period they are paid to the generators. As previously noted, the complexity of the rate setting process results in variances between the amount paid to the generators and the amount collected from RPP consumers.

Under existing legislation, the IESO is required to fund any cash shortfall relating to differences arising between the actual cost of supplying electricity and the amount collected from RPP consumers. In accordance with Section 25.33(5) of the Electricity Act, 1998 (the Electricity Act), the IESO has established and maintains a variance account to track these temporary differences (the original variance account) for subsequent settlement with ratepayers. Cash shortfalls in the IESO arising from the original variance account are funded through financing provided by the OFA.

As described below, once the FHP is implemented, the cost of supplying electricity to RPP consumers that is paid to generators will no longer be fully collected over a 12-month period~~, but over a longer period defined by legislation~~.

Under the FHP, while generators would continue to be paid over a twenty year period as contracted, the amounts paid by the IESO to the generators would be recovered from ratepayers over a thirty year period. ~~Deferring the recovery of these costs from the consumers on a longer-term basis would create a significant interim cash shortfall for the IESO.~~

Section 24(1) of the Ontario Fair Hydro Plan Act (the FHP Act) requires th~~e~~at IESO ~~to~~ establish and maintain a variance account (separate from the original variance account described above) to track the cash shortfall specifically resulting from the implementation of the FHP (the FHP variance account). Due to the longer recovery period, and additional recoverable financing and management fee costs, the balance in the account is forecast to increase significantly. The balance in this variance account is defined in Section 1(1) of the FHP Act to be a regulatory asset[1]. The IESO is entitled under Section 25 of the FHP Act to recover the regulatory asset from RPP consumers in the future, which will be achieved through the OEB setting rates to allow for such recovery. Section 26 of the FHP Act also permits the IESO to transfer or sell the regulatory asset to a financing entity to fund its cash shortfall, thus commoditizing the future cash flow stream.

The Province has requested that OPG administer the deferral of the Global Adjustment under the FHP because of OPG's participation in the market, the regulatory knowledge OPG possesses and the ~~potential~~ expected ability to consolidate the accounting of the related activity ~~and accounting with~~ in the financial statements of OPG. To fulfill this role, OPG intends to establish a financing entity (OPG Trust) ~~to~~ which would have a choice to purchase the IESO's regulatory asset on a monthly basis ~~and~~ which ~~eliminate~~would eliminate any cash shortfall in the IESO. Through this arrangement, OPG Trust will finance these purchases through a combination of provincial borrowing (flowed through OPG as an equity investment), amounts advanced from OPG and direct borrowing from capital markets.

Basis of Accounting

In accordance with PSAS 1300.07, the government reporting entity (GRE) for the Province comprises government components and those organizations that are controlled by the government.

As defined in the Introduction to PSAS, the following types of organizations are controlled by the government: (a) government business enterprises (GBE), government non-for profit organizations (GNPO), and other government organizations (OGO).

[1] To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes.

Commented [OPCD2]: Might generators have refurbishment costs to achieve a longer estimated service life, and how are those reflected in the model. No impact on accounting assumed.

Commented [OPCD3]: Maybe remove? Confusing. Not sure how the 30 year period was determined.

Commented [OPCD4]: RRAs have been commoditized in other markets, both in Canada and the US (more so in the US)

Commented [OPCD5]: OPG retains discretion, not required to purchase.

GNPOs and OGOs are considered government units and, in accordance with PSAS 1300.27, are consolidated in the GRE on a line-by-line basis. For consolidation purposes, the financial information of government units is required to be prepared in accordance with PSAS.

GBEs, on the other hand, are accounted for in the GRE using the modified equity method as prescribed by PSAS 1300.35. Under the modified equity method, which is described in detail in PSAS 3070, INVESTMENTS IN GOVERNMENT BUSINESS ENTERPRISES, the equity method of accounting is modified only to the extent that the GBE's accounting principles (which are required to be IFRS in accordance with paragraph 17 of the Introduction to PSAS) are not adjusted to conform to those of the government.

As documented in Schedule 8 to the consolidated financial statements of the Province, the IESO is an OGO and OPG is a GBE. The current accounting for these entities is as follows:

		ENTITY STATEMENTS	GRE STATEMENTS	
ENTITY	**CLASSIFICATION**	**GAAP**	**ACCOUNTING METHOD**	**GAAP**
IESO	OGO	PSAS[1]	Consolidation	PSAS
OPG	GBE	US GAAP[2]	Modified equity method	IFRS[3]

1. For purposes of preparing general purpose financial statements, an OGO applies PSAS unless those standards do not meet the needs of its financial statement users. In that situation, IFRS should be considered and the most appropriate set of standards applied.
2. Although a GBE is required to apply IFRS for purposes of preparing general purpose financial statements, the Ontario Securities Commission has approved an exemption that allows OPG to apply US GAAP up to January 1, 2019 for purposes of filing its financial statements with the OSC.
3. OPG applies IFRS 14, which permits it to continue to account for rate-regulated activities using US GAAP guidance for its general purpose financial statements.

Commented [OPCD6]: Suggested rewording for clarity (PSAS, PSAS+4200, IFRS).

This memo does not reconsider the classification of these existing entities (i.e. is based on the existing classification of the entities based on past published Public Accounts).

As discussed in detail in a subsequent section, OPG expects that it will control OPG Trust. If this is the case, OPG Trust will be consolidated by OPG and, therefore, reflected in the GRE through the modified equity accounting of OPG under IFRS. If, however, it is determined that OPG Trust is controlled by the Province, OPG Trust will either (a) be consolidated in the GRE on a line-by-line basis under PSAS if determined to be an OGO, or (b) reflected in the GRE through modified equity accounting under IFRS if determined to be a GBE.

Example

For simplicity, the following example will be used in this document to illustrate the accounting impact of the FHP on the various entities involved:

- Ratepayer bill is currently $588, and the 17% reduction related to the FHP is $100.
- The Province directly borrows 44%, or $44, to make an equity contribution to OPG, which OPG then loans to OPG Trust.
- OPG directly borrows 5%, or $5, and loans it to OPG Trust.
- OPG Trust directly borrows 51%, or $51, from capital markets.

Analysis

IESO

The IESO is presently classified as an OGO and prepares its standalone, general purpose financial statements in accordance with PSAS, which is consistent with the basis of presentation required for purposes of consolidating the IESO into the GRE. Under PSAS, the entity has selected to apply PSAB accounting standards to meet its user needs. ~~Under PSAS, the IESO would also have the option of reporting based on IFRS. If the IESO were classified as a GBE, it would also report based on IFRS. Since the IESO has rate regulated balances, it would likely report using IFRS14, consistent with the IFRS related information provided by both Hydro One and OPG which are rate regulated.~~

Commented [OPCD7]: Tie to user needs (see FN 1 to table above).

Current State

Effective January 1, 2016, the IESO adopted on a retrospective basis a new accounting policy that requires its market-settlement activities[2] to be reflected in the financial statements. Under the new policy, the assets and liabilities recognized on the IESO's statement of financial position relating to the IESO-administered markets include cash, amounts due from market participants, interest receivable, revolving line of credit, HST receivable, amounts due to market participants and other liabilities. The IESO's statement of operations and accumulated surplus ~~financial statements~~ does not include the revenue and expenses of the financial transactions of market participants within the IESO-administered markets. This indicates IESO management has taken the position that the IESO is an agent, not a principal, in the IESO-administered markets and, accordingly, records revenue on a net basis.

PSAS doesn't provide any specific guidance as to how it should be determined whether an entity is acting as a principal or an agent in the context of revenue recognition, but both IFRS and US GAAP do. The relevant guidance in IFRS is as follows:

IAS 18.8

Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

IAS 18.IE21

Determining whether an entity is acting as a principal or as an agent (2009 amendment).

Paragraph 8 states that 'in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.' Determining whether an entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate that an entity is acting as a principal include:

a) the entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;

b) the entity has inventory risk before or after the customer order, during shipping or on return;

Commented [OPCD8]: Footnote below from a staff training module but may not be from an acctg perspective, or accurate. Consider deleting if not appropriate/accurate.

[2] The IESO itself does not buy or sell electricity. It administers the wholesale electricity market by authorizing market participants, publishing system forecasts and market information, producing statements and invoices, and performing financial settlement transactions for the markets.

c) the entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and

d) the entity bears the customer's credit risk for the amount receivable from the customer.

An entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. One feature indicating that an entity is acting as an agent is that the amount the entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.

Application of the above IFRS guidance supports the conclusion that the IESO is an agent in the market-settlement process and, therefore, recognizing revenue on a net basis is appropriate. IESO has completed a more thorough analysis of their position that it is an agent in the settlement of the market and reconsideration of that decision is not the topic of this memo.

The IESO is required by legislation to carry out its operations without the purpose of gain or profit~~, making the IESO a self-sustaining entity~~. Other than the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs, which makes it a self-sustaining entity, all amounts the IESO receives from market participants must be paid out to other market participants who have regulatory or contractual rights to receive payments from those collected amounts.

In the context of applying the principal vs. agent guidance, the amounts the IESO is permitted to keep in accordance with its own rate order from the OEB to cover its internal operating costs are recorded as system fee revenue in the IESO's financial statements. System fees are not characterized as being part of the IESO-administered markets. Accordingly, any references to the IESO-administered markets in this document exclude system fees.

As stated in the IESO financial statements, the IESO-administered markets is a balancing system, and as such, the net position of market accounts will ultimately settle to a nil balance in accordance with market rules. However, due to settlement timing differences, the net position of market accounts will not be in a nil position from a cash flow perspective at the end of any reporting period.

This raises a question as to how a cash flow deficit related to the market-settlement process should be accounted for in the financial statements of the IESO. Two approaches are as follows:

1. The cash flow deficit is recognized as an asset when it occurs and then derecognized in the period in which it is settled. Under this approach, the net position of market accounts will always be in a nil balance in the IESO's balance sheet and there is no impact on the IESO's income statement.
2. The cash flow deficit is recognized as a charge to income when it occurs and then reversed through income in the period in which it is settled.

IESO management has concluded it is appropriate to recognize existing cash flow deficits arising from the market-settlement process as an asset. This is evidenced by the fact the components of the market accounts net to a nil closing balance at year end in the IESO's financial statements for the year ended December 31, 2016. These financial statements also explicitly state there is no impact to the accumulated deficit or revenues and expenses as the IESO is not party to these transactions as per the market rules.

Although the IESO's financial statements include the following accounting policy on regulated assets and liabilities, the asset relating to the cash flow deficit discussed above has not been specifically labeled as a regulated asset:

As a rate-regulated entity, the IESO, in appropriate circumstances establishes regulated assets or liabilities and thereby defers the impact on the statement of operations of certain expenses or revenues because they are probable to be collected or refunded to market participants through future billings. The IESO has applied guidance from United States Generally Accepted Accounting Principles (US GAAP) Topic 980, Regulated Operations, in this policy.

The only two balances specifically labeled as being recognized in the IESO's financial statements under the above policy are (i) unrecovered smart metering expenses, and (ii) unrecovered PSAB transition items. IESO management has, however, indicated in discussions that the cash flow deficit/surplus associated with the original variance account is also considered to be a regulated asset/liability under ASC 980 even though it has been presented as part of the Market Accounts balances in the statement of financial position.

Impact of FHP

The implementation of the FHP results in the IESO establishing and maintaining the FHP variance account to track the resulting cash flow deficit, the balance of which is defined for the purposes of the FHP Act to be a 'regulatory asset'.

The act of legislating the balance in the FHP variance account to be a regulatory asset does not, in and of itself, result in its recognition as an asset for accounting purposes. Accordingly, the primary issue at hand is whether the legislated regulatory asset is eligible for recognition as an asset in both the standalone financial statements of the IESO and the consolidated financial statements of the GRE. As discussed in a later section, the conclusion reached with respect to ~~When~~ the appropriate accounting for the FHP in the standalone financial statements of the IESO as an OGO reporting under PSAS ~~are considered in isolation, the impact of the conclusion reached on this issue would be eliminated to the extent the regulatory asset has been sold to OPG Trust by the end of the reporting period. The conclusion remains significant, however, due to its~~may impact ~~on~~ the consolidated financial statements of the GRE~~, which is discussed in a later section~~.

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As noted above, the IESO has adopted a policy to apply the U.S. GAAP guidance in ASC 980 in connection with accounting for rate regulated assets. IESO management has applied this guidance and concluded the regulatory asset created by the FHP can be recognized as a regulated asset for accounting purposes in the financial statements of the IESO. The IESO's auditors, KPMG, concur with this position, as evidenced from the following excerpt from a draft letter issued by KPMG on May 16, 2017 (the KPMG Letter):

We have considered the foregoing analysis and management's conclusion. We concur that the variance account created by Bill 132 will meet the criteria for the recognition of a regulatory asset stated in ASC 980-340-25-1. Furthermore, we have also considered the criteria stated in ASC 980-10-15-2 and believe that IESO should be allowed to continue to use the guidance for regulated operations of Topic 980.

Commented [NPP10]: Insert reference to consistency with previous treatment of OPA (2013 Terry Gabriel email).

Commented [OPCD11]: Terry's email (provided) was from OPA's perspective which referenced RRA. Not sure how helpful it may or may not be here. If not, please ignore comment.

Recognizing the regulatory asset as a regulated asset for accounting purposes in the financial statements of the IESO in accordance with ASC 980 is appropriate only if all of the following conditions are met:

a) the operations of the IESO (or the relevant portion thereof) are within the scope of ASC 980 based on the criteria in ASC 980-10-15-2,
b) the FHP variance account meets the criteria in ASC 980-340-25-1 for capitalization as a regulatory asset, and
c) ASC 980 is an appropriate source of GAAP under PSAS.

Each of these items is addressed in turn:

a) Scope of ASC 980

ASC 980-10-15-2 states the following:

The guidance in the Regulated Operations Topic applies to general-purpose external financial statements of an entity that has regulated operations that meet all of the following criteria:

a) The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.
b) The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products. This criterion is intended to be applied to the substance of the regulation, rather than its form. If an entity's regulated rates are based on the costs of a group of entities and the entity is so large in relation to the group of entities that its costs are, in essence, the group's costs, the regulation would meet this criterion for that entity.
c) In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

The Office of the Auditor General of Ontario (OAGO) does not believe the IESO meets the criteria to be within the scope of ASC 980. This is evidenced by the following statement included in *Legislated Accounting Included in Bill 132, Including the Proposed Ontario Fair Hydro Plan Act, 2017 – Submission to Standing Committee on Justice Policy* dated May 25, 2017 (OAGO Submission):

Moreover, IESO is not engaging in rate-regulated activities, and the contracts under its administration were never subject to rate regulation.

Ontario's electricity industry is rate-regulated. Rates paid by electricity consumers are regulated by the OEB such that over time rates equal cost plus, where applicable, a reasonable rate of return. Providing electricity to consumers involves several different parties, including generators, transmitters, distributors and the IESO. Some of these parties engage in rate-regulated activities, some do not.

The IESO serves an important and active role in Ontario's electricity market, irrespective of the fact that it records market transactions on net basis in the financial statements. The IESO balances the supply of and demand for electricity in Ontario and directs its flow across the province's transmission lines, oversees the wholesale electricity market, where the price of energy is determined, and administers the rules that govern the market. In determining whether the IESO has regulated operations, the focus is on whether the rates the IESO charges its customers are regulated and not whether the costs incurred by the IESO are regulated (although a number of them are).

The following supports the position of IESO management that the above criteria are met and the IESO's operations are within the scope of ASC 980:

The entity's rates for regulated services or products provided to its customers are established by or are subject to approval by an independent, third-party regulator or by its own governing board empowered by statute or contract to establish rates that bind customers.

As noted in a research paper issued in 2001 by a taskforce established by the CICA (the CICA Research Report), there is a view held by some that, with respect to rate regulation in the public sector, there is usually no *independent, third-party regulator* because the government controls both the enterprise and the regulatory agency. Accordingly, it is important to point out that independence is not required to meet the criteria in ASC 980-10-15-2(a). The requirement is an *independent, third-party regulator* or *its own governing board empowered by statute or contract*. In fact, paragraph 64 of the Basis for Conclusions for FAS 71, ACCOUNTING FOR THE EFFECTS OF CERTAIN TYPES OF REGULATION (which is the pre-codified version of ASC 980), specifically states that the criteria in ASC 980-10-15-2(a) was modified so as not to preclude application by government utilities with rates set by their own governing board.

The OEB has been established by the Province to be Ontario's independent energy regulator and, therefore, is considered the governing board of the IESO. The OEB's mandate and authority come from the *Ontario Energy Board Act, 1998*, the *Electricity Act, 1998*, and a number of other provincial statutes. As described in more detail below, the IESO's rates are established in accordance with these statutes.

In the context of its market-settlement role, the IESO's 'customers' are the Market Participants buying electricity from the IESO-controlled grid. All Market Participants are required to execute a Participation Agreement with the IESO. In accordance with Article 3.1 of the standard Participation Agreement, each Market Participant has agreed to be bound by and to comply with all of the provisions of the Market Rules, which includes the following:

Chapter 9, Section 1.2.3
Notwithstanding any other provision within the market rules, market participants shall remit to the IESO such applicable settlement amounts and other payments as may be required under the relevant provisions of the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and any related regulations, as amended from time to time.

The IESO's operations meet the criteria in ASC 980-10-15-2(a) because the rates charged by the IESO are based on statutes. As discussed in more detail below, the rates are designed to recover the IESO's

expenditure for providing the regulated services and the pass-through costs related to the energy purchased from the generators and to government programs.

The main components of invoices issued by the IESO to Market Participants are as follows:

- Commodity Charges
  - Hourly Ontario Energy Price
  - Global Adjustment
- Wholesale Market Service Charges
  - IESO Administration Fee
  - Uplift Charges
  - Rural and Remote Electricity Rate Protection
- Wholesale Transmission Charges
- Debt Retirement Charge

Each component is determined as follows:

Commodity Charges

In accordance with Section 25.33(1) of the Electricity Act, the IESO is required to price electricity to recover costs:

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect,

a) amounts paid to generators, the Financial Corporation and distributors, whether the amounts are determined under the market rules or under section 78.1, 78.2 or 78.5 of the Ontario Energy Board Act, 1998;

b) amounts paid to entities with whom the IESO has a procurement contract, as determined under the procurement contract; and

c) such amounts as may be prescribed that are paid or incurred by the IESO in relation to the Ontario Fair Hydro Plan Act, 2017. *2014, c. 7, Sched. 7, s. 8 (1); 2017, c. 16, Sched. 1, s. 43 (2).*

Market Participants are initially invoiced for consumed electricity at the Hourly Ontario Energy Price (HOEP), which is calculated as the average of the twelve market clearing prices set in each hour. In accordance with Section 25.33(5) of the Electricity Act, the IESO is required to track differences between the amounts invoiced to Market Participants at HOEP and actual costs incurred in a variance account:

Variance accounts

(5) The IESO shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section or under the Ontario Fair Hydro Plan Act, 2017. *2004, c. 23, Sched. A, s. 37; 2014, c. 7, Sched. 7, s. 8 (5); 2017, c. 16, Sched. 1, s. 43 (5).*

Sections 3.1 and 3.3 of the OEB Act require the variance account to be settled over a twelve-month period, which is done through the Global Adjustment on a Market Participant's invoice:

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

a) to such different classes of consumers as may be prescribed by the regulations; and

b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the Electricity Act, 1998 *and shall ensure that the rates reflect these costs; and*

b) the Board shall take into account balances in the IESO's variance accounts established under section 25.33 of the Electricity Act, 1998 *and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1); 2014, c. 7, Sched. 23, s. 6 (2).*

Although the implementation of the FHP involves the deferral of costs over an extended period of time, it does not change the IESO's obligation under the OEB Act to price electricity to recover incurred costs in full. The deferral relating to the FHP is tracked in a separate variance account in accordance with Section 24(1) of the Fair Hydro Plan Act, 2017 (the FHP Act):

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

The right for the IESO to recover the variance account is set out in Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Wholesale Market Service Charges

The IESO charges Market Participants administrative fees to operate the wholesale electricity market and manage the electric power system in Ontario. These fees are required to be approved by the OEB under Section 25(1) of the Electricity Act on an annual basis.

Review of requirements and fees

25 (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves the IESO's proposed business plan for the fiscal year under section 24. 2014, c. 7, Sched. 7, s. 3 (1).

Uplift charges

Need details

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RRRP charges

The RRRP program provides a rate subsidy to rural and remote residential customers who face higher distribution costs. Under the FHP Act, the cost of the RRRP program has shifted from ratepayers to

provincial revenues and, therefore, is no longer a component of the IESO's invoice.

Wholesale Transmission Charge
This charge to LDCs and some large consumers covers the cost incurred by transmission companies to construct and maintain the high-voltage transmission lines needed to transport electricity from generating stations to LDCs or consumers. In accordance with Section 78(1) of the OEB Act, the rate for this service is approved by the OEB.

Debt Retirement Charge
When the Ontario electricity sector was restructured in April 1999, the Ontario Electricity Financial Corporation (OEFC) took on $20.9 million of stranded debt from Ontario Hydro. The OEFC services and retires the stranded debt with cash flows from a number of sources in the electricity sector, one of those currently being debt retirement charges paid by certain ratepayers (ratepayers cease paying debt retirement charges April 1, 2018).

Under Regulation 494/01, DEBT RETIREMENT CHARGE – ADMINISTRATION, the IESO is appointed as a collector of debt retirement charges (Section 2) and is required to collect a debt retirement charge on behalf of the OEFA from every entity who withdraws electricity from the IESO-controlled grid (Section 6(2)). The prescribed rate for the debt retirement charge is set out in Regulation 493/01, DEBT RETIREMENT CHARGE – RATES AND EXEMPTIONS.

The regulated rates are designed to recover the specific entity's costs of providing the regulated services or products.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the entity's costs can be charged to and collected from customers.

As discussed in detail above, the IESO is required by statute to set prices to recover costs.

The majority of the monthly amount invoiced by the IESO to Market Participants represents a direct flow through of costs as they are incurred, but there are certain types of costs for which recovery may be deferred. For those deferred costs, the IESO is dependent on the future consumption of electricity by rate-payers to fully recover costs.

Based on relatively short recovery periods, it is reasonable to assume there will be sufficient demand to recover the deferred costs that currently exist. Specifically:

- RPP and RRRP variance accounts are recovered over twelve months in accordance with Section 3.3(b) of the OEB Act. *(Note - Under the FHP, responsibility for the cost of the RRRP program is being transferred to the Provincial budget and rate-payers will no longer be directly charged)*
- The Smart Metering Entity charge is recovered over the period from May 1, 2013 to October 31, 2018 in accordance with ~~XX~~OEB Decision and Order EB-2015-0298.

Under the FHP, responsibility for the cost of the OESP program is being transferred to the Provincial budget and rate-payers will no longer be charged for the cost of this program. The OESP variance account, which is currently in a credit balance, will be used to fund the cost of the program until

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Although the timing of the recovery of the FHP variance account has not yet been established by the OEB, the wording and intent of the proposed legislation is clear that it is intended by law to be recoverable over a period of 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that there will be sufficient demand to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

In addition to the general scope requirements of ASC 980 discussed above, specific consideration is made as to whether the following scope exception in ASC 980-10-15-7 applies to the FHP:

The guidance in the Regulated Operations Topic does not apply to any of the following transactions:

a) *Accounting for price controls that are imposed by governmental action in times of emergency, high inflation, or other unusual conditions, or accounting for contracts in general. However, if the terms of a contract between an entity and its customer are subject to regulation and the criteria of paragraph 980-10-15-2 are met with respect to that contract, the guidance in this Topic shall apply.*

Based on the discussion below, this scope exemption is not applicable to the FHP.

Electricity cost reductions resulting from the FHP do not represent price controls imposed by the Province in a time of emergency, high inflation, or other unusual conditions. As noted in the 2017 budget speech, the 2017 Ontario Budget – A Stronger, Healthier Ontario, the FHP is a fairer way to share the costs of building a cleaner, more modern and reliable electricity generation system. In particular, the budget speech states:

Commented [NPP16]: Navigant report/other support

Recognizing that existing electricity infrastructure is expected to last for decades to come, the Province would refinance the cost of those capital investments to ensure that system costs are more equitably distributed over time.

The following paragraph from the Basis for Conclusion for FAS 71 also provides some insight as to the specific concerns relating to government imposed price controls that resulted in the scope exception in ASC 980-10-15-7(a):

70. The first scope limitation of paragraph 8—excluding accounting for price controls imposed by governmental action in times of emergency, high inflation, or other unusual conditions—was included in the Discussion Memorandum. Price controls imposed in periods of unusual conditions are not expected to be applied consistently over an extended period. Indeed, their duration usually is limited by statute. In that environment, assurance of future benefits cannot be provided by probable future actions of the price control regulator because that regulator may not exist at a given future date.

The implementation of the FHP does not create the type of environment described in FAS 71.BC70 as it is governed by the OEB and there is no concern the OEB will not continue to exist.

The second part of the scope exception in ASC 980-10-15-7(a) relating to the accounting for contracts is further explained in the following paragraph from the Basis for Conclusion for FAS 71:

71. Accounting for contracts in general was also excluded from the scope of the Discussion Memorandum. The economic effects of cost reimbursement contracts are in some respects similar to the economic effects of the type of regulation addressed by this Statement. However, most contracts tend to be relatively short-term, whereas regulation of enterprises covered by this Statement is expected to continue beyond the foreseeable future. The Board noted that other authoritative literature addresses contract accounting and concluded that it should exclude the general issue of contract accounting from the scope of this Statement.

Although the impetus for the FHP relates to term of contracts the IESO has entered into with certain generators, the FHP does not change the existing accounting for these contracts.

Application of ASC 980-340-25-1 to the regulatory asset

ASC 980-340-25-1 states the following:

Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:

- *a) It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.*
- *b) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.*

A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date.

The following supports the IESO's position that the FHP variance account meets the above criteria for capitalization:

It is probable (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future: *Variance account to be established, maintained* *24 (1) The IESO shall establish and maintain a variance account in which it records the following:* *1. The IESO deferral for each month.* *2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.* *3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or*

after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

The recovery of the regulatory asset is, however, dependent on future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, it is reasonable to conclude that it is probable there will be sufficient demand in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity Production in Achieving Balance – Ontario's Long-Term Energy Plan (Appendix B), will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties (e.g., investors) to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.

Based on the above excerpts from the FHP Act, it is clear the IESO will be recovering costs previously incurred rather than providing for expected levels of similar future costs.

ASC 980 is an acceptable source of guidance under PSAS[3]

In assessing whether ASC 980-340-25-1 is an acceptable source of guidance under PSAS, Paragraph 5 of PSAS 1150, GENERALLY ACCEPTED ACCOUNTED PRINCIPLES, states the following:

When the primary sources of GAAP do not deal with the accounting and reporting in financial statements of transactions or events encountered by the public sector reporting entity, or additional guidance is needed to apply a primary source to specific circumstances, the selection of an appropriate accounting policy requires the exercise of professional judgment. In these circumstances, a public sector reporting entity should adopt accounting policies and disclosures that are consistent with:

a) the primary sources of GAAP; and

[3] If the accounting for GBEs were to change in the future such that line by line consolidation is required using PSAS, the importance of this consideration increases significantly.

b) the application of the concepts described in FINANCIAL STATEMENT CONCEPTS, Section PS 1000.

Related guidance is also provided in PSAS 1150.18-.20:

Paragraphs PS 1150.19-.24 identify some of the other sources that a public sector reporting entity might consult to assist in selecting accounting policies and disclosures that comply with paragraph PS 1150.05.

Pronouncements issued by other bodies authorized to issue accounting standards may be useful sources to consult. For example, accounting pronouncements published with the authority of the Canadian Accounting Standards Board (AcSB), International Accounting Standards Board (IASB), US Federal Accounting Standards Advisory Board (FASAB), US Governmental Accounting Standards Board (GASB), or International Public Sector Accounting Standards Board (IPSASB) are often important sources to consult on matters not covered by primary sources of GAAP or for assistance in applying a primary source of GAAP to specific circumstances.

When a public sector reporting entity chooses to consult a source described in paragraph PS 1150.19, it applies professional judgment and evaluates the source in the context of the relative manner in which the standard setter requires its pronouncements to be applied, as well as in the context of the related pronouncement. When an accounting standard setter does not have a conceptual framework that is similar to the concepts referred to in paragraph PS 1150.05(b), the public sector reporting entity needs to ensure that the selected source is consistent with those concepts.

Since PSAS does not specifically address the treatment of costs incurred that will be recovered through regulatory operations in future periods, the IESO would not be precluded from following the guidance in ASC 980-340-25-1. However, PSAS 1000.05 makes it clear that in order to do so, it must first be demonstrated that such guidance is consistent with the application of the concepts described in PSAS 1000, FINANCIAL STATEMENT CONCEPTS.

The relevant guidance in PSAS 1000 relating to the recognition of an asset is as follows:

PSAS 1000.35

Assets are economic resources controlled by a government as a result of past transactions or events and from which future economic benefits are expected to be obtained.

PSAS 1000.36

Assets have three essential characteristics:

a) they embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows;
b) the public sector entity can control the economic resource and access to the future economic benefits; and
c) the transaction or event giving rise to the public sector entity's control has already occurred.

PSAS 1000.37

An item is not an asset of a government if it lacks one or more of the essential characteristics listed in the preceding paragraph. Thus, for example, an item does not qualify as an asset of a government if the item involves:

a) *no future economic benefit;*
b) *future economic benefit, but the government cannot obtain it; or*
c) *future economic benefit that the government may obtain, but the events or circumstances that give the government control of the benefit have not yet occurred*

The following supports the IESO's position that the regulatory asset possesses the three essential characteristics of an asset:

Embody future economic benefits that involve a capacity, singly or in combination with other assets, to provide goods and services, to provide future cash inflows, or to reduce cash outflows

The following excerpts from the FHP Act make it clear that the IESO is entitled to recover the regulatory asset through rates in the future:

Variance account to be established, maintained

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

Recording determinative

(2) Subject to the correction of any obvious error by the IESO, its recording of the balance in the variance account is determinative of the balance as of the time of the recording.

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

Limitation

(3) The IESO shall not be entitled to collect all or part of the balance recorded in the variance account from specified consumers before May 1, 2021.

Accordingly, the regulatory asset, by statute, has the capacity to provide future cash inflows.

While perhaps obvious, paragraph 13 of PSAS 3210, ASSETS, confirms the generation of future cash flows represents a future economic benefit:

The future economic benefits embodied in an asset may also be in the form of generating future cash inflows. Cash inflows benefit the public sector entity because cash can be used to purchase or to provide goods and services, redistribute wealth or settle liabilities. Benefits in the form of cash inflows relate to resources, such as loans receivable, inventory for resale and portfolio investments. Also, some public sector resources generate cash inflows because they have user fees associated with them.

The ability of the regulatory asset to generate future cash flows is dependent on the future consumption of electricity by rate-payers. Although the timing of the recovery of the regulatory asset has not yet been established by statute, the recovery period is intended to be 30 years. Given the nature and extent of customer demand for the power generated and distributed in Ontario, both at this time and projected in the future, sufficient demand is expected to exist in the future to recover the regulatory asset. This conclusion, which is supported by Figure 19: Ontario's Forecast Electricity

Production in Achieving Balance – Ontario's Long-Term Energy Plan, will need to be continually evaluated throughout the recovery period. The willingness of unrelated third parties to fund the purchase of the regulatory asset from the IESO by OPG Trust also demonstrates the belief that sufficient demand will exist to permit its future recovery.

The public sector entity can control the economic resource and access to the future economic benefits

Paragraph 16 of PSAS 3210, ASSETS, states the following:

A public sector entity controls the economic resource and access to the future economic benefits when it:

- *a) can benefit from the economic resource through its capacity to provide goods and services, to provide future cash inflows or to reduce cash outflows;*
- *b) can deny or regulate access to those benefits by others; and*
- *c) is exposed to the risks associated with the economic resource.*

The IESO can benefit from the regulatory asset through its capacity to provide future cash inflows in one of two ways:

1. *Collection through future rates*

Section 25 of the FHP gives the IESO the right to recover the regulatory asset through future rates:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

2. *Sale to a financing entity*

Section 26 of the FHP Act permits the IESO to sell the regulatory asset:

26 (1) The IESO may from time to time, in accordance with this Act and the regulations, transfer a specified portion of the regulatory asset to a financing entity in accordance with this section.

Agreement

(2) An agreement between the IESO and a financing entity in relation to the transfer of a specified portion of the regulatory asset shall provide for consideration of a payment by the financing entity to the IESO in an amount equal to the amount of the specified portion.

Effect of payment

(3) Upon receipt by the IESO of the payment by the financing entity,

- *(a) the balance in the variance account shall be reduced by the amount of the payment;*
- *(b) the regulatory asset shall be adjusted accordingly;*
- *(c) the financing entity shall acquire a corresponding investment interest; and*
- *(d) the IESO shall retain no further right, title or interest in the corresponding investment interest.*

Since (a) the statutory right to recover the regulatory asset belongs solely to the IESO, and (b) the IESO is permitted, but not required, to sell the regulatory asset, the IESO can deny or regulate access to the future economic benefits of the regulatory asset by others.

The IESO is exposed to the risks associated with the regulatory asset, with the primary risk being that collection through the mechanism set out in Section 25 of the FHP Act is dependent on the future

Commented [LAP17]: CV - Are there other examples to provide as analogies – anything in tangible capital assets?

.31 *When conditions indicate that a tangible capital asset no longer contributes to a government's ability to provide goods and services, or that the value*

.07 *When there has been a loss in value of a portfolio investment that is other than a temporary decline, the investment should be written down to recognize the loss. The write-down should be included in the statement of operations. In the case of an item in the fair value category, a reversal of any net remeasurements should be reported in the statement of remeasurement gains and losses.*

Commented [OPCD18]: See comment on OPCD 19)

consumption of electricity by rate-payers.

The above analysis supports the position that the IESO controls the regulatory asset and access to the future economic benefits.

In reaching this conclusion, consideration was given to the following excerpt included on Page 37 of the 2008 Annual Report of the OAGO:

With regard to the second characteristic, we simply point again to the legacy of the former Ontario Hydro and its stranded debt. This in our view provides concrete evidence that even in monopoly situations governments do not have sufficient assurance that an enterprise will generate enough profits in future years to recover all of its past costs.

Although there needs to be sufficient assurance regarding the recovery of past costs, all relevant facts and circumstances need to be taken into consideration. Accordingly, the stranded debt of Ontario Hydro can be a relevant to the analysis, but not determinative on its own. As noted in the previous section, the recoverability of past costs will be continually assessed.

Commented [OPCD19]: CV to review wording (past does not predict future).

The transaction or event giving rise to the public sector entity's control has already occurred

When evaluating whether a transaction or event gives rise to control, the following guidance from PSAS 3210, ASSETS, provides helpful guidance:

.26
The past transaction or event that gives rise to control of an economic resource resulting from exchange agreements or contracts usually occurs at the point of exchange. This arises when substantially all the benefits and risks of ownership have been transferred to the public sector entity and normally coincides with the disbursement of funds, exchange of other assets or assumption of liabilities.
.28
The existence of a law, by-law or policy in relation to a particular program is not a past transaction or event that gives rise to control of an economic resource. Control does not exist until the underlying event occurs.
.29
The past transaction or event giving rise to control of an economic resource must have occurred by the financial statement date. Legislation having retroactive application cannot create a past transaction or event. Any economic resources related to that legislation would be accounted for in the current and relevant future periods, not in the period of the effective date of the legislation.

In the case of the regulatory asset, the above guidance in PSAS 3210 makes it clear that it is not the statute itself that is the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute. Accordingly, control over the economic benefits of the regulatory asset occurs when the IESO incurs a cash flow deficit that is recorded in the FHP variance account in accordance with Section 24(1) of the FHP Act:

24 (1) The IESO shall establish and maintain a variance account in which it records the following:

1. The IESO deferral for each month.

2. All payments received by the IESO resulting from the exercise of the right of recovery under section 25 and any transfer under section 26.

3. Such other adjustments as may be prescribed, including adjustments in respect of the period that commences on or after May 1, 2017 and before the day this section comes into force.

At this point in time, the IESO has incurred a cash outflow for which it is entitled to recover under Section 25 of the FHP Act:

Regulatory asset established

25 (1) Effective May 1, 2017, the IESO has the right, exercisable in accordance with this Act and the regulations, to recover the balance recorded in the variance account from specified consumers.

Board to set rates

(2) Subject to subsection (3), the Board shall, from time to time and in accordance with the regulations, determine and set rates payable by specified consumers to allow for the IESO to recover the balance recorded in the variance account.

The following excerpt from the IFRS Staff Paper on Rate-Regulated Activities prepared for discussion at the June 2017 IASB meeting presents a consistent view and dismisses the potential dissenting view that the transaction or event giving rise to the IESO's control is the future consumption of electricity by rate-payers:

A right arises from the rate-adjustment mechanism if the entity has already partially or fully fulfilled a regulatory requirement (past event) but the current regulated rate does not yet reflect the compensation that the entity is entitled to in exchange. Even though the entity cannot compel its customers to buy the regulated goods or services, the entity's right to charge an increased future regulated rate has the potential to produce for the entity an inflow of economic benefits that are not available to other parties. That right will be consumed as the entity includes the rate increase in future regulated rates and will lead to an inflow of economic benefits if customers pay the increased future regulated rate for the future delivery of goods or services.

In April 2011, Torys LLP issued a letter to OPG relating to the legal basis of OPG's regulatory deferral and variance accounts which, as evidenced by the following excerpts, also takes the position that the transaction or event giving rise to the asset is the incurrence of costs for which recovery is provided for under statute:

OPG's deferral and variance accounts are established either by regulation or by orders of the Ontario Energy Board (the "OEB") through the proper exercise of its jurisdiction as the administrative tribunal responsible for regulating the electricity industry in Ontario. The establishing of such an account pursuant to regulation or the granting of approval by the OEB to establish such an account confers upon OPG a right to record amounts in the account and to account for the amounts recorded on the basis that they have been prudently incurred.

The OEB has broad jurisdiction in setting payment amounts for OPG and it would not be reasonable for the legislature to have given the OEB the legislative power to authorize the establishment of accounts without also giving the OEB the power to dispose of the amounts recorded in such accounts, including in circumstances where there is no future output. Moreover, to interpret the applicable legislation in a manner that only allows for payment amounts on a volumetric basis is in our view unreasonable because it would not be consistent with the rules of statutory interpretation.

Commented [OPCD20]: Recovery not dependent on future output (eg. OPG would be able to recover, even if the entity stopped producing). Would similar apply to situation of declining demand?

Another potential dissenting view is contained on page 37 of the 2008 Annual Report of the OAGO:

With regard to the third characteristic, we do not believe that a rate-regulation decision can be considered a transaction or event giving rise to an asset or obligation because, as stated above, from the level of the government's consolidated financial statements such a decision is an internal event between two government-controlled entities. An equivalent analysis for rate-regulated liabilities leads to the same conclusion. PSAB standards preclude the inclusion of both gains and losses from such inter-company transactions. Therefore, our contention is that, at the consolidated financial statement level, rate-regulated assets and liabilities have no place and should be removed upon consolidation of the government's controlled entities.

It should be noted, however, that the OAGO's belief that a rate-regulation decision cannot be considered a transaction or event giving rise to an asset or obligation is not contrary to the IESO's position. As noted above, it is not the statute itself that is being considered the transaction or event giving rise to the asset, it is the incurrence of costs for which recovery is provided for under statute.

In addition, one could argue the creation of the relevant statutes is not an internal event from the

point of view of the consolidated government. Statutes must be passed by the Legislative Assembly of Ontario to become law. Since the Legislative Assembly is comprised of elected members, it can be viewed as the government's governing body.

Concluding the regulatory asset possesses the three essential characteristics of an asset in PSAS 1000.05 then begs the question as to whether the application of the guidance in ASC 980 is even necessary in this particular situation. Consistent with the statement in ASC 980 –340-25-1 that *rate actions of a regulator can provide reasonable assurance of the existence of an asset,* ASC 980 provides guidance as to how to apply the primary source of PSAS in the regulatory environment.

In a letter from the OAGO to the Board of Directors of the IESO dated June 22, 2017 (the OAGO Letter), the OAGO makes the following statement:

Commented [OPCD21]: The paper includes references to all relevant documents to support a robust analysis. Assume this is both appropriate and acceptable.

The definitions of an asset in the PSAS and FASB Conceptual Framework are similar. Similar to PSAS, rate regulated deferral accounts do not generally meet the definition of an asset in the FASB's Conceptual Framework.

However, the following excerpts from the Basis for Conclusions for FAS 71 (paragraph 58 in particular), clearly support that ASC 980 is an application of, not an exception from, the basic definition of an asset in the Conceptual Framework:

Economic Effects of Regulation

56. The second threshold issue in the Discussion Memorandum was: "Does rate regulation introduce an economic dimension in some circumstances that should affect the application of generally accepted accounting principles to rate-regulated enterprises?"

57. Most respondents to the Discussion Memorandum indicated that rate regulation does introduce such an economic dimension in some circumstances. Respondents cited the cause-and-effect relationship of costs and revenues as the principal economic effect of regulation that affects accounting for regulated enterprises. They noted that cost might be one factor used by unregulated enterprises to establish prices, but it would often not be the most important factor. Usually, prices are limited by the market. An unregulated enterprise might desire to price its goods or services at a level that would recover all costs and a reasonable profit; however, the market might not permit that price. Alternatively, an unregulated enterprise might be able to increase its prices and its profit if competition does not limit its prices. In either case, cost often is not the principal determinant of prices. In contrast, for an enterprise with prices regulated on the basis of its costs, allowable costs are the principal factor that influences its prices.

58. The economic effect cited by most respondents is the ability of a regulatory action to create a future economic benefit—the essence of an asset. For example, consider a regulated enterprise that incurs costs to repair damage caused by a major storm. If the regulator approves recovery of the costs through rates over some future period or is expected to do so, the rate action of the regulator creates a new asset that offsets the reduction in the damaged asset. The enterprise has probable future economic benefits—the additional revenue that will result from including the cost in allowable costs for rate-making purposes. The future benefits are obtained or controlled by the enterprise as a result of a past event—incurring the cost that results in the rate order. Thus, the criteria of Concepts Statement 3 for an asset are met.

The fact that many Canadian rate-regulated entities recognized regulated assets under Part V of the CPA Canada Handbook – *Pre-changeover Accounting Standards* (Part V GAAP) further supports the position that regulated assets do meet the basic definition of an asset under PSAS. Although Part V GAAP refers to rate regulation in several standards, it does not include cost capitalization guidance equivalent to ASC 980-340-25-1. It does, however, specify in paragraph 32B of Section 1100, *Generally accepted accounting principles*, that Section 1100 applies to the recognition and measurement of assets and liabilities arising from rate regulation beginning January 1, 2009. Since Section 1100.04 only permits the use of an alternate source of GAAP if it is consistent with Part V GAAP, regulated assets need to meet the basic definition of an asset under Part V GAAP in order to be recognized. The Part V GAAP definition of an asset in Section 1000, *Financial Statement Concepts* is consistent with the PSAS definition.

The CICA Research Report also concluded regulated assets meet the basic definition of an asset under Part V GAAP:

In the Study Group's view, the economic benefits and obligations created by rate regulation and resulting from past transactions or events, and the changes in these amounts, meet the definition of a financial statement element set out in Handbook Section 1000.

The OAGO Letter suggests that IFRS should be consulted prior to referring to ASC 980 under PSAS's GAAP hierarchy in PSAS 1150 and points out the following:

- In 2005 the International Financial Reporting Interpretations Committee (IFRIC) indicated the US GAAP recognition criteria for regulated assets were not fully consistent with IFRS and could not be applied by analogy.
- When the question of rate regulated accounting was posed to the IFRIC again in 2008, the IFRIC noted the topic had been previously addressed and there was a well-established practice of first time IFRS adopters ceasing rate regulated accounting and removing regulatory deferral accounts from their financial statements.
- In the Basis for Conclusions on IFRS 14, IFRS 14.BC30 noted the differences in the recognition criteria between IFRS and ASC 980 resulted in almost all existing regulatory deferral accounts being derecognized upon transition to IFRS.

It should be noted, however, that the IASB's project on rate-regulated activities is still in progress and the OAGO Letter does not reference more recent and relevant activity. In September 2014, the IASB issued Discussion Paper DP/2014/02, *Reporting the Financial Effects of Rate Regulation*. The Discussion Paper presents the opposing views as to whether regulatory deferral account balances meet the definitions of an asset or a liability and specifically states the following in paragraph 5.09:

Consequently, the IASB has not formed a preliminary view on whether regulatory deferral account balances meet either the current or proposed revised Conceptual Framework definitions of an asset and a liability. It will use the input received from the responses to this Discussion Paper and the Conceptual Framework project to help it assess whether to develop any specific accounting guidance or requirements for rate-regulated activities.

In addition, the most recent paper issued by the IASB staff in June 2017 includes the following:

17. During the May 2017 Board meeting we also considered the interaction between the definitions of assets and liabilities and the characteristics of defined rate regulation (see paragraphs 5 and 6). We concluded that a combination of those characteristics suggested that the rights and obligations created

by the rate-adjustment mechanism are assets and liabilities, as those terms are expected to be defined in the forthcoming revised Conceptual Framework for Financial Reporting.

The Exposure Draft ED/2015/3, *Conceptual Framework for Financial Reporting*, defines an asset as follows:

4.5 An asset is a present economic resource controlled by the entity as a result of past events.
4.6 An economic resource is a right that has the potential to produce economic benefits.

This recent activity suggests that it would be premature to assume that the IASB will conclude that regulatory deferral account balances will not meet the definitions of an asset or a liability.

Once it is determined that the regulatory asset meets the basic characteristics of an asset in PSAS 1000.36, consideration also needs to be made as to what type of asset it is. This is important because PSAS 1000.58 does not permit the recognition of intangible assets:

In the absence of appropriate public sector recognition and measurement criteria for intangibles, all intangibles, including those that have been purchased, developed, constructed or inherited in right of the Crown, are not recognized as assets in government financial statements. The intangible often called "human capital" that embodies the talent or intellectual capital of government employees is not recognized as an asset under existing accounting principles.

PSAS 1000 identifies two types of assets: financial assets and non-financial assets and provides the following commentary:

.39 Financial assets are assets that could be used to discharge existing liabilities or finance future operations and are not for consumption in the normal course of operations.

.40 A financial asset is any asset that is:

- *a) Cash*
- *b) a realizable asset that is convertible to cash;*
- *c) a contractual right to receive cash or another financial asset from another party;*
- *d) a contractual right to exchange financial instruments with another party under conditions that are potentially favourable to the government;*
- *e) an equity instrument of another entity;*
- *f) an investment in a government business enterprise or government business partnership;*
- *g) a financial claim on an outside organization or individual; or*
- *h) an inventory or item for sale that meets the criteria in FINANCIAL STATEMENT PRESENTATION, paragraph PS 1201.055.*

.41 Non-financial assets include tangible capital assets, and other assets such as prepaid expenses and inventories of supplies.

.42 Non-financial assets are acquired, constructed or developed assets that do not normally provide resources to discharge existing liabilities, but instead:

- *a) are normally employed to deliver government services;*
- *b) may be consumed in the normal course of operations; and*
- *c) are not for sale in the normal course of operations.*

PSAS 3210, ASSETS, also provides some relevant guidance:

.24 Non-financial resources include all items of a fixed or permanent nature (such as tangible capital property), claims to goods and services (such as prepaid items) and consumable goods (such as inventories of supplies). Non-financial resources also include intangibles, Crown lands and natural resources.

.25 Certain non-financial resources are, however, not given accounting recognition as assets in government financial statements. For example, all government intangibles, and all natural resources and Crown lands that have not been purchased by the government, are not given accounting recognition in government financial statements. A government's non-financial

assets, as defined in FINANCIAL STATEMENT CONCEPTS, Section PS 1000, comprise the recognized non-financial resources of a government.

Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'.

In accordance with PSAS 1201.040(a), financial assets are presented separately on the statement of financial position. The IESO classifies its regulated assets (i.e., the original variance account and the regulated assets relating to unrecovered smart metering expenses and unrecovered PSAB transition items) as financial assets. Consistent with these other regulated assets, ~~The~~ the regulatory asset created under the FHP meets the definition of a financial asset in PSAS 1000.39 since it will be available to discharge existing liabilities or finance future operations. Although the regulatory asset is not available to discharge liabilities existing at the date of the statement of financial position, that is no different than, for example, accounts receivable. ~~does not meet the criteria in PSAS 1000.40 to be a financial asset as it does not represent a current contractual right to receive cash. Accordingly, the regulatory asset is a non-financial resource. As noted above, to be recognized as an asset in the financial statements a non-financial resource cannot be an intangible.~~

~~Although PSAS does not permit the recognition of intangibles, it also does not provide a definition of intangibles. While PSAS 1000.40 provides a finite list of items that represent financial assets, the guidance in PSAS 1000.41 .42 on non-financial assets is less definitive, using words like "such as" and "normally". In absence of specific guidance in PSAS as to what constitutes an intangible, U.S. GAAP is probably the most appropriate source to consult, in light of the fact that it deals specifically with regulated assets. Under U.S. GAAP, a regulated asset is not treated as an intangible. ASC 980 contains separate subsections for 'Intangibles – Goodwill and Other' and 'Other Assets and Deferred Costs' and regulated assets are included in the guidance on 'Other Assets and Deferred Costs'. Consistent with the treatment under U.S. GAAP, the regulatory asset is categorized as an other asset under PSAS and recognized in the financial statements as a non-financial asset.~~

By recognizing the regulatory asset as a financial asset, the FHP will have a neutral impact on both the Province's net debt and accumulated deficit, which ~~is~~appears appropriate and aligned ~~consistent~~ with the intent of guidance in PSAS 1100, Financial statement objectives:

Financial statements should present information to describe the government's financial position at the end of the accounting period. Such information should be useful in evaluating:

a) the government's ability to finance its activities and to meet its liabilities and contractual obligations; and
b) *the government's ability to provide future services.*

A government's net debt is an important indicator of a government's financial position, highlighting the financial affordability of future government service provision. A net debt position represents a "lien" on the ability of the government to apply financial resources and future revenues to provide services. Non-financial assets are added to net debt to calculate the other indicator of a government's financial position — its accumulated surplus or deficit. Non-financial assets are "prepaid service potential". Reporting a government's recognized non-financial resources as part of its financial position provides

Commented [OPCD22]: REVIEW

Commented [OPCD23]: Would inserting reference to precedents of RRA commoditizing be helpful?

information necessary for a more complete understanding of a government's debt position, financial position and future operating requirements.

Governments provide public services and redistribute wealth for a variety of social and economic purposes. To meet those objectives, governments need information about the cost of services and the affordability of services. An understanding of the extent of the financial "lien" the government has on its ability to provide future services as a result of past transactions and events is essential information. Governments also need to have an appreciation of the magnitude of the total economic resources they have on hand to deliver services. A government's net financial resources / net debt position, assessed in combination with the non-financial resources position of the government, provides a measure of the net recognized economic resources available to the government at the financial statement date to provide services in the future.

If the regulatory asset is not recognized as a financial asset, the Province's net debt will increase significantly, suggesting that the Province has a much higher future revenue requirement. This would be inaccurate, however, since the regulatory asset is going to be recovered under statute from electricity consumers, not taxpayers.

Commented [OPCD24]: If not recognized, then impact on annual surplus/deficit is significant as well, and under Balanced Budget Legislation would have material impacts which would be contrary to the public interest (based on ON's practice of defining balanced budget based on PSAS).

……

Debits and Credits

Based on the example provided earlier, the IESO pays the contracted power generator $400 for electricity used by the ratepayer and collects $300 from the ratepayer through their local distribution company (LDC). The $100 recovery shortfall is recorded in a variance account created by Bill 132 and deemed to be a regulatory asset. The IESO sells the regulatory asset to OPG Trust for $100 to obtain cash to make up the shortfall.

The accounting for the above transactions in the financial statements of the IESO, which are prepared in accordance with PSAS, depends on whether the regulatory asset is eligible for recognition as an asset for accounting purposes under PSAS. To avoid confusion in the remainder of this document, the term regulatory asset will refer to the defined term in the FHP Act and the term regulated asset or rate-regulated asset (RRA) will refer to an asset recognized for accounting purposes. The following table illustrates the journal entries to be booked by the IESO under both scenarios:

Scenario A – Regulated Asset			**Scenario B – Not a Regulated Asset**		
Market Settlement					
DR	Cash	300	DR	Cash	300
DR	Asset	100	DR	Expense	100
CR	Cash	(400)	CR	Cash	(400)
Sale of Regulatory Asset to OPG Trust					
DR	Cash	100	DR	Cash	100
CR	Asset	(100)	CR	Gain	(100)

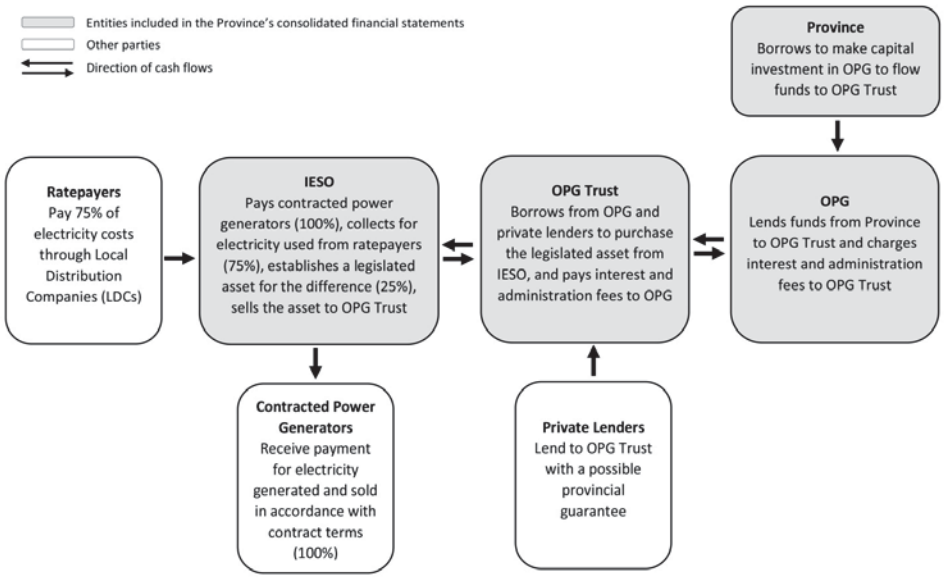
Commented [OPCD25]: Consider inserting 2 additional lines for impact on net debt and impact on annual surplus/deficit? If not sold by the end of the year, will have a loss on the IESO f/s and the province's f/s.

At any given point in time, the accounting result will be the same under both scenarios provided the cash shortfall has been fully funded. If a funding deficit exists, however, the deficit would be recognized

as an asset under Scenario A and recognized as an expense under Scenario B. A funding deficit may arise due to, for example, temporary timing differences between the creation and sale of a regulatory asset. A funding deficit may also arise if OPG Trust (or another financing entity) ceases to purchase the IESO's regulatory assets on an on-going basis.

APPENDIX A

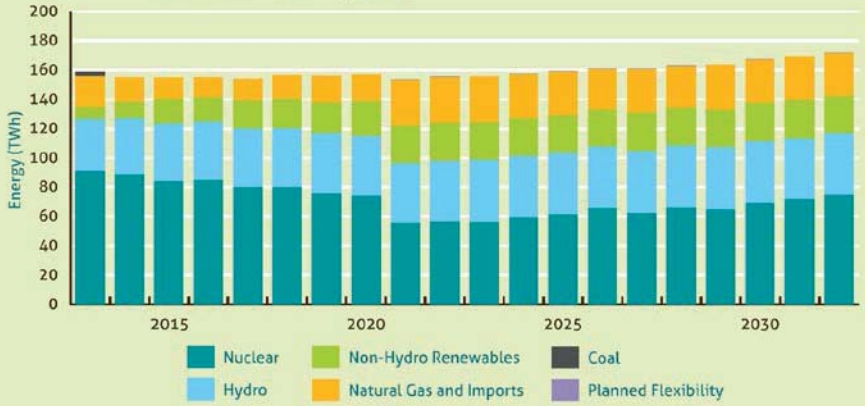
Proposed Legislated Transaction Structure
Prepared by the Office of the Auditor General of Ontario



Commented [OPCD26]: Can chart be expanded to include impact on CFS (consolidation of IESO reflecting RRA on CFS, Interest Income from OPG through revenue of GBE will help to offset borrowing costs incurred by Province on equity injection).

APPENDIX B

Figure 19: Ontario's Forecast Electricity Production (TWh)



Notes: The Planned Flexibility identified in Figure 19 is required to meet peak requirements and represents less than 1 TWh of energy per year. Forecasting of electricity production includes the expectation of imports and exports of electricity in all years. Imports and exports are an important component in managing the operation of the electricity system. As a result, electricity production forecast exceeds the forecast Ontario consumer demand.